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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.03.2018

Pronounced on : 06.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN

CRP (NPD) No.929 of 2003

Venkatasubbu

.. Petitioner

Vs.

1.C.Rajendran Prasad

2. M/s. Saitronic Corporation,
Hosur, by its Proprietor,
C.Rajendran Prasad,
13, Avenue Road,
Nungampakkam Road, T.Nagar,
Chennai.

3. The Repatriate Co-op. Finance & Development Bank Ltd.,
Thyagaraja Road, Chennai-17.

4. The Deputy Registrar of Co-op.
Credit (General) Registrar, Recovery Officer,
Chennai.

5.M.C. Muruganandam (died)

6.Chidambaram @ Kannan.

(R6 brought on record as LR of the deceased
5th respondent vide order dated 27.1.17 made in
CMP.No.356/15 in CRP.No.929/03)

7.S.P.N. Krishnamoorthy .. Respondents

(7th Respondent Impleaded as the proposed respondent
vide Order dt.11.12.2017 made in CMP.No.18362/2005)

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the Fair and Decretalorder dated 01.11.2001 passed in C.R.F. No. 16624 of 2001 in A.R.C.No.17/85-86 by the learned Second Additional Subordinate Judge, Coimbatore.



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For Petitioner : Mr.T.M.Hariharan
For Respondents : No Appearance (for R1 to R6)
: Mr.U.M.Ravichandran (for R7)

JUDGMENT

This Revision Petition arises out of the Fair and Decretal order dated 01.11.2001 passed in C.R.F.No.16624 of 2001 in A.R.C.No.17/85-86 by the learned Second Additional Subordinate Judge, Coimbatore, the Revision Petitioner herein is the Auction Purchaser.

2. The above Civil Revision Petition is filed against the order of the learned II Additional Sub Court, Coimbatore dated 01.11.2001, rejecting the E.P. in S.R. stage filed by this Revision Petitioner for the delivery of the petition mentioned schedule of property. This Revision Petitioner, who is the auction purchaser of the schedule of property has filed the above E.P. as envisaged under Rule 37(15) of the Multi State Cooperative Societies Act, 2002 (hereinafter referred to as the 'Act'). The said Act is a self-contained code as the very preamble of the Act indicates.

3. The brief facts leading to the filing of this Civil Revision Petition is that the 1st respondent, who is the Sole Proprietor of the 2nd respondent Firm had availed a loan from the 3rd respondent bank by mortgaging his immovable property (which is the subject matter of this revision petition) by way of security. As the 1st and 2nd respondents were defaulted in repaying the loan amount, the 3rd respondent initiated recovery proceedings vide A.R.C.No.17/85-86 before the Central Registrar of Co-operative Societies, Chennai, which resulted in an award dated 30.11.1985. As the 1st and 2nd respondents failed to comply with the award, the above said mortgaged property was brought for sale and this revision petitioner was the successful bidder for Rs.7,55,000/- in the auction sale held on 21.04.1988. Later, the petitioner has paid the said bid amount and the last payment of the bid amount was on 05.05.1988 and the 4th respondent proceeded to confirm the sale on 10.06.1988 and directed the petitioner to pay the bank charges of Rs.98,150/-. Accordingly, the petitioner has paid the same on 17.06.1988.

4. Meanwhile, the 5th respondent who is the brother of the 1st respondent has filed a Writ Petition in W.P.No.6875 of 1988 before this Court to forbear the authorities and the petitioner from enforcing the Award passed in A.R.C.No.17/85-86 and obtained an order of stay. Later, the above writ petition was



dismissed by this court by an order dated 21.07.1988 thereby directed the 5th respondent to seek relief before the proper forum and the petitioner was also given liberty to seek refund of the huge amount lying in deposit. Pending disposal of the above writ petition, the 5th respondent has also filed a civil suit in O.S.No.1140 of 1988 before the learned I Additional District Munsif Court, Coimbatore sought for the relief of bare-injunction to restrain the authorities and the petitioner from interfering with his right and possession. However, the 5th respondent did not avail the opportunity given to him and failed to raise his claim before the appropriate forum. Consequently, the 5th respondent was estopped and not entitled to raise any objection or make any claim. The petitioner has also made some representations to the Deputy Registrar of Co-operative Societies thereby requested them to secure possession of the property and also to clarify the issue of title and possession or else to refund the said amount of Rs.7,55,000/-. On 09.08.1988, the Registrar of Co-operative Societies passed an order by cancelling the confirmation of sale and transmitted the Execution Petition to the Joint Registrar. Thereafter, on 10.08.1988 the Deputy Registrar passed an order for refund of the amount to the petitioner.

