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A.S.Nos.842 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2024

CORAM:

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Appeal Suit Nos.842, 663 of 2018 and 175 of 2019
and
CMP.No.22295, of 2018, 10590 of 2019 & 7764 of 2022

A.S.No.842 of 2018

1.P.Gnanaprakasam
2.G.Sathyavathi
3.G.Sathish Kumar

... Appellants

Versus

1.Sree Varadaraja Benefit Fund Ltd.,
Rep. by its Director – Secretary
“Dasar Subramanian Maligai”
Residing at New No.149/1, Old No.63/1,
Purasawalkam High Road,
Purasawalkam, Chennai-600 007.

2.M/s.Sri Ganesh Auctioners & Co.,
Represented by its Executive Director,
Having office at No.5-C/2,
Valluvar Street, Krishnamurthy Nagar,
Kodungaiyur, Chennai-600 118.

3.Amirthavalli

...Respondents

A.S.No.663 of 2018

1.P.Gnanaprakasam
2.G.Sathyavathi
3.G.Sathish Kumar

... Appellants

Versus

Amirthavalli

...Respondent



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A.S.No.175 of 2019

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Amirthavalli

Versus

... Appellant

1.P.Gnanaprakasam

2.G.Sathyavathi

3.G.Sathish Kumar

...Respondents

PRAYER in A.S.No.842 of 2018: Appeal suit filed under Section 96 of the Code of Civil Procedure, prayed to set aside the Judgement and Decree dated 27.06.2018 passed by the learned III Additional Judge, City Civil Court, Chennai in O.S.No.9249 of 2010.

PRAYER in A.S.No.663 of 2018: Appeal suit filed under Section 96 of the Code of Civil Procedure, prayed to set aside the Judgement and Decree dated 27.06.2018 passed by the learned III Additional Judge, City Civil Court, Chennai in O.S.No.9011 of 2010.

PRAYER in A.S.No.175 of 2019: Appeal suit filed under Section 96 of the Code of Civil Procedure, prayed to set aside the Judgement and Decree dated 27.06.2018 passed by the learned III Additional Judge, City Civil Court, Chennai in O.S.No.9011 of 2010.



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For Appellant in
A.S.Nos.842 & 663 / 2018

: Mr. P.Gnanaprakasam
(party-in-person)

For Respondent in
A.S.Nos.842 & 663 / 2018

: Mr. M.Sriram Senior Counsel
for Mr.Ramesh Venkatachalapathy

For Appellant in
A.S.Nos.175 / 2019

: Mr. M.Sriram Senior Counsel
for Mr.Ramesh Venkatachalapathy

For Respondent in
A.S.Nos.175/2019

: Mr. P.Gnanaprakasam
(party-in-person)

COMMON JUDGMENT

The appellants in A.S. Nos. 842 & 663 of 2018 are the plaintiffs in O.S. No. 9249 of 2010, and the appellant in A.S. No. 175 of 2019 is the plaintiff in O.S. No. 9011 of 2010. Both side parties and the suit properties are one and the same. Both suits were jointly tried before the learned III Additional Judge, City Civil Court, Chennai, and a common judgment was passed on 27.06.2018. Accordingly, the suit filed by the plaintiffs in O.S. No. 9249 of 2010 was dismissed. Against this, the plaintiffs have preferred an appeal in A.S. No. 842 of 2018. A suit in O.S. No. 9011 of 2010 filed by auction purchaser (D3) was partly allowed. Aggrieved by this judgment, both parties have put forward appeals in A.S. Nos. 663 of 2018 and 175 of 2019. Since all three appeals arise out of the common judgment in O.S. No. 9249 of 2010 & 9011 of 2010, dated 27.06.2018 common judgment pronounced.



