



C.M.S.A.(MD)No.30 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.03.2024

Delivered On : **19.06.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.30 of 2017

and

C.M.P.(MD)Nos.9282 and 9283 of 2017

T.Thangaraj

... Appellant

Vs.

1.N.Geetha

2.A.Kunjumaadan

3.A.Vadivel

4.Sandha

5.Saravanan

6.Mariammal

7.Mala

8.Veliuvanthammal

... Respondents

(Respondents 2 to 8 herein are remained
ex-parte before the learned First Appellate Court.
Hence, notice may be dispensed with)

PRAYER : Civil Miscellaneous Appeal is filed under Section 100 of Civil Procedure Code r/w. Order 43 Rule 1 of Civil Procedure Code, to set aside the judgment and decree dated 29.08.2016 made in C.M.A.No.13 of 2011 on the file of the Principal District Court, Srivilliputtur, in reversing the judgment and decree order in E.A.No.295 of 2007 in E.P.No.220 of 2000 in O.S.No.213 of 2000 dated 31.01.2011, on the file of the learned Subordinate Judge,



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For Appellant : Mr.V.Meenakshi Sundaram
For Mr.I.Velpradeep
For 1st Respondent : Mr.Raghavachari, Senior Counsel
For Mr.S.Ramesh
For Respondents 2 to 8 : Exparte

JUDGMENT

This Civil Miscellaneous Second Appeal has been filed against the judgment and decree passed in C.M.A.No.13 of 2011 dated 29.08.2016, on the file of the Principal District Court, Srivilliputtur in reversing the judgment and decree order in E.A.No.295 of 2007 in E.P.No.220 of 2000 in O.S.No.213 of 2000 on the file of the learned Subordinate Judge, Srivilliputtur.

2.The auction purchaser before the Courts below is the appellant before this Court. The parties are referred to in the same rank as in E.A.No.295 of 2007.

3.The facts, which form the prelude to the filing of this Appeal is set out in the chronology of dates and events given herein below:-

S.No.	Dates	Events
1.	19.09.1945	Subject properties were purchased by Arumugam Pandaram.
2.	30.04.1998	Mortgage deed executed by Arumugam in favour of Srivilliputtur Primary Agricultural Co-operative Bank for Rs.50,000/-



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3.	13.08.1999	Alleged Promissory note executed by Arumugam Pandaram in favour of Kunchu Madan for Rs. 1,80,000/-
4.	13.07.2000	Registered mortgage executed by Arumugam and his son, Saravanan in favour of Geetha (1 st respondent_ for RS.1,80,000/- vide Doc. No.2710 of 2000
5.	13.07.2000	Mortgage deed executed by Arumugam in favour of Akilandeewari for Rs.1,20,000/-
6.	18.07.2000	Sale agreement executed by Arumugam in favour of Geetha (R1) for the subject properties
7.	28.07.2000	Suit in O.S.No.213 of 2000 was filed by A.Kunchu Madan against P.Arumuga Pandaram
8.	28.07.2000	I.A.No.872 of 2000 in O.S.No.213 of 2000 was preferred to furnish security for Rs.2,75,000/- to pass ad-interim <i>ex parte</i> order of conditional attachment of the schedule mentioned property.
9.	31.07.2000	Attachment made in I.A.No.872 of 2000 in O.S.No. 213 of 2000
10.	20.09.2000	Judgment and decree passed in O.S.No.213 of 2000, on the file of the Sub Court, Srivilliputhur
11.	-	E.P.No.220 of 200 was preferred and the E.P. amount was shown as Rs.2,45,610.25/-
12.	21.06.2001	Sale deed executed by Arumugam in favour of Geetha. The balance sale consideration was also paid.
13.	21.06.2001	Along with the sale deed, since Arumugam could not travel to Sub Registrar office, Arumugam gave a power of attorney to Geetha's husband, Natarajan to present to sale deed for registration.
14.	26.06.2001	The sale deed presented in favour of Geetha was registered.
15.	16.07.2007	Auction sale in favour of the appellant (Thangaraj) for an amount of Rs.5,41,500/-
16.	31.07.2011	E.A.No.295 of 2007 in E.P.No.220 of 2000 on the file of learned Sub ordinate Judge, Srivilliputhur was dismissed.



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17.	29.08.2015	C.M.A.No.13 of 2011 on the file of the Principal District Court, Srivilliputhur, was allowed.
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4.The case of the appellant/auction purchaser is briefly stated hereunder:-

(i)The petition scheduled properties were purchased by one Arumuga Pandaram, vide sale deed dated 19.09.1945. The said Arumuga Pandaram executed a promissory note in favour of the decree holder namely Kunjumaadan, for an amount of Rs.1,80,000/- on 13.08.1999. The said Kunjumaadan filed a suit for recovery of money in O.S.No.213 of 2000 on the file of the learned Subordinate Judge, Srivilliputtur, seeking to direct the defendant to pay him a sum of Rs.2,21,280/- together with subsequent interest at 24% per annum on Rs.1,80,000/- from the date of plaint till realization and also for costs. Along with the said suit, he filed an I.A in I.A.No.872 of 2000 in O.S.No.213 of 2000 to furnish security for Rs.2,75,000/- and to pass an ad-interim ex parte order of conditional attachment of the schedule mentioned property on 28.07.2000. Pursuant to the same, on 31.07.2000, attachment of the petition schedule property was made in I.A.No.872 of 2000 in O.S.No.213 of 2000 before judgment. Thereafter, on 20.09.2000, the said suit was decreed ex parte in favour of Kunjumaadan, that is, the decree holder for an amount of Rs. 1,80,000/- with interest at 6% per annum and for costs of Rs.19,929.50/-.



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Following which, the decree holder Kunjumaadan filed an execution petition in E.P.No.220 of 2000 under Order 21 Rule 11 of the Code of Civil Procedure, 1908. Since the petition scheduled property was already been attached before judgment in I.A.No.872 of 2000 on 28.07.2000 and since the said attachment had been made absolute on 11.09.2000, the Execution Court did not find it necessary to further attach the petition schedule property and hence, proceeded to sell the petition schedule property by auction through Court. In the said auction through Court in E.P.No.220 of 2000, the attached petition schedule property has been sold on 16.07.2007 to the auction purchaser, that is, the appellant namely, Thangaraj.

(ii)When the said E.P. was pending for confirmation of sale, one E.A.No. 295 of 2000 came to be filed by one Geetha/third party on 23.07.2007 under Order 21 Rule 58 of the Code of Civil Procedure, 1908. Claiming that the judgment debtor namely the said Arumuga Pandaram and his son Saravanan together jointly executed a mortgage deed with respect to the petition schedule properties in favor of the said third party on 13.07.2000, on availing a loan of Rs.1,80,000/- from the said third party. The third party further claimed that, following the execution of registered mortgage deed on 18.07.2000, the judgment debtor Arumuga Pandaram further executed an agreement for sale



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with respect to the petition schedule properties for a total sale consideration of Rs.2,17,000/-, for which the advance amount of Rs.17,001/-, was received by him as on 18.07.2000 itself. It was further claimed that, a sale deed has also been executed by the said Arumugam on 21.06.2001, with respect to the petition schedule properties in favor of the said third party. The registered mortgage deed dated 13.07.2000, has been marked as Ex.P1, the original sale agreement executed by Arumugam in favor of Geetha dated 18.07.2000 was marked as Ex.P2 and the Sub Registrar Office copy of the sale deed dated 21.06.2001, executed by Arumugam in favor of Geetha has been marked as Ex.P3.

