

did not deny that he was present at the cutting though he did not wield an axe himself (see section 114, Indian Penal Code). I am not disposed in revision to allow him for the first time to raise this plea on the allegation that he made a mistake in not raising it before. Even if he is allowed to raise such a technical plea, it would only necessitate a fresh prosecution for abetment and a conviction for that offence.

As regards the sentence, the records clearly show that second accused (petitioner) had no dishonest intention and he had even parted with a large sum of money to the first accused to acquire the right of cutting the trees. I therefore think that a nominal sentence is sufficient (my authority is the same case *In re Penchul Reddi*(1) already quoted by me) and I reduce the sentence on him to a fine of Rs. 5 and order the refund of the balance of whatever amount (if any) has been levied from him.

Rs  
LEWIS.  
SADASIVA  
AYYAR, J.

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## APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and  
Mr. Justice Spencer.

A. SUBBARAYUDU AND TWO OTHERS (DEFENDANTS),  
PETITIONERS,

1913.  
December 16.

v.

T. LAKSHMINARASAMMA (DIED) AND ANOTHER  
(PLAINTIFF AND HER LEGAL REPRESENTATIVE), RESPONDENTS.\*

*Civil Procedure Code (Act V of 1908), O. XXI, r. 89—Sale of immoveable property in Court auction—Subsequent private sale by judgment-debtor—Application by judgment-debtor to set aside auction sale—No locus standi to apply—Order rejecting application—Revision petition to High Court under Civil Procedure Code (Act V of 1908), sec. 115—Not maintainable though order erroneous.*

Where after a sale in Court auction of certain immoveable property, the judgment-debtor sold all his rights in the same property to a stranger by a private sale, and subsequently applied under Order XXI, rule 89, of the Code of Civil Procedure (Act V of 1908) to set aside the auction sale.

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(1) (1899) 9 M.L.T., 216.

\* Civil Revision Petition No. 1026 of 1912.

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*Held*, that the judgment-debtor had no *locus standi* to apply under Order XXI, rule 89, to have the sale set aside.

*Anantha Lakshmi Ammal v. Kunnanchankarath Sankaran Nair* (1913) M.W.N., 101, referred to.

*Ishar Das v. Asaf Ali Khan* (1912) I.L.R., 34 All., 186, followed.

*Per* SADASIVA AYYAR, J.—A Civil Revision Petition under section 11F of the Code of Civil Procedure does not lie against an order of the Lower Court rejecting an application under Order XXI, rule 89, though the order was erroneous in law, as the Lower Court did not act illegally or beyond its jurisdiction or with material irregularity in arriving at the decision.

*Per* SPENCER, J.—Neither an amendment of the petition nor the presentation of a fresh petition by the private purchaser could be allowed by the High Court to be made, as he was not a party to the proceedings in the Lower Court and more than one year had expired after the time allowed by article 166 of the Limitation Act (IX of 1908) for filing a petition in the Lower Court.

PETITION under section 115 of the Civil Procedure Code (Act V of 1908), praying the High Court to revise the order of G. KOTHANDA RAMANJULU NAYUDU, the Temporary Subordinate Judge of Kistna at Masulipatam, in Appeal No. 18 of 1912.

The material facts appear from the judgment of the High Court.

*V. Ramadoss* for the petitioners.

*B. Narasimha Rao* for the respondents.

SADASIVA  
Ayyar, J.

SADASIVA AYYAR, J.—This is a petition by the judgment-debtor under Order XXI, rule 89 of the Civil Procedure Code (corresponding to but differing substantially in its wording from the old section 310-A) to have the Court auction sale of a property (which belonged to him on the date of such auction sale) set aside.

After the Court auction sale, however, he sold away all his rights to a stranger and on the date of this application made by him under Order XXI, rule 89, he had no title in the property. Could such a person be allowed to make an application under the new Code to set aside the sale?

Now, an elementary principle of the law is that unless a statute clearly allowed it, a man who has no right in a property on the date of filing a suit or making an application in respect of that property cannot be allowed to file that suit or make that application. The natural meaning, therefore, of the words in Order XXI, rule 89, "any person either owning such property or holding an interest therein, etc.," is "any person owning such property or holding an interest therein on the date of making

the application." The judgment-debtor would continue to own the property sold in Court auction on the date of the application under Order XXI, rule 89, if both of the following conditions are fulfilled. (1) that the Court auction sale has not been confirmed and he has not therefore ceased to be the owner (this condition would be usually fulfilled as the application under Order XXI, rule 89, should be made within thirty days and the sale is confirmed only after thirty days) and (2) that the judgment-debtor has not before the date of the application conveyed away all his rights to a stranger. The judgment-debtor in the present case did not own the property and had no interest in it on the date of the application and hence his petition was rightly (it seems to me) dismissed by the Appellate Court.

Reliance is however placed on *Narain Mandal v. Sourindra Mohan Tagore*(1), *Maganlal v. Doshi Mulji*(2) and other similar cases for the petitioner. In the first place, those cases were decided under the old Code. The judgment-debtor was held in those cases to continue to come within the meaning of the words (in section 310-A of the old Code) "person whose immoveable property has been sold" in Court auction even after he had himself voluntarily sold away his properties. It is unnecessary to say whether those cases were rightly decided (I beg leave, with great respect, to express some doubt as to their correctness) because we have to construe the different words in the new Code.