5. Aggrieved by the said order, the 3rd respondent has filed a writ petition in W.P.No.9171 of 1988 before this court to quash the order passed by the Registrar of Co-operative Societies dated 09.08.1988 and also the order passed by the Deputy Registrar dated 10.08.1988. The above writ petition was allowed by this court by setting aside the order passed by the Registrar of Co-operative Societies and the consequential order passed by the Deputy Registrar. While allowing the above writ petition, this court directed the Joint Registrar of Co-operative Societies, Madras Region to dispose of the matter according to law. Accordingly, the Joint Registrar, after issuing notice to all the parties concerned passed an order dated 18.08.1989 by setting aside the orders passed by the Registrar and the Deputy Registrar thereby confirmed the auction sale to and in favour of the petitioner, holding that the proceedings and sale in auction are valid and proper. The Joint Registrar further ordered the issuance of a Sale Certificate in favour of the petitioner. Thereafter the Recovery Officer has issued the Sale Certificate to the petitioner on 28.07.1999. According to the case of the petitioner, as the 5th respondent who has unlawfully entered into the property and refused to deliver the possession to the petitioner, on 23.06.2000, the petitioner has filed a petition (E.P.SR.No.16624/2000) under Order XXI Rule 11, 35 and 95 of C.P.C. read with Rule 15 of the Multi State Co-operative Societies Rule, 1985 before the learned II Additional Subordinate Judge, Coimbatore sought for the

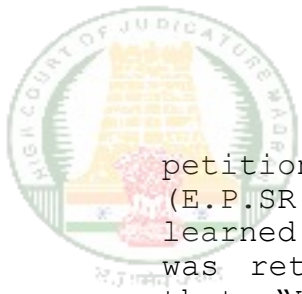


relief of delivery of the property and put the petitioner in possession.

6. In brief, the petitioner further averred in his petition that the 5th respondent was not residing in the property and was residing in some other place as pointed out by him. The schedule of property set out in the petition was in occupation of the Assistant Director of Agriculture until 1988, wherein the 5th respondent maneuvered to trespass into the property of the tenant and it will not confer any right on the 5th respondent. Further, the 5th respondent did not acquire any right, title or interest in the said property under the alleged sale deed dated 09.03.1959 for Rs.3,000/- executed by his father Chidambaram Chettiar, who is the 6th respondent herein. The petitioner furthermore averred in the petition by questioning the title of the property, which allegedly belonged to the 5th respondent after the demise of his father. Therefore, for all the aforesaid reasons, the petitioner was constrained to file the above petition (E.P.) before the learned Subordinate Court, Coimbatore on 23.06.2000.

7. But unfortunately the said Petition was returned by the Sub Court, Coimbatore on 18.08.2000, not only for several defects / requirements but also for maintainability, since the learned trial court has no jurisdiction to entertain the above petition. On receipt of the petition, the petitioner has represented the same after complying with the orders of returns. After heard the petitioner's arguments regarding maintainability, the learned Subordinate Judge by its order dated 01.11.2001 rejected the said petition (E.P.SR.No.16624/2000) on the ground that "... the Order / Return made on 18.08.2000 is not yet properly complied with even after grant of sufficient time ..." This Order is challenged by the petitioner in the present Civil Revision Petition before this Court.

