

(1919) 11 BOM CK 0029**Bombay High Court****Case No:** Second Appeal No. 293 of 1918

Balgauda Laxmangauda Patil

APPELLANT

Vs

Mallappa Virupaxappa Tubli

RESPONDENT

Date of Decision: Nov. 27, 1919**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 92(1)

Citation: (1920) 22 BOMLR 759 : 57 Ind. Cas. 440**Hon'ble Judges:** Norman Macleod, J; Heaton, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

Norman Macleod, Kt., C.J.

The decree of the lower appellate Court was perfectly correct. The facts are set out at page 2. The learned Judge has properly appreciated the rules which refer to the case. When a decree has been transferred to the Collector for execution, and he has put up the property for sale, and it has been sold, then he has a certain power to confirm the sale. That was given to him by Rule 16(2) at page 106 of the Civil Court Manual, namely, "The power referred to in paragraph 1 of Section 312 of the Code of 1882 (present Order XXI, Rule 92(1) of the Code of 1908) to pass an order confirming a sale if no application to set aside the sale has been made within the time limited by law, or if every application so made has been disallowed" and Rule 17 provides that the application to set aside a sale, if it is made within the time limited by law to the Collector, shall be referred to the civil Court. It follows then that once an application is made within the time limited by law to the Collector to set aside the sale, the Collector is bound to refer the application to the Court, because he has no power whatever to deal with that application himself. But as soon as the application is made to him within the time limited by law, which is thirty days from the date of the sale, then all his powers of confirming the sale are suspended until that application has been disposed of. In this case he appears to have ignored the

application to set aside the sale and proceeded to confirm it. In so doing, he was acting clearly ultra vires, and a suit will lie for a declaration in favour of the plaintiff that the sale is void.

2. It has been argued that the plaintiff should have proceeded in execution u/s 47 of the Coda, That auction will not apply this case, because the decrees-holder in the suit in which execution was asked for is not a party to these proceedings, and it is only when questions arise between the parties to the suit in which the decree was passed, or their representatives, that those questions must be determined by the Court executing the decree, and not by a separate suit. Here the decree-holder was not a party nor the representative of a party. The judgment-debtor deposited the money with the Collector or the Mamlatdar, and then proceeded to ask the Collector to set aside the sale. The only questions which arose were purely questions between himself and the auction-purchaser who was an outsider to the original suit, and was neither a party nor a representative of any of the parties. Therefore the decree of the lower appellate Court was perfectly correct and the appeal must be dismissed with costs.

Heaton, J.

3. I concur.