

(1940) 10 MAD CK 0007

Madras High Court

Case No: None

Veerabhadra Pillai

APPELLANT

Vs

O.A. Narayanaswami
Ayyar, Receiver and
Others

RESPONDENT

Date of Decision: Oct. 25, 1940

Citation: AIR 1941 Mad 653

Hon'ble Judges: Abdur Rahman, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Abdur Rahman, J.

A preliminary objection has been raised that this revision is not competent. The petitioner made an application under

Order 21, Rule 90, Civil P.C. This has been refused by the lower Court on the ground that he has no locus standi to make the application. The

order will show that the Court has not passed any order setting aside or refusing to set aside the sale and it is these orders alone which are

appealable under Order 43, Rule 1, Civil Pro. Code, If the lower Court's action, as Oldfield J. said in Sundaram v. Mamsa Mavuthar AIR 1921

Mad. 157 consisted in a refusal to deal with the judgment-debtor's petition, a non-exercise of their jurisdiction must be held to be revisable since

the decision was not a conclusion of law or fact but one in which the question of jurisdiction was involved. I would therefore overrule the

preliminary objection.

2. The lower Court will report whether the entire property was sold in these proceedings or whether the melwaram interest alone was sold. The papers relating to proclamation and the order passed for sale may be sent along with the report. Time, one month.

ORDER

3. The only question to decide in this revision is whether the petitioner had a locus standi to present an application under Order 21, Rule 90, Civil

P.C. There was a little doubt at one time as to what was actually sold in the execution of the decree and I called for a report on that point. The

learned District Judge has reported that the melwaram interest alone was sold and the proclamation of sale has also been sent which shows the

same. There is no doubt on that point now and this is conceded by the petitioner's learned counsel. The only question then is whether the petitioner

who was a kudivaramdar could make an application objecting to the sale under Order 21, Rule 90, Civil P.C. If his interests are those of a

kudivaramdar, they cannot be, within the language of Order 21, Rule 90, Civil P.C., said to have been in any way affected by the sale of the

melwaram interest. There is an observation in Adenna v. Chinna Ramayya AIR 1928 Mad. 1191 which confirms me in my opinion. The revision

petition therefore fails and is dismissed with costs which will be shared by the decree-holder and the auction purchaser.