

Pechiayee Vs. Vallaimuthu Velan

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SooperKanoon Citation : sooperkanoon.com/798236

Court : Chennai

Decided On : Nov-14-1924

Reported in : 87Ind.Cas.437; (1925)48MLJ405

Appellant : Pechiayee

Respondent : Vallaimuthu Velan

Judgement :

Srinivasa Aiyangar, J.

1. I very much regret I cannot interfere with the order of the Lower Court in revision. The petitioner who was judgment-debtor paid the required amount according to the rules under the provisions of Order 21, Rule 89, apparently with a view to enable her to apply for setting aside the sale under the terms of that section. But it is now clear that there was no application made by her to the Court either in writing or by parol. A few days after this the Court confirmed the sale, and more than 90 days thereafter the petitioner applied for a review of the order of confirmation. The Lower Court has held that the review petition was barred by limitation and dismissed it. Assuming that the Lower Court erred in its view of the law with regard to limitation to be applied to the review petition, I do not see what jurisdiction I have to interfere. However that may be, in view of the fact that no application was made by the petitioner to set aside the sale, I see no substance even in the application for the review and no use even if I should direct the Lower

Court to consider the application of the petitioner for review of the order. Three learned Judges of this Court have held that an application either in writing or oral for setting aside the sale is necessary before the Court can be called upon to act and set aside the sale under the provisions of Order 21, Rule 89. In the case of *Popooru Venkata Narasimha v. Jayanti Lakshmi Narasimham* 32 IndCas 783 Sadasiva Aiyar and Moore, JJ. held that an application, oral or written, made within 30 days was necessary for the purpose of Section 310 (a) of the Civil Procedure Code corresponding to Order 21, Rule 89. Mr. justice Krishnan has also taken a similar view in the case of *Payapati Venkatasubba Rao v. Kalapatapu Narayana Rao* 62 IndCas 44, The Bombay case in *Mathuji v. Kondaji* (1905) 7 Bom. L.R. 263 has been expressly dissented from and refused to be followed by this Court. It is no doubt a hard case, but after all the provisions of the Procedure Code are meant to be observed; and in view of the decisions of this Court I feel I cannot do anything to help the petitioner. The C.R.P. is accordingly dismissed, and I do not see why costs should not follow the event, and I accordingly award costs against the petitioner to the respondent.