8. According to the case of the petitioner herein, the learned Subordinate Judge, Coimbatore has erroneously rejected the above petition (E.P.SR.No.16624/2000) filed by him for the delivery of the petition schedule property. This revision petition is sought to be contested by the impleading respondents and they claimed to have purchased the property from the 5th respondent who is the brother of the Judgment Debtor / 1st respondent. On 21.04.1988 the mortgaged property was brought on sale in a public auction held in E.P.No.85/85-86 in A.R.C.No.17/85-86, under the Provisions of the Act and the Revision Petitioner was the successful bidder. Thereafter the sale was confirmed on 10.06.1988 and the Sale Certificate was issued to the petitioner on 28.07.1999. After the Sale Certificate was issued to him, on 23.06.2000, the revision



petitioner has presented the above petition (E.P.SR.No.16624/2000) before the executing court, i.e. the learned II Additional Subordinate Court, Coimbatore and the same was returned on 18.08.2000 in S.R. stage with an endorsement that "Heard Counsel. Original Sale Certificate and Transmit Order with Non Satisfaction Certificate not produced. Hence, returned."

9. Thereafter the petitioner has represented the above petition after complying with certain orders of returns. But the petitioner has not produced the original sale certificate as required by the executing court as the same was not traceable while representing the E.P. As the petitioner has not properly complied with the orders of returns, on 01.11.2001 the executing court has rejected the above E.P. on the ground that "... the Order / Return made on 18.08.2000 is not yet properly complied with even after grant of sufficient time ..." The petitioner further averred that long thereafter, the impleading respondents claimed to have purchased the property from the 5th respondent on 18.03.2003 and even after the order passed by this court, the 5th respondent did not make a claim under the provisions of the Act. Consequently, the sale in favour of the revision petitioner has attained finality.

10. The learned counsel for the revision petitioner contended that Rule 37(15) comes into operation only after the completion of the auction sale, confirmation of sale and issue of Sale Certificate by the Recovery Officer. The said rule enables the lawful purchaser to obtain possession when resisted or prevented by any person not being the Judgment Debtor claiming to be in possession on his own account. Furthermore, the said rules enable the lawful purchaser to obtain possession through any court of competent jurisdiction. The learned counsel further contended that there is no provision under this rule or any other provision to transmit the award as Rule 37(15) can be invoked only after the sale in execution of the award is completed and the Sale Certificate is issued to the purchaser.

11. To support his case, the learned counsel for the petitioner has produced the following judgments:

(1) (1998) 3 Supreme Court Cases 573 (K.K.Modi v. K.N.Modi and others), it is stated as follows:

"43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (p. 344) explains the phrase "abuse of the process of the court" thus:

"This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent



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its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as *res judicata*. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.

46. In *McIlkenny v. Chief Constable of West Midlands Police Force and another* [1980 (2) AER 227], the Court of Appeal in England struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial. The Court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the court because it is an abuse for a party to relitigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of *res judicata* or the requirement of issue estoppel.

47. In the present case, the learned Judge was of the view that the appellants had resorted to two parallel proceedings, one under the Arbitration Act and the other by way of a suit. When the order of



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interim injunction obtained by the appellants was vacated in arbitration proceedings, they obtained an injunction in the suit. The learned Single Judge also felt that the issues in the two proceedings were identical, and the suit was substantially to set aside the award. He, therefore, held that the proceeding by way of a suit was an abuse of the process of the court since it amounted to litigating the same issue in a different forum through different proceedings."

(2) 2009 (2) CTC 119 (C.Rameswaran and 4 others v. N.Sambandam and 8 others), it is stated as follows:

"1. These Civil Revision Petitions have been filed by third parties to a decree, passed by the II Assistant City Civil Court, Chennai, challenging a common order, by which, their applications to condone the delay and to grant leave to file a First Appeal, were dismissed by the lower Appellate Court.

8. Mr. M. Venkatachalapathy, learned Senior Counsel for the petitioners contended that under Order 22, Rule 10 read with Section 146, C.P.c., the petitioners had become successors in interest to the plaintiffs and that therefore the right to prosecute the remedy of appeal devolved on the petitioners. He also contended that by virtue of Sections 41 and 43 of the Transfer of Property Act, the petitioners had a right to pursue the Appeal. The learned Senior Counsel relied upon two decisions of the Apex Court in Raj Kumar v. Sardari Lal and Others, 2004 1 CTC 549 (SC) : 2004 (2) SCC 601 and Hardev Singh v. Gurmail Singh, 2007 (2) CTC 78 : 2007 (2) SCC 404.

