

Venkataramana Ayyar and another - - - - *Appellants*

v.

Natesa Pillai and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 4TH JULY, 1944

Present at the Hearing:

LORD PORTER

LORD JUSTICE GODDARD

SIR MADHAVAN NAIR

[*Delivered by* LORD JUSTICE GODDARD]

This appeal arises out of an application by the respondents, who are judgment debtors, to set aside a sale of certain lands belonging to them sold under an order of the Court and which were bought by the second appellant. The application was made in the first instance to the Subordinate Judge of Mayavaram, who refused it; on appeal, the High Court of Madras reversed his decision and set the sale aside on the ground that it took place on a date subsequent to the latest date prescribed by the Court for the sale and was therefore illegal.

There is no dispute as to the facts which can be quite shortly stated. The 1st appellant had obtained judgment against the respondents for something over Rs. 25,000 and interest. He applied to the Court for an order by way of execution for the sale of the respondents' lands and on 8th April, 1935 the Subordinate Judge made the order and directed a proclamation of sale to be made and fixed the date of sale for 8th July. The sale was duly proclaimed but on the day fixed for the sale no bid was forthcoming and the sale was by order of the Court continued from day to day down to 29th July and on that day an order was made directing the sale to be continued till 5th August. Meanwhile on 7th July the respondents had made an application to the Court to stay the sale on the ground that he was insolvent. The Subordinate Judge had dismissed this application on 10th July. On 2nd August, three days before the day fixed for closing the sale the respondents filed an appeal to the Court of the District Judge against the refusal to stay the sale and in his petition he asked that an interim stay might be ordered pending the disposal of his petition. The next day, 3rd August, an agreement was made with regard to the application for an interim stay between the advocates of the respective parties which was duly endorsed on the petition. It was in these terms: "On behalf of the decree-holder I (that is the advocate for the decree-holder) undertake to have the execution sale carried on from day to day till 12th inst." The endorsement by the respondents' advocate was "In view of the undertaking of the respondent I do not now press this petition." Nothing could be clearer than this. The parties agreed that the sale was to be continued from 5th August to 12th August on which date the appeal was due to be heard as it in fact was. On the same day,

5th August, the appellants' pleader lodged a memo. in the Court of the Subordinate Judge reciting the agreement and paid the necessary fee for continuing the sale for one week from that date. It does not appear that any order of the Court was made on that date for the continuance of the sale, and their Lordships assume that none was made, but on 8th August the Subordinate Judge did make an order that the sale be continued till 12th August, which was in accordance with what the parties had agreed. On that date the appeal was dismissed and the property was thereupon sold to the 2nd appellant at a price which both Courts below have found to be the full value so the respondents have in any case sustained no injury. They then applied to the Subordinate Judge for an order setting aside the sale, apparently on the grounds that it was illegal for the sale to have taken place on 12th August when by the order of 29th July the 5th August had been appointed as the latest day for closing the sale and also on the ground that there had been no proclamation of the sale for 12th August. The Subordinate Judge, as already stated, refused this application, but the High Court in reversing his decision held that the sale was entirely illegal. In this judgment they said:—

“ But there was no sale on 5th August. Nor was the auction closed on that date. On that day the decree-holder represented that the auction sale should be continued for another week and deposited Rs. 3-8-0 for the expenses of conducting the sale on seven more successive days. The Court passed no order on this request other than order that the money so paid should be accepted. . . . The Court's action in not selling the property on 5th August or concluding the sale on that day was highly irregular inasmuch as it had been widely proclaimed that that was the latest date of sale. Its action in selling the property on a date subsequent to that date was positively illegal.”

It will be observed that the High Court makes no reference to the agreement between the advocates of the respective parties for the continuance of the sale but appear to treat the matter as though the appellants' representative had obtained *ex parte* a continuance of the sale. Nor do the Court make any reference to the order of 8th August and their Lordships can only suppose that these two important facts were not brought to the attention of the Court as they cannot think that, had they been, the appeal would have been allowed. In view of the agreement and the order of the Court their Lordships are unable to see that there was any material irregularity in the proceedings, still less any illegality. It was contended before the Board that as no order for the continuance of the sale was made on 5th August the order of 8th August was too late and therefore ineffective but their Lordships cannot accept that argument. Even assuming that in view of the agreement between the parties any order was necessary, and it is not to be taken that in their Lordships' opinion it was, they are of opinion that the agreement come to on 3rd August coupled with the order of 8th August effectively continued the sale to 12th August. It may be observed that the sale was never adjourned; it was all along continued from day to day and consequently no fresh proclamation ever became necessary.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, the order of the High Court set aside with costs and the order of the Subordinate Judge restored. The respondents will pay the costs of the appeal.

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In the Privy Council

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DELIVERED BY LORD JUSTICE GODDARD

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