

Sami Pillai Vs. Krishnasami Chetti and ors.

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Court : Chennai

Decided On : Dec-09-1897

Reported in : (1898)8MLJ77

Appellant : Sami Pillai

Respondent : Krishnasami Chetti and ors.

Judgement :

1. We must hold that the appellant is not entitled to appeal under Section 244, Civil Procedure Code. No doubt, the respondents 1 to 3 as attaching creditors in O. S. No. 21 became entitled to execute the decree in O. S. No. 5, but the sale took place in execution of the latter decree, and so far as O. S. No. 5 is concerned, the respondents cannot be held to be parties to the suit so as to entitle the applicant to treat any question arising between him and them as one under Section 244. We, however, think that he is Entitled to appeal under Section (Sic)11, The right of the said respondents to execute as attaching creditors of the decree in O. S. No. 5 is a special right created by Section 273, Civil Procedure Code. But they do not thereby become transferees of the decree as Was contended on their behalf before us. The holder of the decree in O. S, No. 5 remains decree-holder notwithstanding the attachment of his rights, and as such he was entitled to apply under Section 311 and to appeal against the order passed under that Section. Turning now to the merits, the only irregularity that was pressed before us as vitiating the sale was that lot No, 1 of the property was sold in five sub-plots. Having regard to the facts stated by the Judge in his order and to the other

circumstances of the case, we do not think that this was an irregularity at all, but was a prudent step in the interest of all concerned. The result is that we dismiss the appeal with costs-two sets.

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