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2. For the purpose of convenience, the parties herein are referred to as

they are ranked in the suit O.S.No.9249 of 2010

3. Briefly, the facts of the cases are as follows: The 1st plaintiff is the absolute owner of the suit property described in the plaint schedule with door No. AP 86, 7th street, 11th Main Road, M.Block, Now AS Block, Anna Nagar, Chennai. The suit property was originally allotted to one Narayanasamy by the Tamil Nadu Housing Board in the year 1981. Subsequently, it was sold to one R.Kamala and her husband Natarajan, from whom the 1st plaintiff purchased the suit property on 10.05.1982. Thereafter, he became the absolute owner of the property. To construct the 1st floor and to make alterations for developing his business in the suit property and for family expenses, he borrowed a loan from the 1st defendant / private financier, in the year 1995-1996 by mortgaging the suit property. Thus, the plaintiffs had borrowed a sum of Rs. 8,80,000/- and executed the registered mortgage deed in favor of the 1st defendant. Thereafter, the 1st defendant calculated the interest for the entire month in advance for the entire loan amount, and the same had to be repaid in monthly installments. If any default was committed by the mortgagor, the penal interest would be levied at 36%, though it is against the terms and conditions laid in the mortgage deed, and are not enforceable by law. The plaintiff had repaid a sum of Rs. 12,00,000/- towards the mortgage amount.



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The 1st defendant is professionally a money lender and is entitled to claim interest of 9% per annum only under the Money Lenders Act and Usurious Loans Act, as the loan is a secured one. The excess interest paid by the plaintiff shall be adjusted towards the principal amount. The 1st defendant is not entitled to charge penal interest, and he cannot claim interest for the amount already paid towards the principal amount. A sum of Rs. 12,00,000/- is the only amount due and payable to the 1st defendant. The plaintiffs had offered to pay the same from 2005. But the 1st defendant refused to receive the same by demanding an exorbitant interest amount. The amount paid by the plaintiff through various cheques has not been properly accounted for by the 1st defendant inspite of several letters claiming to render proper accounts, but according to him, the loan amount with interest has come to a sum of Rs. 12,00,000/-.

4. But the 1st defendant with an ulterior motive brought the suit property for auction sale without following any mandatory provisions of Section 69 of the Transfer of Property Act, which is applicable only to properties situated within the jurisdiction of Madras City. The plaintiff's sale deed dated 10.05.1982 was registered on the file of the Sub-Registrar, Ambattur, which is situated in Tiruvallur District, and the Government of



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suit property under the purview of Section 69 of the Transfer of Property Act.

Therefore, the 1st plaintiff had filed a suit in O.S. No. 1990 of 2004 before the learned XVI Assistant Judge, City Civil Court, Chennai, for a declaration, declaring that the 1st defendant is not entitled to bring the suit property for auction sale without a statutory notice under Section 69 of the Transfer of Property Act and for permanent injunction restraining the 1st defendant and their men, from bringing the suit property to auction sale.

5. Pending the disposal of O.S. No. 1990 of 2004, the 1st defendant again brought the suit property to auction sale on 07.02.2005 through the 2nd defendant. The plaintiff personally went to the address of the 2nd defendant, but there is no such auction company functioning there. There is a DTP center running there, as such no proper auction was conducted on 07.02.2005. The 1st defendant with an ulterior motive and malafide intention had executed an alleged sale deed dated 10.02.2005 in favour of the 3rd defendant on the file of SRO, Anna Nagar, Chennai, which is unsustainable in the eye of the Law. The three defendants jointly with an ulterior motive played fraud and created a sale deed by fixing a low price. Even assuming that there was a loan due, a portion of the property was sufficient and not the whole property, thereby violating the provisions of Section 69 of the Transfer of Property Act. The plaintiffs are



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demanded and requested them to receive the said amount and return the parent documents after canceling the mortgage deeds. But the 1st defendant had refused to receive the same and to cancel the mortgage deeds. After the execution of the sale deed dated 10.02.2005, the 3rd defendant along with rowdy elements came to the suit property and attempted to trespass into the suit property. Immediately, the 1st plaintiff had lodged a complaint before the police station, and they had warned the defendant and advised them to take action before the appropriate Civil forum. Hence, the suit for redemption by canceling the mortgage deeds and consequently to return the parent documents of the suit property and also for declaring the sale deed dated 10.02.2005 in favour of the 3rd defendant as null and void and not binding upon the plaintiffs with costs of the suit.

