IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

RSA.No. 363 of 2011 ( )

AGAINST THE JUDGMENT AND DECREE IN AS 272/2007 of I ST ADDITIONAL DISRICT COURT, PALAKKAD DATED 28-10-2010.

AGAINST THE JUDGMENT AND DECREE IN OS 108/2002 of SUB COURT, OTTAPPALAM DATED 31-07-2007.

APPELLANT/APPELLANT/PLAINTIFF:

V.V.CHACKO, AGED 74 YEARS,
S/O.VARUKUTTY, VAZHEPALLY HOUSE,
CHALISSERY VILLAGE, PALAKKAD DISTRICT.

BY ADVS.SRI.T.SETHUMADHAVAN (SENIOR ADVOCATE).
SRI.PUSHPARAJAN KODOTH.
SRI.K.JAYESH MOHANKUMAR.
SMT.VANDANA MENON.
SMT.ANJU P.NAIR.

RESPONDENTS/(RESPONDENTS/DEFENDANTS):

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1. STATE OF KERALA,
   REPRESENTED BY DISTRICT COLLECTOR
   (P.O) PALAKKAD. PIN - 679 522.

2. THE REVENUE DIVISIONAL OFFICER,
   (P.O) OTTAPALAM, PIN - 679 522.

3. THE TAHSILDAR, (P.O) OTTAPALAM, PIN - 679 522.

4. THE DEPUTY TAHSILDAR,
   (REVENUE RECOVERY), (P.O) OTTAPALAM, PIN - 679 522.

BY GOVERNMENT PLEADER SRI.ABDUL RAHMAN.

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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A.HARIPRASAD, J.

R.S.A No.363 of 2011

Dated this the 30th day of June, 2015.

<u>J U D G M E N T</u>

Challenge in this appeal is against the concurrent findings of the trial court and lower appellate court whereby a suit for declaration and injunction filed by the appellant was dismissed.

2. Heard the learned counsel for the appellant and the learned Government Pleader for the respondents.

3. Facts in nutshell, are as follows :

9 cents of property in Survey No.261/1 of Chalissery Village and 6 cents in Survey No.261/2 of the same village was belonging to late Cheru. He kept the sales tax in arrears and the department proceeded against him under Kerala Revenue Recovery Act, 1968 (in short 'the Act'). The properties mentioned above were put up for auction sale on 25-01-2001. The appellant also participated in the auction and got the auction confirmed in his name for a sum of Rs.3 lakhs. 15% of the

auction money was paid on the same day and balance on 24-02-2001. Proceedings issued by the second defendant (Revenue Divisional Officer) dated 29-03-2001 confirming the revenue sale was served on the appellant. Then the plaintiff (appellant) realised that there is mistake in the extent of the property shown in the sale certificate. Plaintiff participated in the auction and bid only on the belief that the property stated for sale was 15 cents. Mentioning of the extent as 9 cents in the sale certificate is totally incorrect. Property obtained by the defaulter Cheru as per Ext.A5 document was put to auction and the property lying within the four boundaries shown in Ext.A5 was purchased by the plaintiff in the auction. The extent of the property is 15 cents. In spite of making requests to the authorities, they failed to correct the extent of the property involved in the purchase by the plaintiff. Hence the suit.

4. The defendant State through its Officers filed a written statement contending that the suit is barred by the

provisions of the Act. According to the defendants though an extent of 15 cents included in the above mentioned Survey numbers in Chalissery Amsom was attached during the revenue recovery proceedings on 25-01-2001, when the properties were put to auction some of the participants raised a doubt about the actual extent of the property. The Village Officer concerned therefore measured the land in the presence of the Deputy Tahsildar (Revenue recovery). Then, it was found that the actual extent of the property was only 9 cents. Accordingly, 9 cents of property was auctioned and the plaintiff bid the same for Rs.3 lakhs. All the records pertaining to sale show that the extent of property was only 9 cents. The plaintiff is not entitled to get any relief as claimed in the plaint.

5. The trial court found that the suit is not maintainable. In appeal, the lower appellate court found that the suit is not hit by the provisions under Section 72 of the Act. This finding has become final. The respondents have not challenged that finding

in any proceedings.

6. The only relevant issue surviving for considering is whether the plaintiff obtained 15 cents of property covered by Ext.A5 by auction purchase or the extent of the property obtained by him is only 9 cents.