(iii) On the basis of the facts on record, oral and documentary evidence adduced by the respective parties and hearing the arguments of either side, the learned Subordinate Judge, Srivilliputtur, concluded that Ex.P2 agreement for sale dated 18.07.2000, is very suspicious making out the case of the auction purchaser that the said Ex.P2 has been brought out collusively by the judgment debtor and the decree holder with a view to defeat the auction purchaser. Therefore, the learned Subordinate Judge, at Srivilliputtur, excluded Ex.P2 and absolutely held that the sale vide Ex.P3 in favor of the third party Geetha is subsequent to the attachment of the petition schedule property in the suit and



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hence, the same is not valid against the said attachment and proceeded to dismiss E.A.No.295 of 2007 on 31.01.2011. Challenging the same, the third party Geetha preferred C.M.A.No.13 of 2011 on the file of the learned Principal District Judge, at Srivilliputtur. However, the learned Principal District Judge, Srivilliputtur, on 29.08.2015, had set aside the order passed by the learned Subordinate Judge, Srivilliputtur, in E.A.No.295 of 2007 dated 31.01.2011, thereby cancelling the attachment and sale of the petition schedule property dated 13.07.2007 by auction, which was conducted by the Execution Court, by order dated 13.07.2007. Challenging the same, this Civil Miscellaneous Second Appeal has been filed before this Court.

5.The case of the obstructor in brief is as follows:-

(i)The judgment debtor Arumugam availed loan from the obstructor by mortgaging the petition schedule properties in favor of Geetha/obstructor vide registered mortgage deed dated 13.07.2000. His son Saravanan also together executed the aforesaid mortgage deed along with the said Arumugam in favor of Geetha. The obstructor/Geetha had advanced a loan of Rs.1,80,000/- to the said Arumugam. Since the judgment debtor was not in a position to redeem the mortgage and since he was encountered by financial constraints, he came forward to sell the aforesaid property to the obstructor/Geetha for a sum of Rs.



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2,17,000/-. After negotiation, an agreement for sale was executed by the said Arumugam in favor of the obstructor/Geetha on 18.07.2000. On the date of sale agreement, the obstructor/Geetha paid an amount of Rs.17,001/- as advance. It was further agreed between them that the loan amount of Rs.1,80,000/- would be adjusted towards sale consideration and the balance sale consideration of Rs. 19,999/- was agreed to be received by the said Arumugam Pandaram. Thereafter, the sale was executed by the said Arumugam in favor of the obstructor/Geetha on 21.06.2001 and possession of the property was also handed over to her. Ever since from the date of the said sale deed, the obstructor/Geetha is in possession and enjoyment of the petition schedule property without any interference from whomsoever. Mutation of the said property has also been effected in favor of the obstructor/Geetha.

(ii) In the meanwhile, the decree holder Kunjumaadan claiming to have obtained a decree against the said Arumugam, has proceeded against the petition schedule property by putting it for sale for realizing his decree debt. The obstructor claims that the alleged loan itself is not a genuine one. It is the contention of the obstructor that the said Arumugam has planted the decree holder to invalidate the sale proceedings and other loan availed by him from the obstructor/Geetha. The obstructor on coming to know that the petition schedule



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property has been put to sale at the instance of the decree holder in E.P.No.220 of 2000, on 16.07.2007 has filed E.A.No.295 of 2007 in E.P.No.220 of 2000, under Order 21 Rule 58 of the Code of Civil Procedure, 1908, seeking to pass an order of raising the order of attachment and the sale held in respect of the petition schedule properties on 13.07.2007. The said application came to be filed on the ground that the sale has been conducted behind the back of the petitioner without due publicity and that apart, the proclamation for the sale was also not made in accordance with law. It was also insisted that the sale is vitiated for many reasons including that there was collusion among the parties, that is, the judgment debtor and the auction purchaser. It was contended that when the judgment debtor himself do not have any saleable interest in the petition schedule properties by the time, when the properties came to be attached and brought to sale and when they have lost the title as regards the petition schedule properties in favor of the obstructor/Geetha long back for a valuable consideration in the manner known to law, the sale by auction by the Execution Court would not bind the obstructor/Geetha.

6.The gist of the decree holders contention is as follows:-

(i)Admitting that the petition schedule property belong to the judgment debtor by virtue of sale deed dated 19.09.1948, the decree holder contended



(ii) Further it was insisted on behalf of the decree holder that, it was not explained what was the necessity for the judgment debtor to execute an agreement for sale within 5 days of executing a mortgage, that is, in favor of Geetha. The said aspect itself would prove that the sale agreement is a forged document created for the purpose of defeating the claim of the decree holder. The decree holder has attached the petition schedule property on 31.07.2000. However, on that date, the obstructor/Geetha had only mortgage right over the petition schedule property. She has purchased the petition schedule property only after the attachment and hence, the sale is not valid. That apart, in the aforesaid sale deed dated 21.06.2001, there is no mention about the mortgage in favor of Ahilandeswari and hence, it is clear that the sale is only to defeat the



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claim of the decree holder and accordingly, it was contended that the obstructor's claim is not maintainable. It was also contended that in the sale proclamation, the mortgages obtained by one Geetha and one Ahilandeswari were mentioned and hence, the sale is subjected to the said mortgages. The auction purchaser had purchased the first item of the petition schedule property for Rs.4,91,000/- and the second item for Rs.50,500/- in Court auction and hence, the obstruction petitioner is entitled to claim only the mortgage amount and not the entire property.

(iii)Further the obstruction petitioner, that is, the said Geetha has purchased the petition schedule property only for an amount of Rs.2,17,000/- vide sale deed dated 21.06.2001. However, the auction purchaser has purchased the same for an amount of Rs.5,41,500/- in the Court auction and the same itself would clearly prove that the sale deed in favor of the obstruction petitioner Geetha is a fraudulent one and the same is hit by *lis pendens*.

7.Findings of the learned Trial Court:-

(i)The claimant was examined as P.W.1 by the learned Trial Court and her husband Natarajan as P.W.2 and the attesting witness of the Ex.P2 agreement for sale dated 18.07.2000 namely Angusamy was examined as P.W.



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3. 14 documents were marked on the side of the claimant as Ex.P1 to P14. The decree holder Kunjumaadan was examined as R.W.1 and the auction purchaser was examined as R.W.2 and one document was marked as Ex.R1 on the side of the respondents.

(ii)The learned Subordinate Judge, at Srivilliputtur, before whom E.A.No.295 of 2007 in E.P.No.220 of 2000 was pending had on considering the evidence on record and after hearing the parties on either side dismissed the said application. The learned Judge had in clear terms observed that Ex.P2 is the sale agreement dated 18.07.2000. The said agreement is prepared in a stamp paper for Rs.50/- dated 31.03.2000 in the name of the claimant. P.W.1 in her cross examination has stated that “கிரைய ஒப்பந்தம்போடுவதற்கு நான் தான் பத்திரம் வாங்கினேன் என்றால் சரிதான். எங்கள் வீட்டில் பத்திரம் இருந்தது, 3 மாதத்திற்கு முன்பே வேறு காரியத்திற்காக என் கணவர் பத்திரம் வாங்கி வைத்திருந்தார், என்ன காரியத்திற்காக பத்திரம் வாங்கியது என்ற விவரம் என் கணவருக்கு தான் தெரியும். எப்போது வாங்கப்பட்டது என்பது பற்றி என் கணவருக்கு தான் தெரியும். கிரைய ஒப்பந்தம் போடுவதற்கு 20 ரூபாய் பத்திரத்தில் தான் போட வேண்டும் என்ற விவரம் எனக்கு தெரியும்.

