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Court : Chennai

Decided On : Oct-16-1890

Reported in : (1891)ILR14Mad227

Judge : Muttusami Ayyar; and Shephard, JJ.

Appellant : Venkata

Respondent : Sama and ors.

Judgement :

1. It is admitted that the appeal cannot be maintained. It must therefore be dismissed.
2. As to the petition under Section 622, it is urged that the sale was not merely irregular, but was wholly void ah initio and that, therefore, the Courts below exceeded their jurisdiction. Seeing that it was the present petitioner, the judgment-debtor, who put the Court in motion by applying under Section 311, we are unable to see how the petitioner can be heard to say that the Court had no jurisdiction.
3. As the case was put by the judgment-debtor, the Court clearly had jurisdiction. Apart from this, we do not consider that either the commencement of the sale prior to the expiry of the thirtieth day, or any delay in making the deposit required by Section 306, or the adjournment of the sale from time to time without sufficient ground is more than a mere irregularity.

4. Although we are referred to the decisions of the Allahabad High Court in Bakshi Nand Kishore v. Malak Chand I.L.R. All. 289 Jasoda v. Mathura Das I.L.R. All. 511, Ganga Prasad v. Jag Lal Rai I.L.R. All. 333, this Court has held that the omission to make the deposit immediately, or the fact of the sale taking place before the expiration of thirty days, is not fatal to the sale, unless substantial injury is proved.

5. The view taken by this Court is also in accordance with the decision of the High Court of Bombay in Lakshmi v. Krishnabhat I.L.R. 8 Bom. 424.

6. The petition is dismissed with costs.

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