6. The 2nd defendant remained ex-parte. The 1st defendant filed a written statement submits that his company is a Nithi Company incorporated under the Companies Act and carrying on the business of accepting deposits from the public and giving loans of various types against security. In order to ensure the safety of depositors' money, lending is made only against the security of jewels, immovable property, deposit with the fund. The rate of interest for lending is fixed, keeping a margin over the rate of interest paid for



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fixed for lending by other companies engaged in similar business. The fund is governed by the regulations of the central Government made through the department of company affairs and of Reserve Bank of India. One such regulation is not to allow the default in monthly payments. Accordingly, the plaintiff borrowed a loan and executed the mortgage deeds from 02.08.1995 to 07.01.1998, by availing 7 loans, totaling it comes around Rs. 8,45,000/- and with interest it comes Rs. 19,06,895.75/- the rate of interest and loan amount were incorporated in the mortgage deed. Therefore, he denied that he claims an exorbitant rate at 36% per annum. The monthly amount as contracted was payable on or before the last working day of every month, failing which the interest at the rate of 2 paise per rupee would be payable on the arrears as provided in the mortgage deed. The fund used to lend to the borrowers out of the deposits made by the shareholders for the funds have to pay interest regularly every month. Hence the fund was bound to collect interest for the defaulted amounts from the date of default to the date of payment. If the monthly payments were made regularly, such interest need not be charged.

7. The 1st defendant further submits that the plaintiffs were irregular in payment of monthly installments and become liable to pay default interest. No interest was charged on such default interest. In such circumstance, any



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interest, then towards the interest due and then towards the principal as provided in the mortgage deed. It was not opened to the plaintiffs to question the accounts maintained by the 1st defendant as per the mortgage deed. The balance amount under various accounts as on 31st March every year was included in the balance sheet and the annual report were prepared. All the payments made by the plaintiffs were given credit to and duly acknowledged by using receipts. The plaintiffs owed a sum of Rs.19,06,895.25. The plaintiffs were given due notice for clearing the amounts due and despite repeated demand he had not cleared the arrears. It is false to say that no notice was given to the plaintiff and all payment made by the plaintiff were given credit, it is false to say that the plaintiff due from the plaintiff is only Rs.12,00,000/- in order to make payment. With a view to delay the payment, he filed a suit in O.S.No.1990 of 2004 for bare injunction, but he did inclined to redeem the mortgage. After making several demands the plaintiff had failed to make payment. Therefore, auction proceedings were initiated as he not taking steps for redeem the mortgage. Therefore, after due notice the suit property was fixed for auction on 07.02.2005, by giving proper publication in news paper, the auctioneers at the time fixed at the premises the mortgaged property was sold to the highest bidder, the 3rd defendant, which was aware of the plaintiffs.

The sale price was credited towards mortgage deed and there was still a deficit



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is less than Rs.15 lakhs value. Therefore, the suit filed by the plaintiff as such is not maintainable and prayed for dismissal.

8. The 3rd defendant submitted the written statement stating that she purchased the property in the auction sale held on 07.02.2005 as a successful highest bidder and also paid a sum of Rs. 15,10,000/- was paid by her and the sale deed was also executed and registered in her name on 10.02.2005 at SRO Anna Nagar. After registration of sale deed in her name, she had applied for mutation of records in her name and the same was also effected. The Corporation of Chennai assessed the suit property in the name of the 3rd defendant and she had paid property tax up to date.

9. After the purchase, she requested the plaintiff to hand over the vacant possession of the suit property, but plaintiff not vacated. He gave the complaint, therefore, she issued notice for that reply given with false allegation, there was a tax due to the Corporation Chennai and the same was cleared by the 3rd defendant. She is a bonafide purchaser having right over the property but plaintiff does not hand over the possession. Therefore she filed a suit in O.S.No.9011 of 2010 for vacating the premises and handed over the possession of the property with damages.



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10. About numbering of suits, mentioned by Trial Court in the judgement dated 27.06.2018, in which reads as follows;

“The suit in O.S.No.9249 of 2010 was originally filed before this Court and numbered as C.S.No.591 of 2006 and received by transfer to City Civil Court, Chennai and renumbered as O.S.NO.9249 of 2010 and subsequently, made over to his Court and O.S.No.9011 of 2010 was originally filed before this Court and numbered as C.S.No.1037 of 2007(A) and receive by transfer to City Civil Court, Chennai and renumbered as O.S.No.9011 of 2010 and are coming on 19.06.2018 for final hearing.”

11. Before the trial Court the 2nd defendant namely auctione remained ex-parte. The plaintiff, 1st defendant and 3rd defendant contested the suit. Both the contested parties adduced oral and documentary evidence. On the side of the plaintiffs, 1st plaintiff was examined as P.W.1 and Ex.A1 to Ex.A45 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B35 were marked.

