

Abbubaker Saheb Vs. MohidIn Saheb

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Court : Chennai

Decided On : Oct-17-1896

Reported in : (1897)ILR20Mad10

Judge : Shephard and ;Subramania Ayyar, JJ.

Appellant : Abbubaker Saheb

Respondent : MohidIn Saheb

Judgement :

ORDER

1. The petitioner, who was appellant in the District Court, seeks to have the order of the District Court set aside on the ground that the Judge exercised a jurisdiction which he did not possess. That order confirmed the order of the District Munsif, which proceeded on the ground of fraud practiced upon the judgment-debtor.

2. It appears that the sale had been confirmed before the application to sotit aside was made. That being so we are of opinion that the ground assignedby the Judge for confirming the District Munsif's order is not a valid one,because the omission to send the certificate required by Section 224 could not effect the jurisdiction of the Court to sell. It would be a more irregularity not entitling any party to have the sale set aside after confirmation. The only ground, as it appears to us, on which the order of the District Munsif could be supported would be that the sale had been brought about by fraud to which the purchaser was a party. Fraud as between the

decree-holder and the judgment-debtor only could not affect the purchaser.

3. The District Munsif does not find distinctly that the purchaser was party to the fraud, and he also omits to say whether the fraud was discovered after the confirmation of the sale.

4. We are of opinion that, unless there was evidence that the purchaser was party to the fraud, and that the judgment-debtor discovered it subsequently to the confirmation of the sale, the District Munsif would have had no jurisdiction to set it aside. In the absence of such evidence the case would be a proper one for interference under Section 622. We must ask the Principal District Munsif of Calicut to return a finding on the above question within one month from the date of the receipt of this order. Seven days will be allowed for filing objections after the finding has been posted up in this Court.

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