(iii)P.W.2 is the husband of the claimant. He says in his cross examination that “கிரைய ஒப்பந்தம் எழுதுவதற்கு எங்கள் வீட்டில் பழைய



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பத்திரம் இருந்தது. ரூ50/- பத்திரம் 2 இருந்தது. அந்த பழைய பத்திரத்தை நானும் என் மனைவி பெயரில் தான் பத்திரம் வாங்கினோம் அந்த 31.03.2000த்தில் அந்த பத்திரம் வாங்கி வைத்திருந்தோம். கிரைய ஒப்பந்தம் எழுதுவதற்கு பத்திரம் திருவில்லிபுத்தூரில் வாங்கியது.

(iv)Ex.P2 is written in a stamp paper valued at Rs.50/- when the stamp required for agreement is only Rs.20/-. The stamp stands in the name of the claimant. A careful perusal of Ex.P2 shows that the name of the claimant appears to have been written with a different pen and hand. The stamp is dated 18.07.2000. The necessity for the claimant or her husband to purchase a stamp paper for Rs.50/- and keep the same with themselves is not explained. Moreover it is the case of the claimant that the person, who typed the said agreement is a document writer, who brought the type machine to the house of the claimant for the purpose of typing the agreement. This contention appears to be strange. Admittedly at the time of agreement there were 3 mortgages one in favour of the claimant, one in favour of Akilandeswari and one in favour of Housing Society. But only one mortgage has been mentioned in the agreement. Further P.W.1 admits that “இந்த சொத்து சம்பந்தமாக ஏல அறிவிப்புகள் எல்லாம் வந்த விவரம் என் கணவருக்கு தான் தெரியும் என்றால் சரி, சொத்து ஏலம் விடப்பட்ட தேதி நடந்த விவரம் எல்லாம் என் கணவருக்கு தான் தெரியும். இந்த சொத்து சம்பந்தமாக கிரையும் முடிப்பதற்கு முன்பே ஷப்தி இருக்கிறது



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என்ற விவரம் என் கணவருக்கு தெரியும்.“

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(v)P.W.1 further admit that “ஆறுமுகத்தின் வாரிசுகளை வைத்து அவர்களுக்கு எதிராக ஏற்பட்ட தீர்வை ரத்து செய்ய வேண்டும்என்று என் கணவர் தான் நடவடிக்கை எடுத்து வந்தார் என்றால் சரிதான்.

(vi)P.W.2 is the husband of the claimant, he admits that those who attested Ex.P2 are known to him. Hence, P.W.3 who is the attesting witness cannot be said to be independent witness and hence, his evidence cannot be looked into. The above said facts make Ex.P2 very suspicious. The case of the auction purchaser is that Ex.P2 is brought out collusively with a view to defeat the auction sale. In the Civil cases, a fact may be taken as proved or not proved on the basis of preponderance of probabilities and proof beyond reasonable doubt is not necessary. In this case, the above said facts suggest that Ex.P2 has been created only with a view to defeat the Court sale. Hence, it is not safe to grant relief to the petitioner on the basis of the said sale agreement, if Ex.P2 is excluded, the sale in favour of the petitioner is subsequent to the attachment in the suit and hence, the same is not valid against the attachment. For the above reasons, the learned Trial Court is of the view that the attachment in E.P.No. 220 of 2000 in O.S.No.213 of 2000 in respect of the petition schedule property



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cannot be raised and this petition is answered accordingly.

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8.Findings of the first appellate Court :-

(i)The said order and decretal order dated 31.01.2011 passed by the Subordinate Judge, Srivilliputtur, was assailed by the obstruction petitioner by filing C.M.A.No.13 of 2011 on the file of the learned Principal District Judge, at Srivilliputtur. The learned Principal District Judge proceeded to observe that, R.W.2, that is, the auction purchaser while deposing his evidence admitted that even before taking the petition schedule property in auction for sale, he had knowledge about the encumbrance with respect to the petition schedule property.

(ii)Recording the same, it is further observed by the said Court that even before the execution of the agreement for sale, the obstruction petitioner had been in possession of the petition schedule property by the strength of the mortgage deed dated 13.07.2000. It is further recorded that after sale on 21.06.2001, undoubtedly the petition schedule property has been in possession of the obstruction petitioner, which could be understood from the original house tax receipts for the period 2006 - 2007 dated 12.03.2007 marked as Ex.P4, the original transfer of house tax registry dated 21.11.2003 marked as



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Ex.P6. The photocopy of mortgage deed executed in favour of Arumugam by Sriyilliputtur Primary Agricultural Cooperative Bank dated 30.04.1998 marked as Ex.P7 and the electricity bills (three numbers) marked as Ex.P11.

(iii)The learned District Judge further recorded that from Ex.P7, it could be understood that the judgment debtor had availed a loan from Srivilliputtur Cooperative Agricultural Bank and the said Bank had issued auction notice with respect to the petition schedule properties and the said notice has also been marked as Ex.P8 and Ex.P9. Ex.P10 receipts would reveal that the entire loan amount has been disbursed by the obstruction petitioner and that, all the title documents on disbursal of the said loan is with the custody of the obstruction petitioner. Further the learned District Judge proceeded to observe that the obstruction petitioner has also contended that the decree holder has filed a full satisfaction memo on receipt of the judgment debtor's loan amount from the obstruction petitioner. The same is not denied by the respondents. Since the obstruction petitioner has fully satisfied the loan availed by the judgment debtor before the Srivilliputtur Primary Agricultural Cooperative Bank and also the loan availed by the judgment debtor to the decree holder, following which the decree holder has also filed a full satisfaction memo in E.P.No.220 of 2000 and since the obstruction petitioner has filed a petition to raise the attachment



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and sale even before the confirmation of the sale before the Execution Court, on the basis of the fact that already the loan availed by the judgment debtor from the decree holder has been fully satisfied by the obstruction petitioner and the same has been acknowledged by the decree holder by filing a full satisfaction memo before the Execution Court, the learned District Judge concluded that the attachment of the petition schedule property pursuant to the E.P. in E.P.No.220 of 2000 and the sale of the petition schedule property dated 16.07.2007 are liable to be set aside. The learned Principal District Judge, at Srivilliputtur, has set aside the order passed in E.A.No.295 of 2007 in E.P.No. 220 of 2000, by an order dated 29.08.2016.

9.Challenging the same, the claimant has filed this Civil Miscellaneous Second Appeal before this Court and has framed the following substantial questions of law:-

“(I)Whether the petition under Order 21 Rule 58 is maintainable in law after the property was sold through Court auction?

(II)Whether the first respondent is a bonafide purchaser of the attached property?

(III)Whether the first Appellate Court erred in allowing the petition based on the sale agreement (Ex.P2), which was unregistered one?



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(IV) Whether the sale dated 13.07.2000 (Ex.P1) executed by Arumuga Pandaram who suffered a decree is legally valid or not?