12. Considering the oral and documentary evidences, the learned trial Judge framed issues in both the suits, which are as follows;

“1. Whether the plaintiff is entitled to get the redemption of the mortgaged property?

2. Whether the plaintiff is entitled to get the declaration of sale



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deed in the name of 3rd defendant with regard to the suit property as null and void as prayed for?

3. Whether the 3rd defendant is a bonafide purchaser for value and entitled to get the vacant possession of the suit property?

4. Whether the plaintiff is entitled for damages and future rent as prayed for?

5. Whether the plaintiff is entitled to get the costs of the suit in O.S.No.9249 of 2010 or whether the 3rd defendant is entitled to get the cost of the suit in O.S.No.9011 of 2010?"

13. By analyzing all the evidence, the learned trial Judge concluded that the plaintiffs have failed to repay the loan amount as they agreed, nor they took steps to redeem by paying the balance amount, by due notice the 1st defendant rightly took steps to auction the property. Accordingly, the highest bidder/3rd defendant purchased the property in the public auction, and thereafter, the plaintiff's right to redeem the suit property had got extinguished by the act of the defendant. Hence the suit filed by the plaintiff in O.S. No. 9249 of 2010, to redeem the mortgaged property with the consequential relief of declaring auction sale deed as null and void, as such is not maintainable. Accordingly, the said suit was dismissed, and also directing him to deliver the vacant possession of the suit property to the 3rd defendant, as prayed for by the auction purchaser in her suit O.S.No.9011 of 2010 but not accepted as claim of damages. Accordingly, the suit in O.S. No. 9011 of 2010 was partly



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allowed. By challenging the said findings the plaintiffs have preferred two appeals in A.S. Nos. 842 of 2018 & 663 of 2018, and the auction purchaser has preferred one appeal in A.S. No. 175 of 2019 as stated above.

14. The learned counsel for the appellants prayed to set aside the findings of the learned trial Judge on following grounds, which as follows;

i) The trial Court erred in stating that the alleged auction conducted on 07.02.2005 by Sri ganesh Auctioneering Company is valid and not challenged by the appellants without considering the material evidence on record. The appellant herein challenged the alleged auction sale deed which includes the alleged auction held on 07.02.2005 fraudulently.

ii). The trial Court failed to appreciate that the auction company is not having any office and no such office is functioning in the address furnished by them, except a DTP Centre and there is no auction conducted on 07.02.2005.

iii) The trial Court failed to consider the vital aspect that the defendant herein not even disclosed before the Court about the details of the bidders participated in the alleged auction held on 07.02.2005 and he upset price fixed for the auction sale.

iv) The trial Court failed to consider the vital aspect that under Ex.A17, the defendant herein paid a deficit stamp duty of Rs.56,440/- i.e., the property has been deliberately undervalued less than eight lakhs of the guide line value



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or otherwise, the alleged auction is only for Rs.15,10,000/- contrary to the guide line value of Rs.23,10,000/-. Naturally the market value of the property is more.

v) The trial Court ought to have concluded that the alleged auction through a dubious auctioneer in the name of the 3rd defendant who is a Benami of the M/s. Varadaraja Benefit Fund Ltd., President who is an advocate and also representing his case.

vi) The trial Court ought to have held that the alleged auction held when the suit for declaration not to initiate auction under Section 69 of the Transfer of Property Act, including the redemption of accounts is pending against the mortgagee M/s.Varadaraja Benefit Fund (O.S.No.1990 of 2004) in a clandestine manner.

Vii) The trial Court ought to have considered that the mortgage property situated at Anna Nagar West in Thiruvallur District, the provisions of Section 69 of the Transfer of Property Act, would not attract in the instant case.

viii) The trial Court erred in stating that the parties herein agreed to invoke Section 69 of the Transfer of Property Act in the mortgaged deed. It is settled law, that the parties cannot create or confer jurisdiction by agreement.

ix) The trial Court ought to have considered even after the dismissal of the earlier suit, the appellant herein challenged the alleged auction sale which is tainted with illegality and also for the relief of redemption.



x) The learned trial Judge erred in stating that the appellant herein sought for extension of time number of times under various exhibits, but failed to consider that each request, the appellant is remitting a sum of Rs.1 lakh or Rs.1.5 lakh.

