SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

In Re: Govindasami Chetti

In Re: Govindasami Chetti

SooperKanoon Citation : sooperkanoon.com/775521

Court : Chennai

Decided On : Jan-19-1939

Reported in : AIR1939Mad501; (1939)1MLJ608

Appellant : In Re: Govindasami Chetti

Judgement :

Stodart, J.

1. Property was sold in Court auction in execution of a decree. While this sale was pending confirmation this petitioner who also had a decree attached the same property. Then he put in this petition to set aside the sale under Order 21, Rule 90 on the ground that there was irregularity in publishing or conducting it. The Courts below have held that the petitioner did not come within that rule as he was not a person whose interests were affected by the sale. This petition is to revise that finding.

2. The petitioner is not entitled to rateable distribution under Section 73 of the Code. His grievance is that the sale but for the irregularity would have fetched more in which case he could have gone against the surplus funds in Court after the executing decree-holder had been paid.

3. But the question remains, was the petitioner a person whose interests were affected by the sale?

4. Every creditor whether he has a decree or not is interested in seeing that at any sale of his debtor's property to another as much as possible is realised. The more the debtor receives for his property the better he will he able to pay his debts. The questions for determination seem to be,

(a) Is this sufficient to give a creditor the right to apply under Order 21, Rule 90?

(b) Does the fact that the creditor making the application has attached the property after the sale and pending confirmation give him any higher right?

5. Answering the first question 1 do not think a mere creditor can come in with an application under Order 21, Rule 90. I have never seen that proposition enunciated nor has such a case ever come before me.

6. The answer to the second question is more difficult. Does the fact that the creditor has attached the property after the sale and before it is confirmed occupy any better position? Are his interests affected by the sale so as to enable him to apply under Order 21, Rule 90? His interests in one sense are affected by the sale, namely, in the sense that if it is confirmed the attachment of the property made at his instance disappears; but he cannot complain of that, for his attachment from the beginning was a conditional attachment. When he attached the property he knew that his attachment would disappear if the sale was in the ordinary course confirmed and would enure only if the sale for some reason was set aside.

7. Can the petitioner then say:

I can apply to have the sale set aside under Order 21, Rule 90 because if I succeed my attachment will continue in full force and effect and I can have a new sale at my own instance which will bring in more money.

8. In other words can it be said that the interests of a person in petitioner's position are affected by the sale when the only possible way in which they are affected is not by the sale itself but by the success or failure of his petition. It seems to me that the criterion in such cases is whether the person damnified is damnified by the actual sale at the time of the sale and that nothing that the said person himself

does after the sale can give him a higher right than he bad at the time of the sale. At the time of the sale this petitioner had no locus standi to apply to have the sale set aside. I do not think the petitioner by attaching the property after the Court sale acquires any higher right than any other creditor. There is no direct authority for the petitioner's contention that a creditor effecting such an attachment is a person whose interests are affected by the sale so as to entitle him to come in with a petition under Order 21, Rule 90. The petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com