

APPELLATE JURISDICTION (a)

Special Appeal No. 420 of 1869.

NARAYANASAWMY NAICK.....*Special Appellant.*
SARAVANA MUDALY and 12 others.....*Special Respondents.*

The plaintiff sued to establish his right to and to recover certain lands in the possession of which he had been obstructed by the defendants. The plaintiff purchased the lands at a sale held in execution of a decree obtained against the 1st and 2nd defendants in the Court of the District Munsif of Tripassore. The sale was directed by the District Munsif of Tripassore. Between the date of the decree and the sale, the village in which the lands were situated was transferred from the jurisdiction of the District Munsif of Tripassore to the District Munsif of Conjeveram.

Held, that the sale was a nullity and conferred no title upon the plaintiff : but that the plaintiff was entitled to recover from the 1st and 2nd defendants the amount of the purchase money paid by him.

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THIS was a Special Appeal against the decision of E. B. Foord, the Civil Judge of Chingleput, in Regular Appeal No. 95 of 1867, modifying the decree of the Court of the District Munsif of Conjeveram in Original Suit No. 145 of 1866.

The plaint set forth that the plaintiff purchased at a sale by auction, ordered by the District Munsif's Court of Tripassore, half a share in the village of Aranvayal, but that while he was cultivating the lands forming the said share, the defendants from 6 to 15, at the instigation of the defendants from 1 to 5, took wrongful possession thereof. The plaintiff therefore sued to establish his right to $11\frac{1}{46}$ cawnies of land and to recover Rupees 496-10-6 on account of loss of produce.

The defence of the 1st defendant was that out of the lands claimed, cawnies 2-1-2 were not mentioned in the sale certificate of the District Munsif's Court, and that the plaintiff was not entitled thereto. He further pleaded that the plaintiff had purchased the lands at auction on his (1st defendant's) behalf.

The 4th and 5th defendants denied having taken wrongful possession of the lands.

The remaining defendants were *ex-parte*.

The District Munsif gave judgment confirming plaintiff's title to the enjoyment of the whole of the land claimed.

(a) Present : Scotland, C. I., and Innes, J.

He adjudged that the 2nd, 4th, 5th, 14th and 15th defendants should pay plaintiff Rupees 254-12-0, on account of loss of produce. He excluded the 1st defendant from liability for loss of produce sustained by plaintiff, and the remaining defendants from any liability whatever.

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The 1st defendant appealed against the decision.

It was admitted at the hearing of the appeal, by the plaintiff's pleader, that the sale certificate he obtained from the Munsif's Court only showed that $9\frac{1}{8}$ cawnies of land were purchased by him at auction.

The Civil Judge modified the decision of the Lower Court and adjudged that plaintiff's right to $9\frac{1}{8}$ cawnies only be established.

The plaintiff appealed specially to the High Court against the portion of the decree of the Civil Judge wherein plaintiff's claim was disallowed, on the following grounds :—

The plaintiff is entitled to the disallowed piece of land under the sale certificate.

The plaintiff is entitled to recover on the whole half of one pungu of the whole lands in the village, and unless the disallowed portion is added to the part decreed, the plaintiff's share cannot amount to the said half pungu.

Upon the hearing of the Special Appeal issues were sent to the Civil Court. In the return it appeared that the plaintiff purchased the land at an auction held by the District Munsif of Tripassore in execution of a decree against the 1st and 2nd defendants, and that the sale was directed after the village in which the lands were situated was transferred from the jurisdiction of the District Munsif of Tripassore to the jurisdiction of the District Munsif of Conjeveram.

Rama Row, for the special appellant, the plaintiff.

The Court delivered the following

JUDGMENT :—Upon the first of the findings returned by the Civil Court, we are of opinion that the objection of the respondents is fatal to the plaintiff's title as purchaser under the sale in execution. After the valid transfer of the village, of which the lands in dispute form a part, from

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the jurisdiction of the Tripassore District Munsif's Court to the jurisdiction of the Court of the Conjeveram District Munsif, the power of the former Court to issue process of execution for the attachment and sale of the land in dispute ceased. The only power which that Court then had as respects execution against such lands was that provided for by Sections 284 and 286 of the Code of Civil Procedure relating to the execution of decrees against property out of the jurisdiction of the Court passing the decree.

By the sale in the present case, therefore, no title could pass to the plaintiff from the Court of the District Munsif of Tripassore. The sale was a mere nullity : as completely so as if the Village had never been within that Court's jurisdiction.

It follows that the decrees of both the Lower Courts must be reversed. But the plaintiff is entitled to be secured the return of his purchase money, which has been paid over to the execution creditor, who is not, it appears, a party to the suit. The 1st and 2nd Defendants (the judgment debtors) have had the benefit of the money so paid in discharge of their liability to the execution creditor, and it would be inequitable that they should have the restoration of the land (which is the effect of the annulment of the sale) without being bound to reimburse the plaintiff, who has not been guilty of any impropriety of conduct with respect to the execution and sale.

The decree of this Court will, therefore, order the payment to the plaintiff by the 1st and 2nd defendants of the amount of such purchase money within six weeks from the date of the decree—and also that in the event of the land being sold in execution to satisfy the said amount for more than sufficient to discharge the said debt, the balance of the purchase money, if not more than equal to the amount of the interest on the said debt at the rate of 6 per cent. per annum, or if more, so much thereof as shall be equal to the said amount, be paid over to the plaintiff.

Our decision upon this objection renders unnecessary the expression of our opinion upon the objection raised by the appellant. The parties, we think, should bear their own costs in this and both the Lower Courts.