xi) The trial Court failed to consider for the borrowings of Rs.11,30,000/- the appellant herein paid Rs.5,01,178.20/- as ib 26.03.2004, including substantial amounts paid through various banks towards mortgage account amounting to Rs.12 lakhs, the statement of accounts from Indian Bank, Union Bank of India and Karur Vysya Bank also produced as Exs.A25 to A27 and sought for rendition of accounts in O.S.No.1990 of 2004, the Mortgagee Benefit Fund failed to furnish the same with break up details to show the actual amount due to mortgage by the mortgagor.

xii) The trial Court failed to consider the vital aspect the 2nd defendant Ganesh Auctioneers & Co is a dubious company and is not functioning in the address furnished by them at relevant point of time. Further they have not renewed since 2004. The 2nd defendant herein instead of justifying the auction sale held on 07.02.2015 by producing positive oral and documentary evidence and the auctioner also conveniently remained exparte in the other suit the trial court ought to have drawn adverse interference against the auction Company.

xiii) The trial Court lost sight of the important legal point, in view of the deliberate under valuation of the property in the alleged auction sale, the



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document has referred under Section 47(A) of the Indian Stamp Act and only after payment of deficit stamp of Rs.56,440/- alone the document is released.

xvi) The trial Court ought to have held that the president of the 1st defendant company is a practicing advocate with help of letter pad auction company conducted the alleged public auction without following the mandatory requirements as stated supra.

xv) The trial Court failed to consider that the 1st defendant Manager who signed as witness to the alleged auction sale deed did not say the amount paid by the 3rd defendant.

xvi) The trial Court ought to have held that the 3rd defendant is a benami or name lender to the president of the 1st defendant company to knock of the ground plus one property (1200 sq.ft residential flat) worth about 1 crore for a paltry sum of Rs.15,10,000/- as per the value determined by the registration department as Rs.23,10,000/-.

xvii) The trial Court ought to have held that the collusion and fraud between 3rd respondent with the mortgage Benefit Fund is quite apparent in the instant case and ought to have set aside the alleged auction sale and determined the redemption amount payable by appellants to redeem their only valuable residential property.

By relying all the grounds the appellant who appeared party-in-



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the appeal filed by the auction purchaser / 3rd respondent.

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15. In response, the learned counsel for the respondents submitted that the first plaintiff, upon mortgaging his property, borrowed a loan and agreed to repay it with interest. The terms were reduced into written deeds of mortgage, which were also executed. However, the first plaintiff defaulted in payment of the rent, interest, and the principal amount. Despite due notice, he did not pay the instalments. On the other hand, the first defendant company sent letters as per rules, and a notice was issued informing the plaintiffs that they were going to conduct an auction sale by adhering to proper procedures. The property was auctioned through a private auctioneer (D2), wherein the 3rd defendant, who was a higher bidder, offered to pay a sum of Rs. 15,10,000/- on 07.02.2005, and she paid the said amount. Consequently, the sale deed was registered in her name on 10.02.2005, thereby making her the absolute owner of the property. This was done for adjusting the loan towards the balance owed by the plaintiff. The plaintiff, without taking any steps to redeem the mortgage, filed a suit for a bare injunction in order to harass the first defendant. Moreover, he showed no inclination to pay the installments regularly but instead filed this suit vexatiously to harass the respondent. Furthermore, it was argued that there was no collusion among D1 to D3 regarding the auctioning the property. The



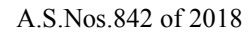
those facts were proven before the learned trial Judge, who rightly appreciated them and dismissed the suit filed by the plaintiffs, allowing the recovery of possession claimed by them. Although damages were denied, the counsel prayed that, however, he is entitled to damages and prayed to allow the appeal filed by the auction purchaser / D3.

16. Points for consideration is as follows:

“(i) Whether the plaintiff is entitled to the redemption of the mortgage?”

“(ii) Whether the auction was conducted fraudulently by the defendants conspiring among themselves with the intention to grab the plaintiff's property?”.