12. Placing reliance upon the above provisions of the Transfer of Property Act, the learned Senior Counsel for the petitioners contended that the purchase of suit 'A' Schedule property by the petitioners, from the plaintiffs in the suit, was in good faith for valuable consideration and that therefore such transfer would operate on any interest that the transferors may acquire at any subsequent point of time. If the transferors had filed an appeal against the judgment in the suit and also succeeded, the petitioners could have taken recourse to Section 43 of the Transfer of Property Act, to compel their transferors (viz., the plaintiffs) to give full effect to the sale. Since the transferors did not file an appeal, the petitioners, as successors, sought the leave of the Court to file an appeal, to avail the remedy provided under Section 43 of the Transfer of Property Act.



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13. I have carefully considered the above submissions. A plain reading of Section 146 CPC, shows that it is an enabling provision. All that it says is that what can be done by a person, can always be done by another claiming under him. As a corollary, what cannot be done by a person, cannot also be done by someone claiming under him. This is on account of the fundamental principle "no one can confer a better title than what he himself has" (Nemo dat qui non habet). In the present case, the suit filed by the plaintiffs way back in the year 1991, was dismissed after contest in February 2004. Without filing any appeal, they sold the suit 'A' Schedule property to the petitioners, in April 2006. Therefore the plaintiffs are deemed to have accepted the decision rendered by the trial Court. Consequently, what they conveyed to the present petitioners, is only that to which they were lawfully entitled, as per the decision of the Civil Court. If the plaintiffs had sold the property either during the pendency of the suit or at least within the period of limitation to file an appeal, with an indication about the proceedings, then the petitioners could be taken to be persons entitled to take the battle further as in a relay race. But the petitioners purchased the property after more than two years of the judgment of the trial Court. Therefore, what was conveyed to them by the plaintiffs in the suit, was only what the plaintiffs themselves are deemed to have had by virtue of the judgment. In other words, the petitioners, who claim under the plaintiffs, are entitled only to what the plaintiffs were declared to be entitled to by the judgment.

17. The date of sale and the date of the ex parte decree indicated in paragraph-2 of the decision in Raj Kumar v. Sardari Lal and others, 2004 (1) CTC 549 (SC) : 2004 (2) SCC 601, make it clear that the transfer took place during the pendency of the suit. It is in the light of the above facts that the observations made in paragraphs-9 and 10 have to be construed. As a matter of fact, in paragraph-5 of the very same decision, it was made clear that a lis pendens transferee cannot seek to come on record as a matter of right and that it is in the discretion of the Court. Paragraph-5 is extracted as follows:-

"5. The doctrine of lis pendens expressed in the maxim "ut lite pendente nihil innovetur" (during a litigation nothing new should be introduced) has been statutorily incorporated in Section 52 of the Transfer of Property Act, 1882. A defendant cannot, by



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alienating property during the pendency of litigation, venture into depriving the successful plaintiff of the fruits of the decree. The transferee pendente lite is treated in the eye of the law as a representative-in-interest of the judgment-debtor and held bound by the decree passed against the judgment-debtor though neither has the defendant chosen to bring the transferee on record by apprising his opponent and the Court of the transfer made by him nor has the transferee chosen to come on record by taking recourse to Order 22, Rule 10, C.P.C. In case of an assignment, creation or devolution of any interest during the pendency of any suit, Order 22, Rule 10 C.P.C. confers a discretion on the Court hearing the suit to grant leave for the person in or upon whom such interest has come to vest or devolve to be brought on record. Bringing of a lis pendens transferee on record is not as of right but in the discretion of the Court. Though not brought on record the lis pendens transferee remains bound by the decree."

18. When even a lis pendens transferee cannot seek to come on record as a matter of right, the petitioners who purchased the property after two years of their vendors losing the battle, cannot seek to revive the cause of action that their vendors had against the defendants in the suit. Therefore the observations in paragraphs-9 and 10 of the decision in Raj Kumar's case, cannot be taken advantage of by the petitioners.

