

PALANMALAI
PADAYACHI
v.
SHANMUGA
AUSARI.

Regulation VI of 1831 and with the decision in the *Collector of Kistna District v. Chinnamrazu*(1). The present suit is one for the possession of the emoluments of a certain hereditary office; and such a suit is apparently barred by the operation of section 3, Regulation VI of 1831. We therefore refer the question whether the suit is so barred to the Full Bench.

This appeal having come on for hearing before the Full Bench on 23rd November 1893, the Court delivered the following

JUDGMENT:—This is clearly a suit within section 3 of the Regulation, and we must, therefore, answer the question in the affirmative. There is no necessary conflict between the two cases cited in the order of reference.

This appeal coming on for hearing before a Division Bench consisting of Muttusami Ayyar and Best, JJ., the Court delivered the following

JUDGMENT:—In accordance with the opinion of the Full Bench we set aside the decree of the District Judge and restore that of the District Munsif.

Respondent must pay appellants' costs in this Court and also in the lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

RAMAN (PETITIONER), APPELLANT,

v.

KUNHAYAN AND ANOTHER (COUNTER-PETITIONERS),
RESPONDENTS.*

Execution—Fraud in conducting a sale in contravention of agreement between creditor and debtor—Estoppel of judgment-debtor by previous petition.

The fact that a judgment-debtor, who petitions to have the sale in execution of the decree against him set aside on the ground of fraud and irregularity, has, in a petition made previous to the sale asking for its adjournment, made no mention of the irregularities now relied on does not create an estoppel.

Thakoor Mahatab Deo v. Leelumund Singh(2) followed.

(1) 5 M.H.C.B., 360.

* Appeal against Order No. 78 of 1892.

(2) I.L.R., 7 Calo., 613.

APPEAL against the order of the Subordinate Judge of North Malabar passed on civil miscellaneous petition No. 8 of 1892.

RAMAN
v.
KUNHATAN.

The petitioner, a judgment-debtor, prayed that the sale in execution of the decree passed against him might be set aside on the ground that the decree-holder, having entered into an agreement with him arranging for a settlement of the debt in lieu of the sale of the property, had nevertheless caused the property to be sold, had purchased it at a low price and had generally acted fraudulently and in contravention of the agreement. It appeared that after the execution of the aforesaid agreement, the petitioner had filed a petition for the purpose of obtaining an adjournment of the sale with a view to making arrangements for carrying out his agreement. The Court, however, had refused the petition on the ground that the date of the sale was very near.

The Subordinate Judge rejected the petition on the ground that the first petition (No. 545 of 1891) estopped the petitioner from alleging any irregularity in the sale, since no mention had been made in the said petition of the alleged arrangement between the creditor and judgment-debtor.

Ryru Nambiar for appellant.

Govindā Menon for respondents.

JUDGMENT.—The Subordinate Judge is in error in thinking that the petitioner is estopped by his previous petition No. 545 of 1891. There was no occasion for mentioning in that petition the irregularities now relied on as vitiating the sale, as that petition was filed for the purpose of obtaining an adjournment with a view to raising the money by private arrangement. In a similar case the Calcutta High Court also held that omissions in such a petition did not create an estoppel(1). We set aside the order and direct the Subordinate Judge to allow the parties to adduce evidence with reference to the alleged irregularities and to dispose of the case in accordance with law. The costs of this appeal will abide and follow the result.

(1) I.L.R., 7 Calc., 613.