17. The suit property originally belongs to the 1st plaintiff by purchase, is an admitted fact. By borrowing a loan from the 1st defendant, he executed a mortgage deed, an undisputed fact. The contention of the plaintiff is that the 1st defendant finance company claimed an exorbitant rate of interest. Although he managed to pay the installments, with some delay, the 1st defendant imposed penal interest. He repaid his installments, which were not properly accounted for, and the plaintiff alleged that all the amounts were appropriated for penal interest. However, he paid a total sum of Rs.12 lakhs, but the 1st defendant demanded Rs.19 lakhs due to his family situation, praying for an



18. When the plaintiff approached the Court to declare the auction conducted by the 1st defendant, through which the property was sold to the 3rd defendant, as null and void, sustained with fraud and collusion, the burden upon him to establish those facts.

19. To support his contention, the plaintiff relied on documents regarding Form A and firm Registration certificate of the 2nd defendant auctioneer, as well as information obtained through the Right to Information Act from concerned departments marked as Ex.B21, Ex.B22, Ex.B23, Ex.B24, Ex.B29, Ex.B41 & Ex.B44.

20 On a perusal of Ex.B21, it reveals that Sree. Ganesh auctioneer and co-/D2, it is a firm registration certificate dated 21.05.2004. Registration No.194 of 2004, and Ex.B22 is a form A, of a registered firm. But according to

<https://www.mhc.tn.gov.in/judis>

the plaintiff, it was created for the purpose of auction, thereafter the alleged



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registration, the firm was not renewed as it was no more existence. To that effect, he relied on the right to information obtained from the District registered firm marked as Ex.A41, which states:

“1. This company was registered on 21.05.2004 (after dispute arose between parties).

2. This company does not renewed since 2004 up to this year 2011

3. Thiru K.Arun and Thiru. S.Thiyagarajan are the two partner of this firms.

4. This firm is not alive as on this state.”

21. The office of the Assistant Commissioner (CT), Manali Assessment Circle, Chennai-600 108, also furnished information that M/s.Sri Ganesh Auctioneers & Co. was not a registered dealer under TNGST or VAT Acts in this Assessment Circle. Since the dealer is not an assessee in this circle, renewal in this Case does not arise. Sri Ganesh & Co. is not a registered dealer of this assessment circle.

22. On a perusal of Ex.B24, it reveals that renewal for a period from 01.04.2005 to 30.06.2005, but within that period it was not renewed, there is no proof on the side of the defendants that the firm was renewed.

23. On a perusal of Ex.A39, it reveals that M/s.Sri Ganesh Auctioneers

& Co. is not a company nor registered under the Companies Act during the



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year 1956, according to information furnished by the Ministry of Corporate office.

24. On a perusal of all these documents, it clearly reveals that the 2nd defendant company, though said to be registered on 21.05.2004, was subsequently not renewed. Since 2004 up to 2011, when the plaintiff obtained the information through the RTI Act, the said company was not renewed. According to the defendant, the renewal period was from 01.06.2005 to 30.06.2005, but after registration of the firm, it was not renewed till 2011. Even on the date of filing in the year 2006, the 2nd defendant firm did not exist as per the reply given by the registry of Corporate. All facts and documents shows that M/s.Sri Ganesh Auctioneers & Co. is not a company registered under the registration Act.

25. The main objection raised by the plaintiff is that the 2nd defendant M/s.Sri Ganesh Auctioneers & Co. is fake for the purpose of grabbing the property 1st defendant set up the said company, surprisingly the 2nd defendant remained exparte throughout all the proceedings. If the company is in existence, the 2nd defendant should have appeared before this Court and raised objections against plaint allegations. But it failed, so the Court is empowered to draw adverse interference for its non-appearance. All replies



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from the Authorities concerned clearly reveal that the said company was not renewed since 2004, and it probabalizes the plaintiff's claim that it was a fake company, at the instigation of the first defendant, it was created only for the purpose of auctioning plaintiff's suit property. But the trial Court failed to appreciate all these facts and circumstance.