7. Learned counsel for the appellant contended that the respondents have no case that the entire property included in Ext.A5 was not brought for auction sale. It is an admitted case of the respondents that the property in Ext.A5 was attached during the revenue recovery proceedings. It is also established in evidence that the entire property was brought to auction sale. Courts below placed reliance on Exts.A1 and A2 documents, which are receipts issued to the plaintiff for depositing the purchase price.

8. Learned Government Pleader contended that the plaintiff did not make any complaint regarding the discrepancy in the extent for a long period of 9 months after the sale. It is

also contended that the plaintiff was fully aware that as per Exts.A1 and A2, only 9 cents were obtained by him in the auction sale. Per contra, learned counsel for the appellant contended that Ext.B1 mahazar would show that the property measured 15 cents when it was brought for sale initially on 12-01-2001. As the sale could not be conducted on that day, it was adjourned to 25-01-2001. On that day, some of the participants of the auction disputed the extent of the property and it was measured by the Village Officer in the presence of Deputy Tahsildar (Revenue recovery). It is the case of the defendants that the property was then found to be having only 9 cents. Learned counsel for the appellant contended that the revenue authorities in that case should have issued a fresh proclamation for sale of 9 cents of property. Plaintiff participated in the auction believing that the property involved was 15 cents and there was no indication to the plaintiff to think that it was only 9 cents at the time of bidding. Learned counsel also contended that the contention raised by the respondents is in violation of Section 49 of the Act. The Section requires that the possession and extent of the land and of buildings should be shown in the proceedings pertaining to the sale. It further says that notice regarding sale shall be duly served and published atleast thirty days before the date of sale. On the basis of these statutory provisions, it is submitted that the defendants cannot be heard to contend that the auction done on 25-01-2001 is only in respect of 9 cents and if so, it is in compliance with the legal requirement in the statute. It is true that none of the documents produced by the respondents would show that they have issued a fresh proclamation in respect of 9 cents.

9. My attention is also drawn to the Commissioner's plan and report (Exts.C1 and C2). Ext.C1 report clearly shows that the Commissioner identified the property involved in the suit and found to be tallying with descriptions in Ext.A5 documents. The plan submitted by the Commissioner would also

show that there cannot be a property having 9 cents in extent, with the boundaries shown either in Ext.A5 or in the Commissioner's report or in the sale certificate, falling within Survey No.261/1 and 261/2. Therefore, in this context, certificate of sale also show that the property which belonged to the defaulter with definite boundaries was brought to sale. Therefore, what is discernible from these documents is that whatever property belonged to the defaulter namely deceased Cheru was brought to sale by the authorities and the same was purchased by the plaintiff/appellant in an auction conducted by the defendants. It is settled law that the property has to be identified with the help of the features, which are stable and decisive and having the least possibility of mistaking by the parties. It is well settled that normally boundaries will be preferred to the extent and measurement. In this case, the boundaries of the property involved in Ext.B5 sale certificate and Ext.A5 title deed of the defaulter Cheru exactly tally. In the absence of any case for the defendants that a portion of the property in Ext.A5 was not sold in the auction, the only legal deduction possible is that whatever belonging to the defaulter was sold out in auction and the same was purchased by the plaintiff. Therefore, the extent of property available within the four boundaries shown in Exts.A5 and B5 and also identified by the Commissioner was transferred to the plaintiff by virtue of the auction sale. The consistent case of the plaintiff is that it is 15 cents that is involved in the purchase. The Commissioner as per his plan and report also identified the property as a land having an extent of 15 cents. I find that the reason adopted by the courts below in this context is incorrect.

In the result, the regular second appeal is allowed. The impugned judgment and the decree passed by the courts below are set aside. It is declared that the properties bounded within four boundaries shown in Ext.B5 sale certificate and included in Resurvey Nos.261/1 and 261/2 of Chalissery Desom

Chalissery Village, erstwhile is Ottappalam Taluk (presently Pattamby Taluk) is the property purchased by plaintiff in the revenue sale conducted on 25-01-2001. If it is having an extent of 15 cents, the plaintiff is entitled to enjoy that extent. The defendants are directed by a mandatory injunction to hand over possession of the lands included in Resurvey Nos.261/1 and 261/2 of Chalissery Desom Chalissery Village of Pattamby Taluk to the plaintiff.

With this clarification, the appeal is disposed of.

All pending interlocutory applications will stand dismissed.

Sd/-
A.HARIPRASAD,
JUDGE.

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P.A to Judge

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