

## APPELLATE CIVIL.

*Before Mr. Justice Devadoss and Mr. Justice Waller.*

APPU *alias* SUBRAMANIA PATTAR (PETITIONER),  
APPELLANT,

1925,  
November 20.

v.

O. ACHUTA MENON, RECEIVER (DEAD) AND OTHERS  
(COUNTER-PETITIONERS), RESPONDENTS.\*

*Civil Procedure Code (Act V of 1908), O. XXI, r. 66—Sale in execution of a decree—Partition Act (IV of 1893)—Proclamation of sale—Appointment of a Commissioner—Duty of Court to settle proclamation of sale—No power in Court to delegate that duty to Commissioner—Settlement of proclamation by Commissioner—Sale thereunder—Validity of sale—Reserve price not fixed in proclamation—Party aware of contents of proclamation, effect of.*

Under Order XXI, rule 66, of the Civil Procedure Code, it is for the Court to settle the proclamation of sale, and it cannot delegate that power to a Commissioner appointed by it; even if the party was aware of the contents of the sale proclamation prepared by the Commissioner, that would not relieve the Court of its duty of settling the proclamation; and if it was not settled by the Court, the sale held thereunder would be invalid.

APPEAL against the order of G. H. B. JACKSON, District Judge of South Malabar, in Miscellaneous Petition No. 51 of 1921 in Original Suit No. 4 of 1917.

This appeal arises out of an application to set aside a sale held under the Partition Act (IV of 1893) in a suit for partition. A preliminary decree for partition was passed, and a Commissioner was appointed to effect a partition under the Partition Act. The proclamation of sale was settled, not by the Court, but by the Commissioner, who held the sale under the said proclamation in public auction. The petitioner, who was one of the defendants in the suit, filed this petition to set aside the

\* Civil Miscellaneous Appeal No. 335 of 1922.

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sale on the ground that the proclamation was not settled by the Court, as required by Order XXI, rule 66, and the Partition Act (IV of 1893), and also alleged that no reserve price was mentioned in it, and that the petitioner was not allowed to bid, and other objections. The District Judge overruled these objections and dismissed the petition and confirmed the sale. The petitioner preferred this appeal.

*K. Kuttikerishna Menon* for appellant.

Respondents were not represented.

#### JUDGMENT.

The first point raised in this appeal is that the proclamation of sale was not settled by the Court but that the Commissioner appointed by the Court after the preliminary decree prepared the proclamation of sale and sold the property. It is for the Court to settle the proclamation of sale and it could not delegate that power to the Commissioner appointed by it. Order XXI, rule 66, directs that when any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court and that such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale and specify as fairly and accurately as possible the property to be sold and a number of other things. It is also contended that no reserve price was mentioned in the proclamation of sale. It is also urged that the appellant was not allowed to bid at the auction. The learned Judge relying upon the report of the Receiver has dismissed the appellant's application to set aside the sale. Even if the appellant was aware of the contents of the proclamation prepared by the Receiver, that would not relieve the Court of its duty of settling the

proclamation. As the records stand at present, we are unable to say whether the allegation of the appellant is true or false. If the proclamation was not settled by the Court the sale would be invalid. As the learned District Judge has not taken evidence in support of the allegations in the petition and as the auction purchasers are not represented here, we think the proper course would be to set aside the order of the District Judge and direct him to restore the application of the appellant to file and dispose of it after taking such evidence as may be adduced by him and other parties to the suit. Costs of this appeal will abide the result and be provided for in the order that will be passed by the District Court.

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MENON.

K.R.

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PRIVY COUNCIL.

RAJA OF RAMNAD (PLAINTIFF)

1926,  
January 21.

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v.

KAMID ROWTHEN AND OTHERS (DEFENDANTS).\*

[ON APPEAL FROM THE HIGH COURT OF JUDICATURE  
AT MADRAS.]

*Estates Land Act (I of 1908, Madras), sec. 12—Tree patta—  
Right to cut trees—Measure of damages.*

Where an agreement is to be construed as one to pay tirva for the enjoyment of the produce of trees (e.g., palmyra trees), by a person not having any right in the land upon which the trees grow, section 12 of the Madras Act I of 1908 does not apply so as to entitle the licensee to cut down the trees. If he cuts down trees illegally he is liable for their full value.

*Quaere*, whether section 12 applies where the trees are on land held by an occupancy ryot, but they have been treated in his patta and muchilka as a separate entity.

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\* *Present*:—LORD DUNEDIN, LORD SHAW, LORD BLANESBURGH and Sir JOHN EDGAR.