

APPELLATE CIVIL.

*Before Sir Lionel Leach, Chief Justice, and
Mr. Justice Somayya.*

T. S. GOPALASWAMI ODAYAR AND ANOTHER (FIRST AND
SECOND RESPONDENTS), PETITIONERS,

1939,
February 22.

v.

T. S. SWAMINATHA ODAYAR AND FIVE OTHERS,
RESPONDENTS.*

*Receiver—Sale of immovable property—Receiver appointed by
Court for—Notice of sale to be given by—Period of,
necessary.*

Receivers appointed by Court to sell immovable property should, unless there are special circumstances or they are otherwise directed by the Court, follow the rule laid down by the Code of Civil Procedure and give not less than thirty days' notice. It is, however, open to the parties to agree to a lesser period.

PETITION praying that in the circumstances stated in the affidavits filed therewith the High Court will be pleased to issue an order setting aside the sale held by the Receiver, the fifth respondent herein, on 28th January 1939 by refusing the confirmation thereof, in Appeal No. 60 of 1930 preferred to the High Court against the order of the Court of the Subordinate Judge of Kumbakonam, dated 26th September 1932 and made in Interlocutory Application No. 695 of 1930 in Original Suit No. 22 of 1924.

*K. Rajah Ayyar and N. A. Krishna Ayyar for
petitioners.*

*S. Ramanujam, T. R. Srinivasa Ayyangar, M. S.
Venkatarama Ayyar, A. V. Viswanatha Sastri for
K. Swaminatha Ayyar, K. R. Rangaswami Ayyangar*

* Civil Miscellaneous Petition No. 551 of 1939.

GOPALASWAMI and *K. Krishnaswami Ayyangar, T. R. Venkatarama*
v.
SWAMINATHA, *Sastri and G. Jagadisa Ayyar* for respondents.

LEACH C.J. The ORDER of the Court was pronounced by
LEACH C.J.—The question before us is whether a sale which has taken place by the direction of this Court should be confirmed or whether a fresh auction should be ordered. The suit out of which this matter arises was filed for partition of the properties of a joint Hindu family. The final decree was passed on 5th May 1938 and the first defendant, who is objecting to the sale being confirmed, received as his share in the family estate immovable properties in the Tanjore district, but he was directed to pay to the fourth defendant in the suit Rs. 7,662-6-0 and to the sixth defendant Rs. 12,841-7-8, both sums to carry interest. In order to discharge the first defendant's liability to the fourth and sixth defendants a receiver was appointed to sell a portion of the lands allotted to him. The receiver gave notice that a sale would take place on the 28th January of this year. The sale took place on that date and the properties were sold to the sixth respondent for a sum of Rs. 31,250. The sale was expressly stated to be subject to the confirmation of the Court and the first defendant says that it should not be confirmed for a number of reasons, one of them being that adequate notice of the sale was not given. We consider that this contention is well-founded and it is not necessary for us to inquire into the truth of the other allegations.

An advertisement was published in "The Hindu" and "The Swadesamitran" on 19th January 1939, that is, nine days before the sale. The advertisement appeared only in one issue of the respective newspapers. The receiver sent copies of the sale announcement to a considerable number of public officials in the Tanjore

district with a view to the posting of the announcement on notice boards and also circularized about a hundred persons who he thought might be possible bidders. It is quite clear that these notices would not reach the addressees until the 20th or possibly later. It may safely be taken that generally notice was not received more than a week before the date fixed for the sale. We consider that in cases where immovable property is to be sold by order of the Court far more than a week's notice should be given. For a sale in execution of a Court decree the Code of Civil Procedure requires that not less than thirty days' notice shall be given. I may mention that the receiver fixed the upset price at Rs. 53,000, but he did not insist on any upset price at the sale and he knocked down the property to the sixth respondent for Rs. 31,250. Property values may have fallen, but where property which was valued at Rs. 1,26,000 in 1932, as in this case, is sold some six years later for Rs. 31,250, it would appear to be an inadequate price. But be this as it may, what the Court is really concerned with is the fact that the sale was not properly advertised and sufficient notice was not given. In these circumstances we refuse to confirm the sale.

We are of the opinion that receivers should, unless there are special circumstances or they are otherwise directed by the Court, follow the rule laid down by the Code of Civil Procedure and give not less than thirty days' notice. Of course the parties may agree to a lesser period.

The purchase price paid by the purchaser will be refunded to him by the receiver. The costs of the sale will be paid by the first defendant within a fortnight's time after the receiver has given intimation of the exact amount.

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The Court has been informed that a resale may not be necessary as the first defendant has come to an arrangement with the fourth defendant and the tenth defendant, who now represents the sixth defendant. If a resale is not necessary as the result of an arrangement between the parties, the receiver will nevertheless be entitled to his commission. By consent it is agreed that, in the event of there being no resale, the first defendant shall pay into Court as the receiver's commission a sum of Rs. 900. Liberty will be given to the receiver to apply to the Court in the event of this order not being complied with.

A.S.V.

APPELLATE CIVIL.

*Before Mr. Justice Varadachariar and Mr. Justice
 Abdur Rahman.*

YERLAGADDA MAHALAKSHMI (PLAINTIFF),
 APPELLANT,

v.

MIDDE SOMARAJU AND SIX OTHERS (DEFENDANTS),
 RESPONDENTS.*

*Transfer of Property Act (IV of 1882), sec. 101—Principle
 underlying section.*

Though section 101 of the Transfer of Property Act is generally invoked in cases where the rights of mesne encumbrancers come up for decision, the principle of the section is not limited to those cases. It only lays down a general rule of presumed intention and, where the later conveyance will be inoperative as against any intermediate right, whether

* Appeal No. 245 of 1934.