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Murugappa Chettiar Vs. S.K. Appavoo Chettiar and anr.

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SooperKanoon Citation : sooperkanoon.com/807182

Court : Chennai

Decided On : Jul-31-1934

Reported in : AIR1935Mad257; 152Ind.Cas.763

Appellant : Murugappa Chettiar

Respondent : S.K. Appavoo Chettiar and anr.

Judgement :

1. It is alleged that there was a private agreement between the appellant (judgment-debtor) and the decree-holder that the property should not' be sold and that in spite of the agreement the decree-holder brought the property to sale and purchased ithimslf and that the suppression of this agreement would constitute 'fraud' within the meaning of the term fraud used in the expression fraud in conducting sale' in Order 21, Rule 90, Civil P. C. Assuming that the contention is well founded it is clear that the agreement was not certified by Court as required under Order 21, Rule 2, Civil P. C. The present application was made about eight months after the agreement relied, on and there is nothing on record to show that the iraud relied on did not come to the notice of the appellant, more than 90'days-before the presentation of the present application. The application cannot therefore be treated as an application for certifying adjustment of the decree. The observations in Ramayyar v. Ramayyar (1898) 21 Mad 356, relied upon by the appellant, viz., that an uncertified adjustment can be relied on to prove 'fraud' is explained in Budrudeen v. Gulam Moideen (1913) 36 Mad 357, in the manner indicated above. The appeal is therefore dismissed'with costs.

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