19. Coming to the contention advanced on the strength of Sections 41 and 43 of the Transfer of Property Act, it is seen that while Section 41 is a deduction from the law of estoppel, Section 43 is based upon the doctrine of "feeding the estoppel". Section 41 applies to cases where there is an ostensible owner, as against a real owner and such ostensible owner transfers the property with the express or implied consent of the real owner, for a consideration. In the case on hand, that question does not arise, since there is no ostensible owner and a real owner. The case on hand is one where the plaintiffs filed a suit seeking the reliefs of declaration, mandatory injunction, permanent injunction and recovery of possession. The suit was dismissed after trial. Thereafter, the plaintiffs and one of the defendants who remained ex parte, sold the property to the present petitioners and the petitioners decided to file an appeal against the dismissal of the suit. Therefore, the necessary ingredients of Section 41 are



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not present in the case on hand, since there is no ostensible owner and a real owner.

20. In so far as Section 43 is concerned, it is based on the common law doctrine of "feeding the grant by estoppel". It is a doctrine of equity which treats that as done, which ought to be done. Even in the case on hand, Section 43 could have arisen for application, if the plaintiffs had filed an appeal against the dismissal of their suit and succeeded in getting a decree even after selling their property to the present petitioners. But the plaintiffs did not file an appeal against the dismissal of their suit. The suit filed by the plaintiffs in O.S.No.2549 of 1991, was dismissed by a judgment and decree dated 25.2.2004. The plaintiffs did not file an appeal against the said judgment. But they sold the property in April 2006 to the present petitioners. Thus on the date of the sale, the plaintiffs' title to the property, was only as found by the judgment. However if the plaintiffs had filed an appeal and succeeded in getting a decree, even after the sale, the petitioners as purchasers, would have been entitled to the benefits of Section 43. But unfortunately for the petitioners, their vendors viz., the plaintiffs allowed the decree to attain finality. Therefore, the occasion for invoking Section 43 has not arisen in this case.

24. As stated earlier, the case of the petitioners is worse than that of pendente lite purchasers. It is seen from the plaint and the judgment of the trial Court that the dispute between the vendors of the petitioners and the defendants in the suit, was only with respect to a wall and a passage measuring about 3 feet 4 inches, described in Schedule 'B' to the plaint. There was no dispute about the ownership of the main property described in Schedule 'A' to the plaint. After the dismissal of the suit, the plaintiffs sold the suit 'A' Schedule property to the petitioners, without filing any appeal against the judgment of the trial Court. A period of more than two years had elapsed from the date of the judgment of the trial Court (February 2004) to the date of sale (April 2006). This is an indication to the fact that the plaintiffs accepted the verdict, reconciled themselves to the rights crystallised under the judgment and abandoned their claim. As persons who stepped into their shoes, the petitioners cannot seek to resurrect the issue, by seeking leave to file an appeal. Therefore the order of the Court below



refusing to grant leave and refusing to condone the delay, is perfectly in order and does not call for any interference."

WEB COPY (3) (2009) 5 CTC 710 (Tamil Nadu Handloom Weavers' Co-operative Society, rep. by its Managing Director, 350, Pantheon Road, Egmore, Chennai-8 v. S.R.Ejaz, rep. by his Power Agent, Muralidhar T.Balani), it is stated as follows:

"34.The statutory provision as contained in Section 11 CPC bars the jurisdiction of a Court to try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title and has been heard and finally decided by such Court. As per Explanation IV to Section 11 CPC, any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Therefore, the second suit is barred not only on the ground that the issue raised in the said suit was directly in issue in the former suit between the parties or their predecessor-in-interest but also on the ground of a deeming fiction. The explanation IV to Section 11 of CPC was inserted with a specific purpose, to put an end to the litigation once for all. In the absence of such a provision, the parties would file suits after suits with new grounds. There should be finality to litigation. The principles of constructive res judicata would be applicable in such cases. In case parties are permitted to initiate re-litigation, it would have the effect of unsettling matters which were settled earlier.

