

Narasayya Vs. Subbayya

Narasayya Vs. Subbayya

SooperKanoon Citation : sooperkanoon.com/774083

Court : Chennai

Decided On : Aug-01-1904

Reported in : (1905)15MLJ12

Appellant : Narasayya

Respondent : Subbayya

Judgement :

Sankaran Nair, J.

1. The petitioner has been ordered by the District Munsif under Section 359, C.P.C., to be sent to the Magistrate to be dealt with according to law. The counter-petitioner obtained a decree in O.S. No 67 of 1902 and in execution applied to arrest the petitioner. The petitioner then applied on the 26th September 1902, to be declared an insolvent. Notice was given to the creditors about 17 in number. There was an enquiry under Section 350 and as the result of that enquiry an order was passed under Section 351, C.P.C., declaring the petitioner an insolvent, but there was no order of discharge. A receiver was appointed. When the receiver proceeded to take possession a claim was advanced to one of the properties now in dispute by one Narasarazu. The Receiver applied to the Court for assistance to take possession and all the properties including the properties in dispute were placed in Ms possession. When the properties in dispute which are included in the schedule were being sold it was found that no bidders came forward and then on

enquiry the receiver ascertained that the property was being actually cultivated by one who claimed to hold under the man who had previously asserted title to the property. This cultivating tenant happens to be one of the scheduled creditors who never alleged before that this property did not belong to the judgment creditor.

2. The Receiver submitted a report to the Munsif. On this report the Munsif made an enquiry to which the decree-holder, the respondent herein, and the judgment-debtor, the petitioner herein alone were parties. Notice appears to have been issued to 'all persons opposing insolvent's title' and the Munsif held that the petitioner 'had wilfully concealed certain material facts respecting two lands that he claimed in the petition and schedule belonging to him.'

3. Those material facts are that the lands were once sold in the execution of a decree in O.S. No. 225 of 1892 passed against the petitioner, and the purchaser again sold them to one Narasarazu on the 30th August 1899. It is this Narasarazu who claims the property. No notice was issued by the Munsif to Narasarazu and he is not a party to these proceedings. There is no finding by the Munsif whether the property belongs to the judgment-debtor as alleged by him or to Narasarazu.

4. I am of opinion that the Munsif has no jurisdiction to pass the order under Section 359, C.P.C. After an enquiry held under Section 35C, an order has been passed under Section 351, C.P.C., declaring the petitioner an insolvent. Section 359, C. P.C, does not say, it may be admitted, that the application for an order under that section must be made at the hearing under Section 350, or soon thereafter, but it appears to me that any order under Section 359, must be based on the findings arrived at in an enquiry under Section 350, C.P.C. No new enquiry under Section 359, is contemplated and as the result of the only enquiry under Section 350, was in favor of the petitioner, the Judge had no power in this case to send the petitioner to the Magistrate.

5. I set aside the District Munsif's order as one passed without jurisdiction.