(V) Whether the property, which was attached by the competent civil Court can be sold by overcoming the order attachment?

(VI) Whether the first Appellate Court considered the principle laid down under Order 38 Rule 11 of C.P.C.?"

Submissions:-

10.The learned counsel appearing for the appellant/auction purchaser, submitted that the first Appellate Court failed to see that E.A.No.295 of 2007 filed by the claimant is not maintainable in law under Order 21 Rule 58(1)(a) of the Code of Civil Procedure, 1908. Pointing out the petition under Order 21 Rule 58 of the Code of Civil Procedure, 1908, in E.A.No.295 of 2007 came to be filed by the claimant after the attached property has been sold, submitted that the transaction between the judgment debtor and the claimant is a fraudulent one. He further insisted that the sale agreement dated 18.07.2000, as well as the sale deed dated 21.06.2001, were exclusively created for the purpose of defeating the auction purchasers right on the subject property. He pointed out that the first Appellate Court ought to have seen that according to the claimant, the judgment debtor Arumuga Pandaram executed a mortgage deed in her favour on 13.07.2000 and the said document was registered on the file of the



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Sub-Registrar office at Srivilliputtur. The sale agreement was entered between them on 18.07.2000, which is an unregistered document within 5 days from the date of the said mortgage and based on the same, the sale deed was executed in favour of the claimant on 21.07.2001 on the file of the Sub-Registrar office at Virudhunagar. However, the property was attached in I.A.No.872 of 2000 on 28.07.2000.

11.The said dates and events would clearly reveal that the claimant had purchased the property after passing the order of attachment by the learned Trial Court. He categorically contended that, the entire sale transaction dated 21.06.2001, is a fraudulent transaction and the same could be culled out from the conduct of the judgment debtor and the claimant. Having registered the mortgage deed on the file of the Sub Registrar office, Srivilliputthur, the very same property came to be registered under the sale transaction in Sub Registrar office, at Virudhunagar on 21.07.2001. That itself would clearly prove that, the sale agreement is a fabricated document. He pointed out that since the order of attachment passed by the learned Trial Court on 28.07.2000, is in the jurisdiction of the Sub-Registrar office at Srivilliputthur, the claimant and the judgment debtor have colluded cunningly to register the sale deed on 21.07.2001, before the Sub-Registrar office at Virudhunagar and the same itself



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would prove that the fraudulent nature of the transaction in favor of the claimant. Contending that the judgment debtor has no right to sell the property, after passing an order of attachment by the learned Trial Court, he further pointed out that the learned First Appellate Court failed to note that the claimant admitted in her evidence that she knew the judgment and decree and the order of attachment passed with respect to the petition schedule property. Therefore, knowing fully about the order of attachment and decree exclusively, with malafide intention and hand in glove with the judgment debtor, the documents were created by the judgment debtor and the claimant. He further pointed out that the mortgage deed was executed in favor of the claimant on 13.07.2000. As per the mortgage deed, the period of redemption was one year. However, within 5 days, a sale agreement came to be executed, as if he was not able to redeem the mortgage property on 18.07.2000.

12.Having known the judgment and decree passed by the learned Trial Court, it can be precisely understood that the claimant and the judgment debtor have colluded together to create the document, that is, the sale agreement as if the same has been entered into on 18.07.2000. Further, the said agreement for sale is an unregistered document. The appellant auction purchaser is a bonafide purchaser of the property through Court auction and the judgment debtor,



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decree holder and the claimant have together colluded with each other and have filed a memo of full satisfaction before the learned Trial Court, which has also been rightly rejected by the learned trial Court. He categorically concluded that the claimant, who had purchased the property for fraudulently, cannot acquire any right over the property and hence, the claim of the claimant has to be fully negated and pressed for allowing the Appeal.

13.Per contra, the learned Senior Counsel appearing for the first respondent submitted that the learned Trial Court dismissed the petition filed by the claimant in E.A.No.295 of 2007 and the grave error committed by the learned Trial Court was that, it ignored Ex.P2 agreement for sale and held that the sale is after attachment and therefore, the attachment cannot be raised. The learned Trial Court miserably erred by dismissing the said E.A.No.295 of 2007 on 31.01.2011, without considering certain significant points. The points elaborated by the learned Senior Counsel is extracted as follows:-

“(i)The bonafide of the 1st respondent in discharging all other debts to save the property should be considered.

(ii)The conduct of R.W.1 and R.W.2 in having full knowledge of the interest held by the 1st respondent before the auction sale.

(iii)The value of the property at the time of auction sale, that is, admitted by R.W.2. The property has been knocked off at a meagre price in the auction sale.



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(iv)A subsequent attachment is subject to the obligations created before attachment and it cannot invalidate a sale held pursuant to a contractual obligation.”

14.The claimant assailing the said order passed by the learned Trial Court filed C.M.A.No.13 of 2011 before the learned District Judge, at Srivilliputtur and the First Appellate Court appreciated the facts and points for consideration and the Appeal was duly allowed. The learned Senior Counsel elaborated the reasons recorded by the First Appellate Court and the gist of the same are extracted as follows:-

“(i)The interest for Geetha is created under Ex.P1, mortgage and Ex.P2, sale agreement, which are both prior to the attachment date. Geetha has a right of priority.

(ii)The auction purchaser knew about the encumbrance in the property, (sale in favour Geetha) even prior to auction sale.

(iii)Geetha had been in possession of the subject property from Ex.P4 and Ex.P11.

(iv)Geetha is in possession of all the original mortgage documents.

(v)The mortgage amount due to the Bank was discharged by Geetha.

(vi)Objections to raise attachment is maintainable as the sale in favour of auction purchaser is not confirmed. When there is



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no confirmation of sale, the objections are maintainable.

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(vii)The auction sale was cancelled and the amount deposited by auction purchaser was directed to be refunded with 5% interest as contemplated under Order 21 Rule 89(1)(a).”

15.He further submitted that the substantial questions of law raised by the auction purchaser does not disclose any merit and that the First Appellate Court has considered the facts and has rendered an appropriate finding, which cannot be questioned without substantial questions of law. He categorically insisted that, this is a case where, the First Appellate Court has appreciated the powers and scope of the executing Court and has rendered a reasoned order. Categorically contending that E.A.No.295 of 2007 filed by the claimant under Order 21 Rule 58 of the Code of Civil Procedure, 1908, is not hit by proviso (a) of Order 21 Rule 58(1) of the Code of Civil Procedure, 1908. He submitted that this is a case, where the auction sale has not been confirmed and the same is also reflected in paragraph 29 of the First Appellate Court's judgment. Contending that the attachment made by the learned Trial Court itself is void, since the conditions under Order 38 Rule 5(1) of the Code of Civil Procedure, 1908, are not fulfilled, to substantiate that the learned Trial Court has not satisfied itself with regard to the conditions mandated under Order 38 Rule 5(1) of the Code of Civil Procedure, 1908, he relied upon the case of ***W.Pappamal***



