

## APPELLATE CIVIL.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

1920.  
December 6.

SHANTMURTI DEVAPPA KALLYANPUR (ORIGINAL DEFENDANT), APPELLANT v. NARAYAN RAMCHANDRA PRABHU AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS<sup>2</sup>.

*High Court Civil Circulars, page 106, Rule 17†—Civil Procedure Code (Act V of 1908), Order XXI, Rules 89, 90—Indian Limitation Act (IX of 1908), Article 166—Decree—Execution proceedings—Execution transferred to the Collector—Sale by Collector—Application to set aside sale to be made to Court—Practice and procedure.*

The attention of the District Officers called to Rule 17 of the High Court Civil Circulars at page 106.

In every proclamation for sale carried out under the Rules it should be notified that any person wishing to set aside the sale under Order XXI of the Code of Civil Procedure should make his application to the Court and not to the Collector to whom the decree has been sent for execution, within thirty days from the date of the sale.

If in spite of the notification any person makes an application to the Collector to set aside the sale, he should be referred to the Court without a moment's delay.

FIRST appeal from the decision of V. V. Wagh, First Class Subordinate Judge at Karwar.

Execution proceedings.

The plaintiffs obtained a decree against the defendant in execution of which they applied for sale of the property of the latter. The execution proceedings were transferred to the Collector, who sold the property at an auction.

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\* First Appeal No. 291 of 1920.

† The rule runs as follows :—

If any application to set aside a sale be made within the time limited by law to the Collector, or other officer aforesaid, he shall refer the applicant to the civil Court.

The defendant applied to the Collector to set aside the sale within thirty days of the date of the sale. As the Collector had no power to deal with the application, he sent up the application to the civil Court. This was long after the thirty days had elapsed.

The Court held that the application not having been made to it within thirty days of the date of the sale, was barred by limitation.

The defendant appealed to the High Court.

*G. P. Murdeshwar*, for the appellant.

*Nilkanth Atmaram*, for the respondents.

MACLEOD, C. J. :—This is an application to set aside a sale in Darkhast No. 286 of 1916. The mortgage decree was passed in favour of the plaintiffs in the original suit and the sale was held on the 20th June 1919. Defendant No. 7 was a party to the suit. On the 7th July 1919 he made an application to the Collector to set aside the sale on the ground that he had been prejudiced by the sale of a certain Survey Number which was sold in priority to other Survey Numbers in which he had no interest. Under Rule 17 on page 106 of the Manual of Circulars, the Collector should have at once referred the applicant to the Court executing the decree. Unfortunately, the Collector did not read Rule 17 in the right way. He appears to have inquired into the matter on the complaint of defendant No. 7 and then referred the application to the First Class Subordinate Judge for him to set aside the sale on the 28th August 1919.

It is difficult to imagine how the Collector came to make such a mistake. The Rules which regulate the procedure to be followed when decrees are transferred

1920.

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SHANTMURTI  
DEVAPPA  
v.  
NARAYAN  
RAM-  
CHANDRA.

1920.

SHANTMURTI  
DEVAPPA  
v.  
NARAYAN  
RAM-  
CHANDRA.

for execution to the Collector under the provisions of section 68 of the Code of Civil Procedure are perfectly clear. At that time Rule 17 was in force which says: "If any application to set aside a sale be made within the time limited by law to the Collector, or other officer aforesaid, he shall refer the applicant to the civil Court." It was pointed out by this Court in *Tipangavda v. Ramangavda*<sup>(1)</sup> that it is the duty of the Collector to return the application to the applicant and tell him that the application should be made to the Court. We have no doubt that if there was anything on the merits of the case in the applicant's favour it would be extremely hard if he were debarred from having his application dealt with by the Court, because the Collector by an error of judgment retained the application and did not even forward it to the Court within the thirty days allowed to a person to make an application to set aside a sale. But in this case the applicant has no grievance on the merits, so that the appeal must be dismissed with costs.

We think it is advisable that the attention of the District officers should be called to Rule 17. We also think that in every proclamation for sale carried out under the Rules it should be notified that any person wishing to set aside the sale under Order XXI of the Code has to make his application to the Court, and not to the Collector to whom the decree has been sent for execution, within thirty days from the date of the sale. We also point out that if in spite of that notification any applicant still makes an application to the Collector to set aside the sale, he should be referred to the Court without a moment's delay.

*Appeal allowed.*

R. R.

(1) (1919) 44 Bom. 50.