I think that we ought to follow the ruling of this Court in *Anantha Lakshmi Ammall v. Kunnanchankarath Sankaran Nair*(3) which shows that the subsequent purchaser from the judgment-debtor is entitled to apply under Order XXI, rule 89. If the subsequent purchaser is so entitled, why should the judgment-debtor who has no interest be also permitted to apply in disregard of the plain rule of jurisprudence already referred to by me?

*Ishar Das v. Asaf Ali Khan*(4) shows that such a judgment-debtor cannot apply under Order XXI, rule 89, though I am not prepared to agree (with great respect) with Mr. Justice CHAMBER that even the subsequent purchaser cannot come in under

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(1) (1905) I.L.B., 32 Cal., 107.

(3) (1913) M.W.N., 101.

(2) (1901) I.L.R., 25 Bom., 631.

(4) (1912) I.L.B., 34 All., 186.

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Order-XXI, rule 89, as that opinion is opposed to the ruling in *Anantha Lakshmi Ammall v. Kunnanchankarath Sankaran Nair*(1).

SADASIVA  
AYYAR, J.

Even if I am wrong in the above view, I am clearly of opinion that the lower Court did not act illegally or beyond its jurisdiction or act with material irregularity in arriving at the above conclusion and hence that we are not entitled to interfere under section 115 of the Civil Procedure Code. This view of mine, as regards the applicability of section 115 is, no doubt, opposed to the view held in 1913 Madras Weekly Notes, 101. I am unable (with great respect) to hold that because a Court by falling into an error of law dismisses a suit or an application on the ground that the particular plaintiff or particular applicant has not got the right of suit or right of application claimed by him, therefore, that Court has declined to exercise jurisdiction over the suit or application. I therefore respectfully differ from *Anantha Lakshmi Ammall v. Kunnanchankarath Sankaran Nair*(1), so far as that case decides that the High Court could interfere under section 115 of the Civil Procedure Code.

In the result, this revision petition is dismissed but as we have allowed costs to the respondent in the connected appeal we make no order as to costs in this petition.

SPENCER, J.

SPENCER, J.—I feel no doubt whatever that a judgment-debtor who, after a Court auction of his immoveable property has been held but before it has been confirmed, parts with his entire interest in such property in favour of a private purchaser is not a person “either owning such property or holding an interest therein by virtue of a title acquired before such sale” at the time of his applying to have the sale set aside, although he may be a “person whose immoveable property has been sold under this chapter” within the meaning of section 310-A of the Code of 1882 [see *Maganlal v. Doshi Mulji*(2)].

In this respect I consider that *Ishar Das v. Asaf Ali Khan*(3) was rightly decided. I would follow that decision so far as it decides that a judgment-debtor who has divested himself of all his interest in the property has no *locus standi* to apply under Order XXI, rule 89, to have the sale set aside.

(1) (1913) M.W.N., 101.

(2) (1901) I.L.R., 25 Bom., 681.

(3) (1912) I.L.R., 34 All., 186.

On the question whether the purchaser under the private sale is a person owning such property and can come in under this section the above decision is in conflict with a later decision of a Bench of this High Court in *Anantha Lakshmi Ammall v. Kinnanchankarath Sankaran Nair* (1) but I find it unnecessary to express any view about the purchaser's rights in the present case as he is not a party to the present proceedings, and I am satisfied that we should not as a Court acting in revision under section 115 of the Civil Procedure Code allow any amendment of the petition at this stage or any presentation of a fresh petition by a person not a party to the proceedings in the Lower Court, more than one year after the time allowed by article 166 of the Limitation Act has expired

I would therefore dismiss the Revision Petition but without costs as costs have been allowed in the appeal against order which the petitioners took as an alternative remedy.

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SPENCER, J.

## APPELLATE CRIMINAL.

*Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.*

THE ASSISTANT SESSIONS JUDGE, NORTH ARCOT,  
PETITIONER,

v.

RAMASWAMI ASARI, ACCUSED.\*

1914.  
February 2,  
3 and 10.

*Criminal Procedure Code (Act V of 1898), ss. 179 to 188—Entrustment to native Indian subject in India—Conversion outside British India—Loss in India—Jurisdiction of Indian Courts to charge and try without certificate under section 188.*

A entrusted three jewels at Vellore to the accused, a native Indian subject, for sale. The accused pledged two of them in Bangalore and misappropriated the third at Madras, contrary to the arrangement that he should return the jewels or their price to A at Vellore.

*Held*, that the British Court at Vellore had jurisdiction to try the accused for breach of trust or dishonest misappropriation without a certificate under section 188, Criminal Procedure Code.

*Sessions Judge, Tanjore v. Sundara Singh* (1910) M.W.N., 143 and *Imperator v. Tribunal* (1912) 13 Cr. L.J., 530, dissented from.

(1) (1913) M.W.N., 101.

\* Criminal Miscellaneous Petition No. 546 of 1913.