

## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Benson.*

ATHAPPA CHETTI (AUCTION-PURCHASER), APPELLANT,

1897.  
March 5.

v.

RAMAKRISHNA NAYAKAN (COUNTER-PETITIONER No. 1),  
RESPONDENT.\*

*Civil Procedure Code—Act XIV of 1882, ss. 311, 314—Court sale—Irregularity—  
Right of holders of other decrees to object.*

A zamindar mortgaged his estate to a bank and the mortgagee obtained a decree in the High Court, in execution of which it was ordered that the zamindari should be sold village by village. Other persons held money decrees against the zamindar. One of them in execution of his decree had the zamindari put up for sale in one lot, subject to the bank mortgage, and with the leave of the Court purchased it himself. The other decree-holders applied to have the sale (which had not been confirmed) set aside on the ground of material irregularity in publishing the sale by which substantial injury was caused to them. The irregularities relied on were that the proclamation was not issued in the prescribed form, and did not state the extent of the property and the revenue assessed on it, or the amount of income derived from it, and no mention was made of the order of the High Court:

*Held*, that the sale should not be confirmed.

APPEAL against the order of W. Dumergue, District Judge of Madura, in Civil Miscellaneous Petition No. 242 of 1895.

This and certain other petitions were preferred under Civil Procedure Code, sections 311 and 314, by persons holding money decrees against the Zamindar of Guntamanayakanur, who desired to have cancelled the sale of the zamindari which had taken place in execution of a money decree obtained by one Athappa Chetti for Rs. 2,537 in Original Suit No. 65 of 1894 on the file of the Subordinate Court of Madura (West). The sale was held subject to a mortgage of the Commercial and Land Mortgage Bank, and the decree-holder, who was the present counter-petitioner No. 1, having obtained leave to bid, became the purchaser for the sum of Rs. 1,500. The bank had previously obtained a decree upon the mortgage, in execution of which it had been ordered that the zamindari should

\* Appeal against Order No. 84 of 1896.

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be sold village by village. On the close of the first day of the sale held in execution of the decree of the Subordinate Court, the Central Nazir reported that there were no bidders except the first counter-petitioner, who made a bid of Rs. 1,500, and the sale was ordered to be continued next day. This was done, but no other bidders appeared, and the sale was closed. On both days the second counter-petitioner's agent, one Makka Ravuthan, was present. On the third day, that is to say, on the 3rd October 1895, after the sale, the first counter-petitioner executed an agreement in favour of the Zamindar of Doddapanayakanur, who is related to the judgment-debtor. In this agreement the first counter-petitioner stated that he has received from the Zamindar of Doddapanayakanur the sum of Rs. 1,500 deposited as the purchase money for the zamindari and "undertakes on the confirmation of its sale to reconvey or transfer the zamindari at the cost of the Zamindar of Doddapanayakanur to any person the said zamindar may name, without the slightest stipulation even as to the balance of the decree amount." This agreement was attested by Makka Ravuthan, the judgment-debtor's agent, who was present at the Court sale.

The District Judge set aside the sale making *inter alia* the following observations:—

"The petitioners being entitled to rateable distribution, have the right to apply under section 311 to set the sale aside on the ground of material irregularity (*Lakshmi v. Kuttunni*(1)), and it has therefore to be seen whether there was any material irregularity in publishing the sale, no irregularity in conducting it having been alleged. Then as to the proclamation of sale framed on information supplied by the judgment-creditor, the form prescribed required that the extent of the property to be sold and the revenue or rent assessed on the land shall be specified. But neither of these particulars was given in the present instance, and the proclamation itself was not issued in the form required by the High Court—*Vide* page 64, Part II, Civil Rules of Practice. Moreover, the last column of the proclamation ought to contain any other facts material to be known relating to the property, and I think there is no doubt that the fact of the High Court having, in separate proceedings, ordered the zamindari to be sold

(1) I.L.R., 10 Mad., 57.

“village by village was a very material fact which should have been mentioned together with particulars of the income derived from the zamindari in gross and in lots. All these points were ignored, and the application for the sale of the whole estate in one lot practically gave the go-by to the orders of the High Court. Intending purchasers would inevitably feel apprehensive as to the legal effect of a sale in gross by a District Court when the High Court had ordered the sale to be in separate lots, and their apprehension would be increased by all allusion to the order of the High Court being suppressed. The omission to notify the facts which I have now mentioned was, in my opinion, a material irregularity which has resulted in substantial injury to the petitioners.”

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The purchaser preferred this appeal.

*Pattabhiramu Ayyar, Sundara Ayyar and Sesa Chariar* for appellant.

Respondent was not represented.

JUDGMENT.—We agree with the District Judge that there were material irregularities in publishing the sale and that these irregularities caused substantial injury to the respondents, who are decree-holders, within the meaning of section 311, Civil Procedure Code (*Lakshmi v. Kuttunni*(1)).

We, therefore, dismiss the appeal.

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Benson.*

CHOKKALINGA NAICKEN (PLAINTIFF), APPELLANT,

v.

MUTHUSAMI NAICKEN AND OTHERS (DEFENDANTS),  
RESPONDENTS.\*

1897.  
August 9.

*Limitation Act—Act XV of 1877, schedule II, Arts. 142, 144—Adverse  
possession—Acts of ownership.*

The defendant had used as a backyard a small piece of land situated between his house and that of the plaintiff, who was his brother, for a period of more than

(1) I.L.R., 10 Mad., 57.

\* Second Appeal No. 1170 of 1896.