Concept of res judicata Legal Position :-

52. In K.K.Modi v. K.N.Modi and others, 1998 (3) SCC 573, the Supreme Court had the occasion to consider the vices of re-litigation and on a reference to the Supreme Court Practice 1995, published by Sweet & Maxwell, the Supreme Court made observation with respect to "abuse of process of Court" thus :-

"One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not



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be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

59.It is the solemn duty of this Court to see that nothing would come in the way of frustrating the recipient of justice from executing the decree. Similarly, the Court is expected to filter out and throw all unwanted and vexatious litigations which would be an obstruction to the decree holders in their journey to get justice.

Conclusion :-

60.The issue involved in this revision is a classic example as to how a vexatious litigant would be able to delay the legal process and cause threat to the very justice delivery system by way of unwanted re-litigation. The respondent was attempting to make mockery of the very judicial system. In case litigants like the respondent is permitted to achieve their objective in delaying the execution of a decree passed by the Court, which has attained finality, the common man will lose faith in Courts as well as in the justice delivery system.

61.Therefore, I have no hesitation to conclude that the suit in O.S.No.2889/2009 is a vexatious suit. I am also of the view that this is a fit case for exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

62.Accordingly, the suit in O.S.No.2889/2009 on the file of XIV City Civil Court, Chennai is struck off from the file. The order of status quo granted by the trial Court as per order dated 15.04.2009 in I.A.No.5320/2009 will stand vacated. There is no order as to costs. M.P.No.1/2009 is closed."



(4) 2018 SCC Online SC 121 (Sundaram Finance Limited v. Abdul Samad & Anr.), it is stated as follows:

"10. The relevance of the aforesaid provision is that the application of the decree holder is made to the Court which passed the decree, which issues the precepts to any other Court competent to execute the said decree. As noticed, the expression "the Court which passed the decree" is as per Section 37 of the said Code. We may note at this stage itself that in the case of an award there is no decree passed but the award itself is executed as a decree by fiction. The provisions of the said Act traverse a different path from the Arbitration Act, 1940, which required an award made to be filed in Court and a decree to be passed thereon whereupon it would be executable.

11. Now turning to the provisions of Order XXI of the said Code, which deals with execution of decrees and orders. In case a Court desires that its own decree is to be executed by another court, the manner for doing so is provided by Rule 6, which reads as under:

"Order XXI - Execution of Decrees and Orders xxxx xxxx
xxxx xxxx xxxx

6. Procedure where court desires that its own decree shall be executed by another court.- The court sending a decree for execution shall send-

- (a) a copy of the decree;
- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and
- (c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect."

12. The manner of presentation of an application is contained in Rule 11(2) of Order XXI, which reads as under:

"Order XXI - Execution of Decrees and Orders xxxx xxxx
xxxx xxxx xxxx 11 (2) Written application-Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall



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contain in a tabular form the following particulars, namely:-

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed;
- (h) the amount of the costs (if any) awarded;
- (i) the name of the person against whom execution of the decree is sought; and the mode in which the assistance of the court is required, whether-
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;
 - (iii) by the arrest and detention in prison of any person;
 - (iv) by the appointment of a receiver;
 - (v) otherwise, as the nature of the relief granted may require."

14. We would now like to refer to the provisions of the said Act, more specifically Section 36(1), which deals with the enforcement of the award:

"36. Enforcement. - (1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 to 1908), in the same manner as if it were a decree of the court."



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15. The aforesaid provision would show that an award is to be enforced in accordance with the provisions of the said code in the same manner as if it were a decree. It is, thus, the enforcement mechanism, which is akin to the enforcement of a decree but the award itself is not a decree of the civil court as no decree whatsoever is passed by the civil court. It is the arbitral tribunal, which renders an award and the tribunal does not have the power of execution of a decree. For the purposes of execution of a decree the award is to be enforced in the same manner as if it was a decree under the said Code.

