

RAMANADAN
CHETTI
v.
NAGOODA
MABACAYAR.

of this proposition the judgment of Wood, V.C., in the *Liverpool Borough Bank v. Turner*(1), where it is laid down that, since the passing of the Merchant Shipping Act, 17 and 18 Vict., c. 104, the only ownership in a vessel that can be created, either in law or in equity is when the requirements of that Act have been complied with, *i.e.*, a sale-deed has been executed and the transfer has been registered, and in which case specific performance was refused. This case was followed by the Merchant Shipping Act^a Amendment Act, 25 and 26 Vict., c. 63, which by section 3 says that certain equities may be enforced and it was argued by the appellant's Vakil that the law as to the manner in which valid sales might be made was thereby altered. The case of *Ward v. Beck*(2), however, which discussed this Merchant Shipping Act Amendment Act quotes the judgment of Wood, V.C., in the above case and approves it, and it must therefore be considered as a binding authority as to the manner in which alone a valid sale of a ship can be effected.

For this reason, then, the plaintiff's suit must fail, and we also think that for the other reasons urged by the defendant, the plaintiff cannot succeed in his action. We, therefore, dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

1897.
December 10.

VIRASAMI CHETTI (PETITIONER-PURCHASER), PETITIONER,

v.

LILADHARA VYASS (COUNTER-PETITIONER), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, ss. 310A, 315—Application by a purchaser for refund.

A house was attached and sold as the property of one against whom a decree of the Small Cause Court, Madras, had been passed. The property was brought to sale, and the purchase money was paid into the Madras City Civil Court. The sale was set aside under Civil Procedure Code, section 310A. Part of the purchase money was attached in execution of subsequent decrees passed against the same defendant by the Small Cause Court and was remitted to that Court

(1) 29 L. J., Ch., 827.

(2) 32 L. J., C.P., 113.

* Civil Revision Petition No. 93 of 1897.

under the attachment. On an application by the purchaser for the refund of the purchase money by the various persons who had received portions thereof:

Held, that the City Civil Court had jurisdiction to entertain the application.

PETITION praying the High Court to revise the proceedings of P. Srinivasa Rau, Judge of the City Civil Court, Madras, on Civil Miscellaneous Petition No. 573 of 1896 in the matter of Execution Petition No. 50 of 1893. .

One Virasami Naidu obtained a decree in suit No. 4528 of 1892 on the file of the Madras Court of Small Causes, in execution of which a house was attached and brought to sale and purchased by R. Virasami Chetti for Rs. 790, which was paid into Court. The judgment-debtor obtained an order setting aside the sale under Civil Procedure Code, section 310A, on payment by him into Court of the amount of the decree, *i.e.*, Rs. 790, and the amount of Rs. 40 payable to the purchaser. In execution of subsequent decrees of the Small Cause Court against the same defendant, two sums of Rs. 39 and Rs. 89 were attached and paid over by the City Civil Court out of the sum of Rs. 790 paid in by the purchaser. The purchaser claimed to be entitled, under Civil Procedure Code, section 315, to the refund of the 790 rupees and he now applied accordingly, the several decree-holders and the judgment-debtor being made parties to the application. The Judge of the City Civil Court dismissed the application on the ground that the money had not been paid out by that Court direct, but had been sent to the Small Cause Court under attachment thereupon.

The applicant preferred this appeal.

Kumarasami Sastri and *Visvanadha Sastri* for petitioner.

Lakshmana Chetti for respondent.

JUDGMENT.—We think that the Judge has misunderstood the scope of section 315 of the Code of Civil Procedure. The fact that the purchase money was handed over to the Small Cause Court under an attachment issued by that Court makes no difference. The person who paid the purchase money is entitled, under section 315, to recover the same by way of execution from the person who has actually received it. The fact that the Small Cause Court was the medium through which the money reached the hands of the party proceeded against cannot affect the rights or liabilities of the parties under section 315. We must, therefore, set aside the order of the Judge and direct that the petition be restored to his file, and be disposed of according to law.

The petitioner must have his costs in both Courts.

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