26. Another contention raised by the plaintiff is that the 3rd defendant is a name lender by colluding with 1st defendant and she was not a bona fide auction purchaser for that D2 company. He relied on the deposition given by the 3rd defendant, examined as DW2/Amirthavalli. About her participation she has deposed as follows;

“இரண்டாம் பிரதிவாதி ஸ்ரீ கணேஷ் என்கிற ஏலக்கம்பேனி எந்த இடத்தில் இயங்கி வருகிறது என்று எனக்கு தெரியாது. முதல் பிரதிவாதியின் அலுவலகம் எங்கு உள்ளது என்று எனக்கு தெரியாது. ஏலம் எடுத்த தேதி எனக்கு ஞாபகம் இல்லை. ஏலத்தில் சென்ற அன்று முன் பணமாக ரூ.3,76,400/- செலுத்தினேன். நான் ஏலத்தில் பங்கு பெறுவதற்காக பீயிட்டிங் டிபாசிட் எவ்வளவு தொகை கட்டினேன் என்று கேட்டால் எனக்கு ஞாபகம் இல்லை.

..... அந்த தாவாச் சொத்தை உள்ளே சென்று நான் பார்க்கவில்லை தெருவில் இருந்து தான் பார்த்தேன். தாவா சொத்தின் வீஸ்திரம் சுமார் 880 sq.ft. தான் என்று நினைக்கிறேன். இந்த தாவா சொத்து வீட்டினில் கட்டிட பரப்பளவு எவ்வளவு என்று



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கேட்டால் எனக்கு தெரியாது. நான் கொண்டு சென்ற முன் பணம் (Earnest money) ரொக்கமாக என்று கேட்டால் தற்போது ரூபகம் இல்லை. ரூ.3,77,400/-வை நீங்கள் கொடுக்கவில்லை அதனால் தான் ரசீதைத் தாக்கல் செய்யவில்லை என்று சொன்னால் அது சரியல்ல. ஏலத்தின் மீதித் தொகையை ரொக்கமாகத்தான் செலுத்தினார்கள் என்று சொன்னால் எனக்கு ரூபகம் இல்லை. அதற்கும் இரசீது இல்லை என்றால் சரியில்லை. நான் வருமான வரிச் செலுத்துபவர் இல்லை.

..... வழக்கு சொத்திற்கானக் கிரயப் பத்திரத்தை எங்கு வைத்து எழுதி வாங்கினேன் என்று எனக்கு ரூபகம் இல்லை.

..... வீட்டு வரி கட்டியதற்குகான இரசீது இருக்கிறதா என்று கேட்டால் என்னிடம் இல்லை.

..... இந்த தாவா சொத்தின் மூல பத்திரத்தின் அசல் பத்திரம் ஏன் இல்லை என்று கேட்டால் அதை பற்றி என் கணவரிடம் தான் கேட்க வேண்டும், எனக்கு தெரியாது. தாவா சொத்தின் அசல் ஆவணங்கள் உங்களிடமோ, உங்கள் கணவரிடமோ கிடையாது அவ்வாறு இருந்திருந்தால் அதை நீங்கள் இந்த நீதிமன்றத்தில் தாக்கல் செய்துயிருப்பீர்கள் என்று சொன்னால் சரியல்ல.

..... எங்கே உள்ளது என்றால் என் கணவரிடம் உள்ளது. உங்கள் கணவர் இங்கே இருக்கிறார் என்றால் இருக்கிறார். தற்சமயம் இந்த நீதிமன்றத்தில் தாக்கல் செய்ய முடியுமா என்று கேட்டால், முடியாது.”



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27. Thus about her participation, she deposed that she was not aware of the entire auction proceedings. On perusal of the entire records, it reveals that originally sale deed stands in the name D.W2 was not produced before trial Court even at the time of Cross-examination. When questioned, she stated that she has not possessed the original sale deed of the suit property. Further, she was not able to identify the property, which indicates that she was not aware of the property particulars. Her own evidence proves that she was only a name lender of the 1st defendant.

28. Moreover, the 1st defendant is represented by the President/Babu, who is an Advocate by profession, also contested the case on behalf of the 1st defendant. Therefore, at his instigation, all these documents were fabricated to grab the plaintiff's property, is established by the plaintiff through both oral and documentary evidence. Moreover, the value of the property alleged auctioned in the year 2005, as per the guideline value Ex.A44, is around Rs.22,15,000/-. However, the property was sold for a lesser amount of Rs.15 lakhs. Therefore, by not following proper rules, the 1st defendant auctioned the property for a lesser value.