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versus I.Chidambaram reported in **AIR 1984 Madras 70**. Further, he pointed out that the order of attachment must be communicated to the Sub Registrar relying upon the case of **Sri Krishna Chit Funds versus R.S.Pillai and another** reported in **2000 (2) CTC 524**. He submitted that in the instant case, the order of attachment was not communicated to the Sub Registrar office at all. He further submitted that, the claimant holds a prior interest in the petition schedule property, pursuant to the registered mortgage deed dated 13.07.2000, under Ex.P1 and the agreement for sale dated 18.07.2000, marked as Ex.P2. The claimant is a bonafide purchaser, who had stepped into the shoes of the mortgager and discharged all dues to the third parties. An interest or right created prior to the order of attachment is not vitiated and when the sale deed dated 21.06.2001, marked as Ex.P3, is entered pursuant to the obligation under Ex.P1 mortgage deed and Ex.P2 agreement for sale, such a prior interest is not affected and he relied upon the case in **V.K.Sreedharan versus Chandramaath Balakrishnan and another** reported in **1990 (3) SCC 291** and **Rajendra Singh versus Ramdhar Singh** reported in **2001 (6) SCC 213**. Finally, he submitted that, on the basis of equity, the order of the first Appellate Court should be upheld and that the equity lies in favor of the claimant Mrs.Geetha, as she had discharged the mortgage due in favor of Bank and other dues. He pointed out that, Ex.P10, receipts is the proof of discharge of the loan availed by the



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judgment debtor with the Cooperative Agricultural Bank at Srivilliputthur by the claimant. He further insisted that the claimant being a bonafide purchaser of the petition schedule property, has diligently cleared the property for encumbrances and it is inequitable for a third party, that is, the auction purchaser under the garb of auction sale to knock off the property. Categorically contending that, the claimant is a bonafide purchaser for value, he pressed for dismissal of the Second Appeal.

16.Heard the learned counsel for the appellant and the learned counsel for the respondents and anxiously perused the materials available on record.

Analysis:-

17.Before considering the rival submissions, I shall refer the substantial questions of law determined by this Court, while entertaining the Appeal on 01.11.2017 and the same are as follows:-

“(I)Whether the petition under Order 21 Rule 58 is maintainable in law after the property was sold through Court auction?

(II)Whether the first Appellate Court is erred in allowing the petition based on the sale agreement (Ex.P2), which was unregistered one?

(III)Whether the sale dated 13.07.2000 (Ex.P1) executed by



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Arumuga Pandaram who suffered a decree is legally valid or not?

(IV) Whether the property, which was attached by the competent civil Court can be sold by overcoming the order attachment?

(V) Whether the first Appellate Court considered the principle laid down under Order 38 Rule 11 of C.P.C.?”

18. Order 21 Rule 58 of the Code of Civil Procedure, 1908, deals with adjudication of claims to or objections to attachment of property. For the purpose of the first substantial question of law, the said provision is extracted as follows:-

“58. Adjudication of claims to or objections to attachment of, property.—

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained: Provided that no such, claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or



interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.”



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19. In respect of a money claim, a decree holder has filed a suit in O.S.No.213 of 2000 on the file of the learned Subordinate Judge, Srivilliputtur and during pendency of the said suit, he also filed I.A.No.872 of 2000 for attachment before judgment of the suit property. It is further seen that attachment of survey No.1321 of Srivilliputtur Town before judgment was allowed on 28.07.2000 and the attachment was made on 30.07.2000, following which, the attachment of the said property was made absolute on 11.09.2000 before judgment by the learned Subordinate Judge, Srivilliputtur. While so, the suit was set *ex parte* and an *ex parte* decree was passed by the learned Subordinate Judge, Srivilliputtur, on 20.09.2000 in favor of the decree holder Kunjumaadan. In the meanwhile, the judgment debtor Arumugam executed a registered mortgage deed in favor of the claimant on 13.07.2000, for an amount of Rs.1,80,000/- with respect to the petition schedule properties. The same has been marked as Ex.P1. It is claimed by the claimant that within 5 days of the date of the said Ex.P1 mortgage deed, the judgment debtor executed an agreement for sale on 18.07.2000, which has been marked as Ex.P2, in favor of the claimant with respect to the petition schedule properties for a total sale consideration of Rs.2,17,000/-.

20. It is pertinent to mention here that both the auction purchaser and the



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decree holder have disputed the said Ex.P2 document as a sham and fabricated document. In the meanwhile, the decree holder filed Execution Petition in E.P.No.220 of 2000 before the learned Subordinate Judge, at Srivilliputur. Since the petition schedule property has already been attached on 30.07.2000 and the attachment has been made absolute on 11.09.2000, the Execution Court found it fit not to further attach the same once again and proceeded for auction of the said properties. In the meanwhile, the claimant further claims that the judgment debtor had adjusted an amount of Rs.1,80,000/- with sale consideration towards the debt incurred by him by mortgage of the petition schedule properties and the balance of amount of Rs.19,099/- was received by the judgment debtor on 31.07.2000, following which, the judgment debtor executed a sale deed marked as Ex.P3 in favor of the claimant Geeta on 21.06.2001. While so, the Executing Court brought the petition schedule properties for sale and the appellant/auction purchaser purchased the petition schedule properties on 16.07.2007 for a total consideration of Rs.5,41,500/-. Following which, the claimant third party/Geeta filed E.P.No.295 of 2000 on 23.07.2007 in E.P.No.220 of 2000 under Order 21 Rule 58 of the Code of Civil Procedure, 1908. Now, I have to consider whether the petition filed by the claimant under Order 21 Rule 58 seeking to raise the attachment and the sale of the petition schedule property, after the same has been sold through a Court



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auction is maintainable?

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21.In the case on hand, the auction purchaser purchased the property in the Court auction on 16.07.2007. However, even before confirmation of the sale, the claim petition came to be filed by the claimant precisely within seven days from the date of auction, that is, on 23.07.2007, in E.A.No.295 of 2007 under Order 21 Rule 58 of the Code of Civil Procedure, 1908.

22.Apparently, a claim petition or objection to the attachment with regard to the property attached in execution of a decree shall not be entertained, where before the claim is preferred or objection is made, the property attached has been sold or where the Court considers that the claim or objection was designedly or unnecessarily delayed.

23.Section 65 of the Code of Civil Procedure, 1908, says that “where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time, when the property is sold and not from the time, when the sale becomes absolute”. So, obviously only when the sale has become absolute, then only the property is deemed to have vested on the purchaser from the date, when the



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property is sold. So, only when the sale becomes absolute, the vesting of right will relate back to the date of sale. Hence, till such confirmation of sale, there cannot be any vesting of title on the purchaser. In order to say, the sale is complete, the auction sale should have been confirmed. So, till such confirmation, the sale could not be said to be complete. So, a claim petition or objection filed before confirmation of sale will not be hit by Proviso (a) to Order 21 Rule 58(1) of the Code of Civil Procedure, 1908.

