

## APPELLATE CIVIL.

Before Mr. Horace Owen Compton Beasley, Chief Justice,  
Mr. Justice Anantakrishna Ayyar and  
Mr. Justice Curgencen.

1930,  
April 24.

HANUMAYAMMA (LEGAL REPRESENTATIVE OF THE DECEASED  
FIRST APPELLANT), APPELLANT,

v.

KOTTAPALLI ANKAMMA (RESPONDENT), RESPONDENT.\*

*Civil Procedure Code (Act V of 1908), O. XXI, rr. 71 and 84—  
Resale under r. 84, after proclamation—"Forthwith" in  
r. 84, meaning of.*

Where, on the failure of an auction purchaser to deposit the twenty-five per cent of the price, the Court is required under Order XXI, rule 84, Civil Procedure Code, to hold a resale "forthwith", it means that the Court should hold the resale "as expeditiously as the circumstances permit". Though it is not obligatory on the Court to issue a fresh proclamation in every case of such resale, yet it is competent to do so in the circumstances of a particular case in the interests of the defaulting purchaser; and when it does so, the resale held immediately after the fresh proclamation should be deemed to be one held "forthwith" within the terms of rule 84.

APPEAL under clause (15) of the Letters Patent against the judgment of JACKSON J., passed in Appeal against Appellate Order No. 6 of 1926, preferred to the High Court against the decree of the District Court of Guntūr in Appeal Suit No. 253 of 1924, preferred against the Order of the District Munsif of Narasaraopet in Execution Application No. 1088 of 1923 in Original Suit No. 945 of 1921.

The material facts appear from the judgment.

*Ch. Rayghava Rao* for appellant.—As the resale was not held immediately after the default, it cannot be said to have

\* Letters Patent Appeal No. 250 of 1927.

been held "forthwith" within the meaning of Order XXI, rule 84, Civil Procedure Code.

HANU-  
MAYAMMA  
v.  
ANKAMMA.

[CHIEF JUSTICE.—This is a question of fact to be decided according to the circumstances of each case.]

[ANANTAKRISHNA AYYAR J.—A fresh proclamation was issued in this case, only in your interests. If the sale had been held immediately on the very day, there would have been no bidders and you would have lost heavily.]

That is problematical. The statute must be satisfied. If, as both the learned Judges held, there is no obligation to issue a fresh proclamation, how can we say that a sale held two months after the default, under a fresh proclamation, is one held "forthwith". A fresh proclamation is necessary only when the remaining seventy-five per cent is not paid and not when the initial twenty-five per cent is not paid.

No one appeared for respondent.

The JUDGMENT of the Court was delivered by

BEASLEY C.J.—This Letters Patent Appeal comes before us on account of a difference of opinion between JACKSON and THIRUVENKATACHARIAR JJ., upon one point. BEASLEY C.J.

The facts of the case are as follows :—The appellant bid at a court sale ; his bid was accepted but he failed to pay the twenty-five per cent deposit as is prescribed by Order XXI, rule 84, Civil Procedure Code. Having defaulted in the payment of the deposit, a fresh proclamation was issued and a resale of the property held. This sale resulted in a deficiency of Rs. 630 and the appellant was ordered under Order XXI, rule 71, Civil Procedure Code, to make good the deficiency. He objects to that order on the ground that the sale was not held "forthwith" to use the word which appears in Order XXI, rule 84, Civil Procedure Code, which provides that, upon failure of a bidder to pay the twenty-five per cent deposit, the property shall "forthwith" be resold. The sale at which the appellant defaulted was held on the 1st September 1923 and closed at 5 p.m.

HANU-  
MAYAMMA  
v.  
ANKAMMA.  
BEASLEY C.J.

that day. The appellant, as before stated, failed to pay the twenty-five per cent deposit; the next day and the day after that, were holidays, and on the 4th September a fresh proclamation was directed to be issued proclaiming the property for sale, and the sale was held on the 5th November 1923 and resulted, as before stated, in a deficiency. The District Munsif, before whom the matter came, after going in detail into the facts and into the law, seems to us to have come to the conclusion that, although a fresh proclamation was not obligatory, it was necessary in the interests of the defaulting bidder to proclaim the property again for sale. We may say at once, that we think, that in the interests of the defaulting bidder it was necessary for the property to be again proclaimed for sale. Had the property been put up for sale on the 4th September, clearly there would have been no notice to prospective bidders and very likely no bidders would have attended the sale at all. In the lower Appellate Court, however, the District Judge took the view that, where a bidder defaults in payment of the deposit, the property cannot be resold unless there has been a fresh proclamation of sale; and he held upon that basis that, as the sale of the property had to be freshly proclaimed, the sale had been held "forthwith". When the matter came before JACKSON and THIRUVENKATACHARIAR JJ., they agreed that a fresh proclamation was not necessary under such circumstances, but disagreed on the question as to whether the property had been sold "forthwith". JACKSON J. took the view that although it was not obligatory to freshly proclaim the sale, nevertheless, in the interests of the defaulting auction-bidder, it should be freshly proclaimed, that there had been no unnecessary delay and that the sale should be said to have been held "forthwith". He gave his understanding of the word

“forthwith” and rendered it as follows: “as expeditiously as circumstances permit”; and that, in our view, would be a good rendering of the word. It is very difficult to say how the word “forthwith” should be defined; but we think that the rendering of it by JACKSON J. is probably as good a one as there can be and that “as expeditiously as circumstances permit” is probably the correct definition of that word. Another rendering might be “such time as appears to be reasonably early having regard to all the circumstances.” Obviously in some cases it might reasonably be held that the resale should take place immediately following on the abortive sale. For instance, take the case of a sale of ten lots of property where the first lot is put up for auction, the bid of a bidder is accepted but he then and there defaults in payment of the deposit. Under these circumstances, probably, it could quite reasonably be held that the property should be sold “forthwith”, meaning that it should be sold then and there, before the sale of the other nine lots is proceeded with; but it must depend entirely upon the circumstances of each case. In this case, we think that although it was not obligatory for a fresh proclamation of sale to be issued, yet it was in the interests of the auction-bidder that there should be a fresh proclamation for sale; that being so, there was no unnecessary delay, and in these circumstances the sale can be said to have been held “forthwith”. The appeal must therefore be dismissed. No costs, as the respondent is unrepresented before us.

HANU-  
MAYANMA  
v.  
ANKAMMA.  
BEASLEY C.J.

N.E.

---