29. The plaintiff also argues that by violating Section 69(c) of the



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property was situated at Anna Nagar, West in Tiruvallur District and not within the town of Madras. Therefore, as per Section 69 of the Transfer of Property Act, the present suit could not be investigated. However, the defendant relied on documents Ex.B1 to Ex.B35, stating that before auctioning the property, proper notice was sent to the 1st defendant. To that effect, he relied on Ex.B2 and Ex.B3, and thereafter Ex.B4 to B6, where the plaintiff sent various letters and also prayed for an extension of time for payment of the amount. But the same was not considered. In the year 2004, before auction, he filed a suit in O.S.No.990 of 2004, not to auction the property, although he said the suit was dismissed as infructuous. Subsequently, however at the time of auctioning the property, the suit was pending.

30. The contention of the defendant is that by giving due notice, they were empowered to conduct the auction as per the terms of the mortgage deed. Therefore, the pendency of the suit is immaterial, according to their objection. It is true that as per the mortgage deed, the 1st defendant is entitled to bring the property for auction provided it should be followed by all the regulations without contravention to the statutory rules. But as discussed above, the proceedings initiated by the 1st defendant to auction the property were tainted with fraud. As per Ex.B25, the 1st defendant Company was represented by his



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1st defendant. But as discussed above, the 2nd defendant was not in existence, nor it was renewed till 2011. The auctionee on the side of the 2nd defendant without entering the witness box itself shows that it is a fictitious said company colluded with the 1st defendant by setting up the 3rd defendant as the auction purchaser and sold the property for a lesser value, even without following the guideline value of the property of the value in the year 2005.

31. Moreover, the 3rd defendant also clearly revealed that she was not able to produce the original title deed of the property. So, with an ulterior motive to grab the property, they fixed a lesser value, and the 1st defendant colluded with the 2nd and 3rd defendants auctioned the property belonging to the plaintiff with the help of the mortgage deed, as such it is tainted with fraud. As discussed whether D2 is a fake firm created only purpose to auction plaintiff's property, so that only it was neither renewable nor functioned thereafter; therefore D2 remained exparte which it self proves that no such firm is in existence. Therefore, the alleged auction is liable to be set aside on that ground defraud alone. Accordingly, issue no.2 is answered.

32. Even before auctioning the property, the 1st plaintiff was inclined to pay Rs.12 lakhs as the balance amount, but it was not accepted by the 1st defendant. Moreover, the 1st plaintiff also requested the 1st defendant to submit



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the statement of accounts, but they failed to furnish the account. On the other hand, they took all steps to auction the property with the malafide intention to grab the 1st plaintiff's property. But the learned trial Judge failed to appreciate all these legal aspects as well as the fraudulent manner followed by the defendants 1 to 3. Instead of granting the decree in favor of the plaintiff, erroneously dismissed the suit, is liable to be set aside, thus issue No.1 is answered.

33. Based upon the alleged fraudulent sale deed, relief was granted, and the 1st plaintiff was directed to surrender his possession, which is erroneous. It is settled proposition that if fraud is established, they can be thrown out at any stage of proceeding. Accordingly, both the appeals filed by the plaintiff in A.S.No.842 and defendant in A.S.No.663 of 2018 are allowed by setting aside the order passed by the learned trial Judge in O.S.No.9249 of 2010 and O.S.No.9011 of 2010. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

34. In view of the findings given by those appeals, the appeal filed by the 3rd defendant in A.S.No.175 of 2009 is dismissed. Rate of interest also restricted as the defendants not approached the Court with clean hands.

Accordingly, the suit filed by the 1st plaintiff is decreed, and he is directed to



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deposit a sum of Rs.12,00,000/- (Rupees Twelve lakhs only) with interest at the rate of 6% from the date of the suit till realization, within a period of three months from the date of receipt of a copy of this order, and on such deposit, the 1st defendant is permitted to withdraw the said amount. Thereafter, on receipt of the amount, the 1st defendant is directed to return the parent documents of the suit property to the plaintiff within 4 weeks. Consequently, the sale deed executed by the 1st defendant in favor of the 3rd defendant is declared as null and void. The suit is decreed with costs.

24.04.2024

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

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To,

1. The III Additional Judge, City Civil Court,
Chennai.
2. The Section Officer, VR-Section,
High Court of Madras, Chennai.



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A.S.Nos.842 of 2018

T.V.THAMILSELVI,J.

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Appeal Suit Nos.842, 663 of 2018 and 175 of 2019
and
CMP.No.22295, of 2018, 10590 of 2019 & 7764 of 2022

24.04.2024