24. In the instant case, obviously the objection petition came to be filed by the claimant Mrs. Geetha before confirmation of sale on 23.07.2007 in E.A.No.295 of 2007 under Order 21 Rule 58 of the Code of Civil Procedure, 1908. Pending E.A.No.295 of 2007, the learned Trial Court proceeded to confirm the sale, following which the decree holder filed E.A.No.321 of 2011 for taking possession of the property and the learned Trial Court was pleased to allow the same by order dated 28.08.2014. Challenging the same, the claimant filed C.R.P.(MD)No.2139 of 2014 before this Court. This Court by its order dated 18.12.2014, dismissed the aforesaid Civil Revision Petition, by concluding that, claimant cannot question the order passed in E.A.No.321 of 2011, ordering delivery of possession. The same was not further challenged by the claimant Geetha and hence, the same became final. The said order dated



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18.12.2014, came to be passed by this Court in C.R.P.(MD)No.2139 of 2014 pending C.M.A.No.13 of 2011 filed by the claimant before the learned District Judge, at Srivilliputtur. Since E.A.No.295 of 2007 filed under Order 21 Rule 5 of the Code of Civil Procedure, 1908, came to be filed even before the confirmation of the sale, the same will not be hit by provisional (a) to Order 21 Rule 58 of the Civil Procedure Code, 1908. However, pending disposal of the same, the learned Trial Court proceeded to allow E.A.No.321 of 2011 filed by the decree holder on 28.08.2014, following which C.R.P.(MD)No.2139 of 2014 filed by the claimants, challenging the same also came to be dismissed by this Court vide order dated 18.12.2014 and since the claimant has not preferred to challenge the same, the said order passed by this Court on 18.12.2014, allowing delivery of possession to the auction purchaser became final.

25. In view of the same, the learned District Judge is bound by the aforesaid order passed by this Court in C.R.P.(MD)No.2139 of 2014 dated 18.12.2014, with respect to the E.A. filed by the auction purchaser for taking possession of the property. However, the learned District Judge negating the order passed by the learned Trial Court rejecting the memo filed by the decree holder with respect to the full satisfaction of debt by its decreetal order dated 22.12.2010 and the order passed by this Court in C.R.P.(MD)No.2139 of 2014



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dated 18.12.2014, proceeded to pass an order contrary to the findings of this Court in C.R.P.(MD)No.2139 of 2014. Duly recording the fact that, after the suit in O.S.No.213 of 2000 been set *ex parte* on 20.09.2000, the judgment debtor Arumugam filed an application seeking to condone the delay in setting aside the *ex parte* decree, which was passed as against him and the same has been dismissed by the learned Trial Court. It has been further recorded by the First Appellate Court that the judgment debtor further preferred a Civil Revision Petition as against the said order of the learned Trial Court before this Court and this Court was pleased to allow the aforesaid petition. As such, when the petition to set aside the *ex parte* order came for hearing before the learned Trial Court, the same was further returned for want of filing the written statement in O.S.No.213 of 2000.

26.Having recorded the fact that, the judgment debtors efforts to set aside the *ex parte* decree had failed, the learned First Appellate Court recording that the claimant has disbursed the loans availed by the judgment debtor before the Srivilliputtur Primary Cooperative Agricultural Bank as well as the loan availed by the judgment debtor from the decree holder, **on the basis of the rejected full satisfaction memo filed by the decree holder before the learned Trial Court**, the First Appellate Court proceeded to conclude that, since E.A.No.295



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of 2007 came to be filed before the confirmation of sale by the learned Trial Court, the decreetal order and the order passed by the learned Trial Court in E.A.No.295 of 2007 dated 31.01.2011 is liable to be set aside. Accordingly, the order of the learned Trial Court dated 31.01.2011 and the attachment made in O.S.No.220 of 2000 and the auction conducted on 13.07.2007 were set aside by the learned first appellate Court. I am of the considered view that the aforesaid conclusion made by the learned First Appellate Court completely conflicting and deviating from the order passed by this Court in C.R.P.(MD)No.2139 of 2014 cannot be sustained.

27.In the instant case, now I have to consider whether the objection petitioner/obstructor/Geetha is a bonafide purchaser for value and whether she had the knowledge of attachment order of the learned Subordinate Judge, Srivilliputtur. The objection petitioner Geetha was examined as P.W.1 and she in her cross examination dated 01.07.2009, before the Execution Court deposed as follows:-

“கிரைய ஒப்பந்தம் போடுவதற்கு நான்தான் பத்திரம் வாங்கினேன் என்றால் சரிதான். எங்கள் வீட்டில் பத்திரம் இருந்தது. 3 மாதத்திற்கு முன்பே வேறு காரியத்திற்காக என் கணவர் பத்திரம் வாங்கி வைத்திருந்தார். என்ன காரியத்திற்காக பத்திரம் வாங்கியது என்ற விவரம் என் கணவருக்கு தான் தெரியும், எப்போது வாங்கப்பட்டது என்பது பற்றி என் கணவருக்கு தான் தெரியும்.



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கிரைய ஒப்பந்தம் போடுவதற்கு 20 ரூபாய் பத்திரத்தில் தான் போடவேண்டும் என்ற விவரம் எனக்கு தெரியும். மனு சொத்து மதிப்பு சார்பதிவாளர் மதிப்பு பிரகாரம் ரூ.2,17,000-ம் என்றால் சரி. சார்பதிவாளர் மதிப்பு, கிரையத்தொகைக்கு அந்த மதிப்பை தான் நான் போட்டுள்ளேன் என்றால் சரி. கிரைய மதிப்பு சார்பதிவாளர் அலுவலகத்தில் (பி2) என் கணவர் சென்று பார்த்துவிட்டு வந்தபின்பு தான் இந்த கிரைய ஒப்பந்தத்தில் ரூ.2,17,000-ம் என்று குறிப்பிட்டுள்ளேன் என்றால் சரி. கிரைய ஒப்பந்தம் என் வீட்டில் வைத்துதான் டைப் அடித்தார் என்றால் சரி. பத்திரம் எழுதுபவர் தட்டச்சு மிசனை எடுத்துவைத்து என் வீட்டில் வைத்து பத்திரம் டைப் செய்து தயார் செய்தார்.

அசல் கிரையப்பத்திரத்தை தாக்கல் செய்தால் இந்த ஜப்தி விவரம் தெரியவரும் என்றால் சரிதான். சொத்துக்கான கிரைய ஒப்பந்தப் பத்திரம் தயார் செய்ய ஏற்பாடு பண்ணியது எல்லாம் என் கணவர்தான். என் கணவர் யூனியன் வங்கியில் தலைமை எழுத்தராக பணி செய்து வருகிறார். கிரையம் செய்த பிறகு 2 தடவை ஆறுமுகத்தை பார்த்திருக்கிறேன். (பி2) கிரைய ஒப்பந்தம் நீதிமன்ற ஜப்தி கட்டளை முன்பாக ஒரு பத்திரத்தை உற்பத்தி செய்யவேண்டும் என்பதற்கு இந்த கிரைய ஒப்பந்தம் உற்பத்தி செய்யப்பட்டது என்று சொன்னால் சரியல்ல. பி2 கிரைய ஒப்பந்தம் முழுக்க முழுக்க ஒரு பொய்யான ஆவணம் என்றால் சரியல்ல பி3. என் கணவர் வத்ராப்பில் வேலை செய்து வருவதால் கிரைய பத்திரம் எழுதுவதற்கு அங்கிருந்து பத்திரம் வாங்கி வந்தார். திருவில்லிபுத்தூரிலும் பத்திரம் எழுதுபவர்கள் இருக்கிறார்கள் என்றால் சரி. என் கணவருக்கு அருப்புக்கோட்டையில் வைத்து ஆறுமுகம் ஒரு பவர் பத்திரம் எழுத்தி கொடுத்தார். அங்கேயே கிரையமும் எழுதிக் கொடுத்துவிட்டார். அந்த பவர் பத்திரம் என்கைவசம் இருக்கிறது என்றால் சரி. அந்த பவர் பத்திரம் என்



