procedure made the sale altogether invalid and without jurisdiction. In the present case the sale of the attached decree has not taken place and we see no reason why before the sale the judgment-debtor should not be allowed to take objection to its saleability in view of rule 178 of the Civil Rules of Practice. Apparently such a rule does not seem to exist in Calcutta or in Bombay.

For the above reasons we confirm the lower Court's order and dismiss this appeal with costs of the fourth and fifth respondents.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Pandrang Row.

1934, August 21.

RAJAGOPAL DOSS AND ANOTHER (RESPONDENTS), APPELLANTS,

v.

A. KUPPUSWAMI MUDALIAR (PETITIONER), RESPONDENT.*

Madras City Tenants' Protection Act (III of 1922), sec. 9—Sale contemplated in—Tenants-defendants in different suits—Order making them jointly liable for payment of value of entire land and making them liable to forfeit their right to purchase in default of payment by any one of them of his portion—Valid order under sec. 9 if.

The sale contemplated in section 9 of the Madras City Tenants' Protection Act (III of 1922) is of the land in the occupation of the tenant from which he is sought to be ejected. An order making the tenants—defendants in different suits jointly liable for the payment of the value of the *entire* land

* Appeals against Orders Nos. 273 to 283 of 1933.

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and making them also liable to forfeit their right to purchase the land in default of payment by any one of his portion is not contemplated by section 9 of the Act, and the Court has no jurisdiction to pass such an order under that section.

APPEALS against the orders of the Court of the City Civil Judge, Madras, dated 1st August 1933 and made in Civil Miscellaneous Petitions Nos. 1109, 1102, 1104, 1105, 1106, 1107, 1108, 1110, 1112 1113 and 1114 of 1933 in Original Suits Nos. 463 of 1930, 622, 633 and 635 of 1929, 460, 461, 462, 464, 466, 467 and 468 of 1930 respectively.

K. Bhashyam Ayyangar, *R. Desikan* and *P. K. Pushparaj* for appellants.

Subramanyam and *Rajagopal* for respondent.

Cur. adv. vult.

MADHAVAN NAIR J.

The JUDGMENT of the Court was delivered by MADHAVAN NAIR J.—These appeals arise out of fourteen applications made by the plaintiff-respondent for the issue of commission to value the improvements effected by the defendants on their holdings. The applications were made under section 4 of the Madras City Tenants' Protection Act III of 1922.

The plaintiff-respondent who is the owner of re-survey No. 1065-2 had leased out portions of this land to the Adi-Dravidas for house-sites. In 1929 and 1930 he filed fourteen suits in ejectment against them. Then each of them applied to the Court under section 9 of the Act for an order that the landlord shall be directed to sell the land for a price to be fixed by the Court. In addition to the sites held by the tenants, there were, on the land, pathways, a temple, common latrine, etc., erected by the Adi-Dravidas for their common use and enjoyment. The sale of these sites not being

in their occupation could not be asked by the tenants. As they wanted these also sold to them, they arrived at an understanding with the plaintiff under which it was agreed that they should buy up all the sites for a certain sum. This was advantageous to the plaintiff as well. Eventually the back portion of the plot which contains 100 cocoanut trees was left out by consent and a commissioner was asked to value the rest of the land leaving out the aforesaid portion. The defendants presented a petition to the Court praying for an order directing them to pay jointly a certain sum to the plaintiff for the entire land leaving out the aforesaid portion. The commissioner valued the land at a sum of Rs. 650 per ground. The amount payable by each of the defendants for their sites was estimated at this rate. The so-called roads were valued at Rs. 250 per ground, and each tenant was asked to pay 1/14th of the total amount. Thus, according to this calculation, each tenant had to pay for his share Rs. 690–7–2 in addition to his own site value. The Court passed an order directing all the defendants in the suits to pay jointly a certain sum to the plaintiff as the market-value of the sites and a decree was passed in accordance with these terms. Payments were not made in due time and accordingly, though the petitions stood dismissed under the law for non-payment, applications for extension of time were made by the defendants. Under Exhibit E, dated 20th January 1932, time was extended till 15th July 1932 and again on the latter date time was extended until 20th September 1932. As no amount was paid by the defendants the applications out of

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MADHAVAN NAIR J.

which these appeals arise were filed by the plaintiff under section 4 for the valuation of the improvements.

