

defendant only will pay interest at 6 per cent. on the money drawn SUBBARAYUDU
by him from the date of receipt to date of repayment. With this ^{v.}
modification we confirm the decree of the District Judge and KOTTAYA.
dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Wilkinson.

KRISHNAYYA (PETITIONER), APPELLANT,

1891.
December 4.

v.

UNNISSA BEGAM (COUNTER-PETITIONER), RESPONDENT.*

*Civil Procedure Code, ss. 234, 368—Execution of decree—Death of judgment-debtor
after attachment and before sale—Representatives not joined.*

A decree-holder attached land of the judgment-debtor in execution of his
decree and a sale proclamation was made; the judgment-debtor died and his legal
representatives were not brought on to the record, but the execution proceeded
to sale:

Held, that the sale should be set aside.

APPEAL under letters patent, section 15, against the judgment of
Shepherd, J., on civil revision petition No. 92 of 1889.

The above-mentioned petition was preferred under Civil Pro-
cedure Code, s. 622, and prayed the High Court to revise the
proceedings of G. T. Mackenzie, District Judge of Kistna.

The decree-holder in original suit No. 391 of 1882, on the file
of the District Munsif of Bezwada, attached land belonging to the
judgment-debtor on 9th September 1887; the sale proclamation
was ordered on 27th September 1887; the judgment-debtor died
shortly afterwards, but the execution proceeded to sale. The
daughter of the judgment-debtor claimed to be entitled to the
land in question, and presented a petition to the District Munsif,
praying that the sale, which was alleged to have fetched a very
low price, be set aside. The District Munsif rejected this petition,
but on appeal the District Judge made an order setting aside the
sale, which was the order sought to be revised.

The District Judge expressed a doubt whether the provisions
in the Civil Procedure Code regarding the death of a party

* Letters Patent Appeal No. 25 of 1889.

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applied to execution proceedings, as to which he referred to *Gulabdas v. Lakshman Narhar*(1), *Dulari v. Mohan Singh*(2), but he considered that the case came within the rule in *Ramasami v. Bagirathi*(3), on the authority of which he made an order as above.

The auction purchaser preferred the above petition, which came on for disposal before SHEPARD, J.

Subbayya Chetti for petitioner.

Respondent was not represented.

SHEPARD, J.—This is not a mere case of irregularity in the conduct of the sale. Here the judgment-debtor was no longer alive at the date of the sale, and no representative had been placed on the record. The decision in *Ramasami v. Bagirathi*(3) is binding on me, notwithstanding the judgment in *Stowell v. Ajudhia Nath*(4). I must dismiss the petition.

The auction-purchaser preferred this appeal against the judgment of SHEPARD, J.

Subbayya Chetti for appellant.

Respondent was not represented.

JUDGMENT.—We agree with the learned judge that the decision in *Ramasami v. Bagirathi*(3) was right, and see no reason why we should refer this case to the Full Bench because of the decision in *Stowell v. Ajudhia Nath*(4). In that case the contest was between two mortgagees, the second mortgagee having been the first purchaser. After the sale to him the first mortgagee attached and brought the property to sale, and the mortgagee died prior to the sale. The second mortgagee had, however, purchased his interest subject to the first mortgagee's claim, and the death of the original owner could not affect the proceedings in any way. The remark of Oldfield, J., was not concurred in by Straight, J., and both Judges were agreed that the question whether the sale might be voidable at the instance of the legal representative did not arise for decision.

The property might be liable in the hands of the legal representatives, but the right, title and interest of a deceased person could not be sold. The sale without notice to him of property belonging to a person not a party to the suit was a material irregularity and must necessarily cause him substantial injury.

The appeal is dismissed.

(1) I.L.R., 3 Bom., 221.

(3) I.L.R., 6 Mad., 180.

(2) I.L.R., 3 All., 759.

(4) I.L.R., 6 All., 256.