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கணவருக்கு எழுதிக் கொடுக்கப்பட்டது. அந்த பவர் பத்திரம் 21.06.2003ல் எழுதிக் கொடுக்கப்பட்டது. அந்த பவர் பத்திரத்தின் அடிப்படையில் தான் சொத்தை என் கணவர் என் பெயருக்கு கிரைய பத்திரம் எழுதிக் கொடுத்தார். என் கணவர் பெயரில் எழுதப்பட்ட பவர் பத்திரம் என் கைவசம் இருக்கிறது. பவர் பத்திரம் எழுதியவர் சந்திரசேகரன். அந்த பவர் பத்திரத்தை இந்நீதிமன்றத்தில் தாக்கல் செய்யவில்லை. பவர் பத்திரத்தை பற்றி மனுவில் நான் சொல்லவில்லை. தபசில் சொத்துக்கு நான் வாங்கிய பின்பு நீதிமன்றத்திலிருந்து அறிவிப்பு வந்துள்ளது என்றால் சரிதான். சொத்திற்கு நீதிமன்றத்திலிருந்து அறிவிப்பு நடவடிக்கை வந்துள்ளது என்று நான் என் கணவரிடம் சொல்லிவிட்டேன். இந்த சொத்து சம்பந்தமாக இந்த நீதிமன்றத்தில் வந்து பார்த்தாரா என்பதை என் கணவரிடம் தான் கேட்க வேண்டும். இந்த சொத்து சம்பந்தமாக ஏல் அறிவிப்புகள் எல்லாம் வந்த விவரம் என் கணவருக்கு தான் தெரியும் என்றால் சரி. சொத்து ஏல்விடப்பட்ட தேதி நடந்த விவரம் எல்லாம் என் கணவருக்கு தான் தெரியும். இந்த சொத்து சம்பந்தமாக கிரைய முடிப்பதற்கு முன்பே ஜப்தி இருக்கிறது என்ற விவரம் என் கணவருக்கு தெரியும்.”

28.The objection petitioner's husband Natarajan was examined as P.W.2 and the relevant portion of his cross examination dated 20.07.2009, is extracted as follows:-

“கிரைய ஒப்பந்தம் எழுதுவதற்கு எங்கள் வீட்டில் பழைய பத்திரம் இருந்தது. 50 ரூ பத்திரம் 2 இருந்தது. அந்த பழைய பத்திரத்தை நானும் என்மனைவியும் இருவரும் சேர்ந்து போய்தான் வாங்கி வைத்திருந்தோம். ஆனால் என் மனைவி பெயரில் தான்



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பத்திரம் வாங்கினோம். அந்த 31.03.2000 த்தில் அந்த பத்திரம் வாங்கி வைத்திருந்தோம். கிரைய ஒப்பந்தம் எழுதுவதற்கு பத்திரம் திருவில்லிபுத்தூரில் வாங்கியது. கிரைய ஒப்பந்தத்தில் ஆறுமுகத்திற்கு திரு.வி.தொ.வே.வங்கியில் கடன் இருக்கும் விவரத்தை சொல்லவில்லை. குிரைய ஒப்பந்தத்தில் நான்சாட்சி கையெழுத்து போடவில்லை. கிரைய ஒப்பந்தத்தில் ஆறுமுகம் 4 கையெழுத்து போட்டிருக்கிறார். கிரைய ஒப்பந்தப்பத்திரத்தில் சாட்சி கையெழுத்து போட்ட இருவரும் எனக்கு தெரிந்த சாட்சிகள்.”

29.The second attesting witness of the agreement for sale, that is, Ex.P2, agreement, one Angusamy was examined as P.W.3 and his cross examination and the relevant portion of his cross examination dated 05.08.2009, is extracted as follows:-

“கிரைய ஒப்பந்தம் எழுதுவதற்கு அவர் வீட்டிலேயே பத்திரம் வைத்திருந்தார். கிரைய ஒப்பந்தப் பத்திரம் ரூ.20/- என்றால் சரியல்ல. 50 ரூபாய் பத்திரம். மனுதாரின் கணவர் நடராசனை எனக்கு 40 வருடமாக பழக்கம். நடராசன் சொன்னத்தின்பேரில் நான் கையெழுத்து போட்டேன் என்றால் சரியல்ல. கீதா தான் கையெழுத்து போடக் கூப்பிட்டது நான் கையெழுத்துப் போட்டேன்.”

30.Recording the evidence deposited by P.W.1, P.W.2 and P.W.3, the learned Trial Court promptly recorded the discrepancies in Ex.P2 and further the learned Trial Court keenly recorded that the name of the claimant appears to have written with a different pen and hand in the stamp paper dated 31.03.2000.



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Further, relying upon the oral evidence of P.W.1, P.W.2 and P.W.3, the learned Trial Court came to a conclusion that P.W.3, who is the attesting witness cannot be said to be an independent witness, since he is known for 40 years to P.W.2, even according to his own statement. The entire narration of the preparation of the Ex.P2, agreement for sale as substantiated by P.W.1, P.W.2 and P.W.3, appears to be strange and suspicious and the learned Trial Court proceeded to conclude that the case of the auction purchaser that the Ex.P2 is brought out collusively with the view to defeat the auction sale cannot be negated. Considering the suspicious circumstances on the mode of preparation of Ex.P2 agreement for sale in favour of the objection petitioner, the learned Trial Court excluded Ex.P2 and concluded that the sale in favour of the claimant by Ex.P3, is subsequent to the attachment in the suit and hence, the same is not against the attachment and for that reason, refused to raise the attachment and set aside the sale and dismissed the petition.

31.It is pertinent to mention here that the Ex.P1, registered mortgage deed was registered in Srivilliputthur Sub-Registrar office in 13.07.2000, in which the period for redemption has been mentioned as one year. However, within 5 days of the said agreement for sale, the alleged Ex.P2 agreement for sale came to be executed in favour of the claimant on 18.07.2000. Considering



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the fact that, the said Ex.P2 agreement for sale is not a registered document, this Court is of the considered view that the chances of the same could have been created by the claimant in collusion with the judgment debtor, after the execution of sale deed vide Ex.P3, sale deed dated 21.06.2001, as observed by the learned Trial Court, cannot be ruled out. This can be substantiated by the admission of the claimant in her cross examination that her husband had knowledge about the attachment of the petition schedule property even before the execution of Ex.P3 sale deed.

32.The learned first Appellate Court on the basis of the submissions putforth by the claimant has recorded that, the loan availed by the judgment debtor from the decree holder has been fully satisfied by the claimant and the same has been recorded by the learned Trial Court, by filing of the full satisfaction memo by the decree holder before the learned Trial Court. However, the learned First Appellate Court gravely erred by failing to take note of the decreetal order passed by the learned Trial Court on 22.12.2010, by rejecting the memo filed by the decree holder in E.A.No.295 of 2007 in E.P.No. 220 of 2000 in O.S.No.213 of 2000 on the file of the learned Subordinate Judge, Srivilliputtur, stating that he is not pressing his counter to the said E.A. and he has no objection to allow the said E.A.No.295 of 2007 and to set aside



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the sale held on 13.07.2007. Neither the claimant nor the decree holder have challenged the said order passed by the learned Trial Court on 22.12.2010.

Since the same was not challenged, either by the claimant or by the decree holder, the learned First Appellate Court erred in recording the fact that, the full satisfaction memo has been filed by the decree holder before the learned Trial Court.