The tenants opposed the applications stating that the order passed by the Court calling on the parties to pay the value of the entire site was not an order under section 9 of the City Tenants' Protection Act and that it is still open to them to avail themselves of that section and that they must be allowed to have their sites bought separately. The learned Judge overruled this contention saying that the order under section 9 already passed was final; and, as the tenants have failed to comply with the provisions of the decree, he held that the respondent is entitled to eject them on payment of the value of the improvements.

In appeal Mr. Bashyam on behalf of the defendants-appellants, in addition to the above grounds urged in the lower Court, urged also another ground, viz., that subsequent to the adjustment the parties entered into another arrangement under which the appellants had to pay only for a portion of the suit land giving up the remaining portions in favour of the plaintiff and that this arrangement should be given effect to. This arrangement was referred to in the affidavit Exhibit F-1 in support of the application for extension of time filed on 15th July 1932 (Exhibit E). The request in the application was only to grant some time for payment and nothing was said about the enforcement of the agreement. The agreement, having regard to its details, see paragraph 5 of the counter-affidavit of the second respondent in Civil Miscellaneous Petition No. 1109

of 1933, is one which the Court will find it difficult to enforce. The argument that the agreement should be given effect to was not raised in the lower Court. For these reasons we cannot allow the question to be raised here for the first time.

The question for consideration is whether the applications under section 9 made by the defendants still remain undisposed of as contended for by them. If they have been disposed of as held by the lower Court, then the petitions of the respondent under section 4 should be allowed and the appeal should be dismissed.

The order passed by the Court was :

"All the defendants will pay the whole amount as fixed by the commissioner. In default of payment of any portion thereof, all the defendants will forfeit their right to purchase the plaintiff's property."

Later on a portion of the entire plot was left out. The order is no doubt a consent order but the question is whether such an order falls within section 9 of the City Tenants' Protection Act. That section says that the applicant may ask the Court for an order that the landlord should be directed to sell the land for a price to be fixed by the Court. Obviously the sale contemplated in the section is of the land in the occupation of the tenant from which he is sought to be ejected. The order making the defendants in different suits jointly liable for the payment of the value of the *entire* land and making them also liable to forfeit their right to purchase the land in default of payment by any one of his portion is, in our opinion, not contemplated by section 9 of the Act. We would therefore hold that the Court had no jurisdiction to pass the order which it passed under section 9. It must therefore be taken that

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applications under section 9 have not yet been finally disposed of. The lower Court will therefore pass fresh orders on those applications in the light of our observations. If the orders that will be passed on those applications are not complied with, then the plaintiff-respondent will be entitled to revive his applications under section 4 of the Act and ask the Court to pass orders on them.

For the above reasons, we would set aside the order of the lower Court and ask the Court to pass the necessary orders in the circumstances of the case. Each party will bear his own costs here.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice Burn.

1934, August 17.

IN RE JANA YELLAMRAJU AND THREE OTHERS, PETITIONERS.*

Agency Rules of 1924, *r.* 2—*Pauper appeal—Admission of —Provision of O. XLIV of Code of Civil Procedure as to decree appealed from being contrary to law, etc.—Applicability of.*

Under rule 2 of the Agency Rules of 1924, an appeal *in forma pauperis* is not bound to be admitted, whatever the merits of the case may be, if once pauperism is established. The High Court is entitled to take into consideration the merits of the case and to be guided by the provision in Order XLIV of the Code of Civil Procedure, which enables the High Court to refuse leave to appeal *in forma pauperis,* unless upon a perusal of the judgment and decree appealed from it has reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

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* Civil Miscellaneous Petition No. 2419 of 1934.