

services mentioned in Exhibit 1 and any surplus income can be appropriated by them for their own use.

The appeal fails and is dismissed with costs of defendants 1 to 10. On the Memorandum of Objections, we allow Rupees 250 as vakil's fees in the lower Court.

N.R.

PITCHAYYA
v.
VENKATA-
KRISHNAMA-
CHARLU.

APPELLATE CIVIL.

*Before Mr. Justice Ramesam and Mr. Justice
Cornish.*

J. A. SANKARA RAJU (APPELLANT IN BOTH APPEALS),

v.

KUPPAMMAL AND THREE OTHERS (RESPONDENTS IN O.S.A.
No. 75 OF 1929), AND

THE OFFICIAL ASSIGNEE, MADRAS, AND SIX OTHERS
(RESPONDENTS IN O.S.A. No. 79 OF 1929).*

1929,
October, 16.

*Presidency Towns Insolvency Act (III of 1909) Second
Schedule, art. 18—Validity of sales—Power of Court to
consider.*

The power of the Court to inquire under article 18 of the Second Schedule to the Presidency Towns Insolvency Act involves also the power to consider the validity of sales, and, if a proper case is made out, not to confirm sales. If there is no reason to set aside, the Court merely confirms the sale.

ON APPEAL from the orders of WALLER, J., dated respectively 9th September and 5th August 1929 and passed in Applications Nos. 1120 of 1929 and 444 of 1929 in I.P. No. 266 of 1928 in the exercise of the Insolvency Jurisdiction of the High Court.

S. Duraiswami Ayyar (A. K. Ramachandra Ayyar with him) for appellant in both appeals.

* Original Side Appeals Nos. 75 and 79 of 1929.

SANKARA
RAJU
v.
KUPPAMMAL.

V. Varadaraja Mudakiyar for first respondent in O.S.A. No. 75 of 1929 and for second respondent in O.S.A. No. 79 of 1929.

A. Kuppaswami Ayyar for third respondent in O.S.A. No. 75 of 1929.

M. Ramachandra Rao for fourth respondent in O.S.A. No. 75 of 1929.

The JUDGMENT of the Court was delivered by

RAMESAM, J. RAMESAM, J.—The facts of this case are as follows:— One Narayanaswami Nayakar became an insolvent. He was adjudicated on the 2nd of July 1928. One of the creditors mentioned in the schedule was Kuppammal. She was described as a mortgagee by deposit of title-deeds. She applied on the 3rd of October for the sale of the secured properties under article 18 of the Second Schedule to the Presidency Towns Insolvency Act. Before her application came on for orders, there was a meeting of the creditors and a composition scheme was settled, according to which the creditors were to be paid Re. 0-3-9 in the rupee; and two guarantors, namely Sankararaja, brother-in-law of the insolvent, and Govindarajulu Nayakar, promised to find Rs. 11,000 to make up the sum required for paying the creditors. They were to be given possession of the residuary assets of the insolvent and the benefit of the good will and possession of the business premises, namely, No. 134, Anna Pillai Street, and an iron safe. The first petition, the application for sanction of the scheme, and the application for sale came on before KUMARASWAMI SASTRI, J., for orders on the 18th of February. All the parties interested in all the three petitions seem to have appeared before him, and, so far as the scheme matter was concerned, handed over a memorandum of consent, and all the petitions were ordered in the following terms:—

“Order in terms within.”

An order was drafted which purports to be an order disposing of all the three petitions and not merely the composition scheme matter. If there was any mistake in so drafting one order for all the three petitions, there would have immediately been an appeal. We have no doubt that all the three matters were discussed outside the Court and were brought up before the learned Judge for being dealt with in one combined order. The mortgagee Kuppammal afterwards advertised the sale of the properties. The advertisement was dated the 10th of May and the sale was on the 13th of May. One of the guarantors wanted the premises in Anna Pillai Street to be reserved to the last, but Kuppammal would not do it and the properties were sold. The purchasers filed an application for confirmation of the sale and for delivery of possession of the properties. O.S.A. No. 75 is against the order on this petition. WALLER, J., having confirmed the sale, ordered delivery. Another petition was filed by Sankararaja, one of the guarantors, for vacating the order of KUMARASWAMI SASTRI, J., dated the 18th of February. WALLER, J., refused to reconsider that order. O.S.A. No. 79 is against this order.

The power under article 18 of the Second Schedule seems to involve also the power to consider the validity of sales and, if a proper case is made out, not to confirm sales. A formal order of confirmation may not be necessary. If a proper case is made out for setting aside the sale, the Insolvency Court would have such power. If there is no reason to set aside, it merely confirms the sale. We have nothing to do here with the provisions of the Civil Procedure Code confirming sales in execution of decrees. The decision in *Narain Das v. Ramchandra*(1) relied on by the learned advocate for the appellant has no bearing on a matter of this kind. In this case the

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ground on which the sale was sought to be set aside was that there was misrepresentation and Sankararaja discovered sometime after the order of the learned Judge that Kuppammal was not a mortgagee at all. We have seen his deposition and we do not see any reason to differ from the learned Judge. His attempt to show that the promissory note and the letter showing the deposit of title-deeds were ante-dated does not even seem to have been hinted at in the affidavit and the learned Judge declined to consider that portion of the case. Whether it is recorded as a sale by the Court or as a sale by somebody authorized by the Court, articles 18, 19 and 20 imply jurisdiction of the Court to confirm the sale and refuse to set it aside. The decision in *Jegemaya Dasee v. Akhoy Coomar Das*(1) relates to an application to the Registrar to enquire into title. We have not got to do with a matter of that kind here. The decision of the learned Judge is right and this appeal (O.S.A. No. 75 of 1929) is dismissed with taxed costs of the purchasers.

As regards O.S.A. No. 79 of 1929, the learned Judge was right in refusing to vacate the order as no grounds were made out. He had jurisdiction to order delivery of possession not because of the provision in the Civil Procedure Code relating to such delivery to an auction-purchaser, but he could do so under the Insolvency Act, as all the parties concerned have submitted to the Court's jurisdiction, co-operated in procuring the order for sale, and ought not to be allowed to resist the purchaser's attempt to get possession (see the judgment of WALLIS, C.J., and SPENNER, J., in O.S.A. No. 6 of 1918). This appeal also must fail and be dismissed with taxed costs of Kuppammal.

B.C.S.

(1) (1912) I.L.R., 40 Calc., 140.