33.While so, in furtherance to the auction sale conducted by the learned Trial Court, the auction purchaser filed E.A.No.321 of 2011 in E.P.No.220 of 2000 for taking possession of the petition schedule properties and the same was allowed by the learned Trial Court on 28.08.2014. Challenging the same, the claimant Geetha and another mortgagee namely, Ahilandeswari, preferred two Civil Revision Petitions as against the order passed by the learned Trial Court in E.A.No.321 of 2011 in C.R.P.(MD)Nos.2139 of 2014 and 2091 of 2014 respectively before this Court. This Court was pleased to dismiss both the aforesaid Civil Revision Petitions and the operative portion of the same is extracted as follows:-

“4. It is also brought to the notice of this Court that the revision petitioner/mortgagee has filed a separate suit based on the simple mortgage as against the judgment debtor. When the mortgage executed by the judgment debtor was a simple mortgage,



the revision petitioner cannot claim that she is in possession of the property. The present application E.A.No.321 of 2011 was filed by the auction purchaser to deliver of the possession of the property, pursuant to the auction held on 30.07.2007. When the suit filed by the revision petitioner is pending, the remedy available to her is to get a decree in that suit and execute the same. She cannot stand in the way of auction purchaser taking possession of the property. The Execution Court has rightly dismissed the application filed by the revision petitioner. Therefore, CRP(MD).No.2091 of 2014 is dismissed.

5. So far as the civil revision petition in C.R.P.(MD).No.2139 of 2014 is concerned, according to the revision petitioner, she purchased the property on 21.06.2001. She claimed that she is in possession of the property and therefore, the order passed in E.A.No.321 of 2011 have to be set aside.

6. Mr.A.Arumugam, learned counsel appearing for the first respondent/auction purchaser, submitted that the alleged purchase of the property by the petitioner on 21.06.2001 was subsequent to the decree passed in the suit and after the property was attached in execution proceedings in E.P.No.220 of 2000. It is also brought to the notice of this Court that the petitioner filed a claim petition under Order 21 Rule 89 CPC in E.A.No.295/2007, which was also dismissed by the Execution Court.

7. Mr.R.Vijayakumar, learned counsel appearing for the petitioner submitted that as against the order passed in E.A.No. 295/2007, the petitioner has filed an appeal in CMA No.13 of 2011



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on the file of District Court, Srivilliputtur and the same is pending.

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8. Mr.A.Sivaji, learned counsel appearing for the second respondent submitted that decree holder received the entire decree amount and he has also filed a memo dated 01.11.2010 to that effect before the Execution Court. The Execution Court by order dated 22.12.2010 rejected the memo since the property was sold in the year 2007 itself. The learned counsel for the second respondent also submitted that the second respondent has already filed a civil revision petition challenging the order dated 22.12.2010.

9. When the claim petition filed by the revision petitioner was dismissed by the Execution Court and after the dismissal of the said petition, the revision petitioner cannot question the order passed in E.A.No.321 of 2011 ordering delivery of possession. In these circumstances, the civil revision petition is devoid of merits and the same is liable to be dismissed. Accordingly, the civil revision petition in C.R.P.(MD).No.2139 of 2014 is dismissed.”

34.The common order in C.R.P.(MD)Nos.2091 of 2014 and 2139 of 2014 dated 18.12.2014, came to be passed during the pendency of C.M.A.No. 13 of 2011 before the First Appellate Court. The said common order dated 18.12.2014, passed by this Court was not further challenged by the claimant. Since the same was not challenged further, the order passed by the learned Trial Court in favour of the auction purchaser in E.A.No.321 of 2011 for taking possession of the petition schedule property became final pending E.A.No.295



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of 2007, which was filed by the objection petitioner under Order 21 Rule 5 of the Code of Civil Procedure, 1908. I am of the considered view that since the order passed by the learned Trial Court in E.A.No.321 of 2011 for taking possession of the property in favour of the auction purchaser came to be concluded and became final by the order of this Court in C.R.P.(MD)No.2139 of 2014, dated 18.12.2014, the learned District Judge ought not to have proceeded to adjudicate C.M.A.No.13 of 2011, but should have closed the said C.M.A., recording the order passed by this Court in C.R.P.(MD)No.2139 of 2014 on 18.12.2014. Under such circumstances, the findings of the learned Trial Court with respect to the suspicious nature of Ex.P2 agreement for sale, I am of the considered view that the said unregistered agreement marked as Ex.P2 dated 18.07.2000, as per Section 64(2) of the Code of Civil Procedure, 1908, will not come to the rescue of the claimant and Ex.P3, sale deed being a document, subsequent to the attachment of the petition schedule property in the suit, the same will not prevail valid as against the said attachment.

35.The answer to the third substantial question of law has been already answered supra. The fourth substantial question of law is factually incorrect for the reason that, Ex.P1 document dated 13.07.2000, is not a sale deed but the same is mortgage deed, which was executed by Armuga Pandaram in favor of



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the claimant on 13.07.2000.

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36.To answer the substantial questions of fifth and sixth substantial questions of law incidentally, I have to consider whether there was a valid attachment order of the petition schedule properties in O.S.No.213 of 2000. Though the learned counsel for the claimant categorically submitted that, the attachment before judgment, which was made absolute on 11.09.2000 is void for the sole reason that the said order of attachment came to be passed without following the mandates of Order 38 Rule 5(1) of the Code of Civil Procedure, 1908. He also categorically contended that, the said order of attachment is void for want of being communicated to the registering officer under Order 21 Rule 58(a) of the Code of Civil Procedure, 1908. However, the admission made by the claimant in her cross examination while deposing evidence as P.W.1, that both herself and her husband had knowledge of the attachment with respect to the suit schedule property, which was made as early as on 11.09.2000 gains significance. I have no hesitation to hold that the claimant remained mute spectator of the entire proceedings in O.S.No.213 of 2000 and E.P.No.220 of 2000 filed in the aforesaid original suit till the petition schedule property was brought for auction on 16.07.2007.



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37.Having observed the same, I have no hesitation to hold that the application made by the claimant in E.A.No.295 of 2007 is hit by Order 21 Rule 58(1)(b) of the Code of Civil Procedure, 1908. Having admitted her knowledge as to the attachment of the petition schedule properties in O.S.No. 213 of 2000 and her husband has been monitoring closely by watching the entire proceedings in the aforesaid suit and E.P.No.220 of 2000, this Court considers that the claim/objection made by the claimant was designedly and unnecessarily delayed. That apart, pending E.A.No.295 of 2007 and yet another E.A.No.321 of 2011 held by the auction purchaser for taking possession of the petition schedule property came to be allowed by the learned Trial Court on 28.08.2014 and the same has also been confirmed by this Court in C.R.P. (MD)No.2139 of 2014 by its order dated 18.12.2014. The claimant having not preferred to challenge the same and the said order of this Court having become final, automatically the claim/objection of the claimant in E.A.No.294 of 2007 could not be pressed upon by the claimant any further.

38.Accordingly, all the judgments relied upon by the learned counsel for the claimant is not applicable to the facts and circumstances of this case. In the result, the Civil Miscellaneous Second Appeal stands allowed. Consequently, the judgment and decree passed by the learned District Judge in C.M.A.No.13



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of 2011 dated 29.08.2016 is hereby set aside. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

- 1.The Principal District Judge, Srivilliputtur.
- 2.The Sub Judge, Srivilliputtur.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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19.06.2024