

Oliver Vs. Anantharamayyar

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Court : Chennai

Decided On : Sep-02-1897

Reported in : (1897)ILR20Mad498

Judge : Subramania Ayyar and ;Davies, JJ.

Appellant : Oliver

Respondent : Anantharamayyar

Judgement :

1. It is admitted in this ease that the first application to the Collector for sale under Section 40 of the Act (VIII of 1865) was made within the time prescribed by Section 18, and that the sale which took place in the pursuance of that application was set aside on the ground of an irregularity in conduct of the sale by the officer carrying it out. After the sale was thus set aside, the landlord applied again to the Collector for a fresh sale without giving a second notice to the tenant of his intention to sell under Section 39. The Lower Appellate Court has held that such notice was necessary; in other words, that all that had been done up to the irregular sale was practically void, and that the landlord must begin 'de novo.' We are unable to accept this view. The landlord was in no way responsible for the irregularity in the sale, and he was entitled to ask the Collector to rectify what had gone wrong by giving orders for a proper sale. The second application to the Collector must be considered in the light of a continuation of the original application for sale, which was admittedly in order. It is contended that a fresh

notice of intention to sell ought to be insisted on in the interest of the tenant. But the tenant being the party in default, is entitled to less consideration than the landlord who would necessarily be delayed by the adoption of such procedure. We must therefore hold that a second notice to the tenant under Section 39 of the Act was not necessary in law before the landlord's application to the Collector for a regular sale in lieu of the invalid one. We accordingly reverse the decree of the District Judge and restore that of the Munsif. The respondent must pay the appellant's costs in this and in the Lower Appellate Court.

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