21. The Madras High Court in Kotak Mahindra Bank Ltd. v. Sivakama Sundari & Ors. referred to Section 46 of the said Code, which spoke of precepts but stopped at that. In the context of the Code, thus, the view adopted is that the decree of a civil court is liable to be executed primarily by the Court, which passes the decree where an execution application has to be filed at the first instance. An award under Section 36 of the said Act, is equated to a decree of the Court for the purposes of execution and only for that purpose. Thus, it was rightly observed that while an award passed by the arbitral tribunal is deemed to be a decree under Section 36 of the said Act, there was no deeming fiction anywhere to hold that the Court within whose jurisdiction the arbitral award was passed should be taken to be the Court, which passed the decree. The said Act actually transcends all territorial barriers.

Conclusion:

22. We are, thus, unhesitatingly of the view that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceedings.

23. The effect of the aforesaid is that the view taken by the Madhya Pradesh High Court and the Himachal Pradesh High Court is held to be not good in law while the views of Delhi High Court, Kerala High Court, Madras High Court, Rajasthan High Court, Allahabad High Court, Punjab & Haryana High Court and Karnataka High Court reflect the correct legal position, for the reasons we have recorded aforesaid.

24. The appeal is accordingly allowed and the impugned order dated 20.3.2014 is set aside restoring the execution application filed by the appellant



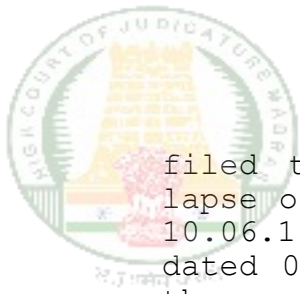
before the Morena courts. The parties are left to bear their own costs."

12.As pointed out above, the learned counsel for the Revision Petitioner submitted his arguments urging this court to allow this Civil Revision Petition, by setting aside the order of the learned II Additional Sub Court, Coimbatore dated 01.11.2001, rejecting the E.P. in S.R. stage filed by this Revision Petitioner for the delivery of the petition mentioned schedule of property.

13.Per contra, the learned counsel Mr.U.M.Ravichandran appearing for the 7th respondent contended that the 7th respondent herein is the absolute owner of the schedule mentioned petition property, which is the subject matter of this revision petition, who acquired a valid title from the 5th respondent under a Sale Deed dated 18.03.2003, registered as Document No.1645/2003. He further contended that ever since the date of purchase of the said property, the 7th respondent is in absolute possession, right and enjoyment of the same till now and hence he filed a petition to implead himself as a necessary party to this revision petition. Later he was impleaded as the 7th respondent in this Civil Revision Petition.

14.According to the case of the 7th respondent as contended by his learned counsel in brief, the subject matter of this property was under mortgage with the 3rd respondent, and on failure to repay the loan amount, the said property was subjected to auction sale and reached the stage of public auction and finally the petitioner was issued with a Sale Certificate after paying the bid amount. Only thereafter the Recovery Officer has issued a Sale Certificate to the petitioner on 28.07.1999.

15.Apart from the above contentions, the learned counsel for the 7th respondent submits that the revision petitioner herein, who is the petitioner in the above C.F.R.No.16624/2011 has filed a petition (E.P.SR.No.16624/2000) under Order XXI Rule 11, 35 and 95 of C.P.C. read with Rule 15 of the Multi State Cooperative Societies Rule, 1985 before the learned II Additional Subordinate Judge, Coimbatore only on 23.06.2000, i.e. after the lapse of 12 years from the date of confirmation of sale, i.e. on 10.06.1988. The above delay is not only inordinate one, but also beyond the period of limitation. As the above petition filed by the petitioner is barred by limitation, the same is not maintainable in the eye of law. At this juncture, unfortunately the learned II Additional Subordinate Judge, Coimbatore has not raised the question of limitation while returning the said petition as the revision petitioner has

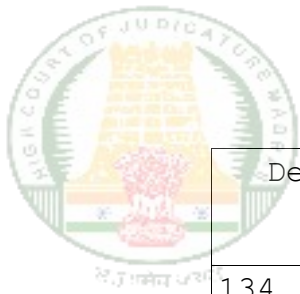


filed the above petition in E.P.C.R.F.No.16624/2001 after the lapse of 12 years from the date of confirmation of sale, i.e. on 10.06.1988. Even while rejecting the above petition by an order dated 01.11.2001, the executing court has not pointed out about the period of limitation. While so, the learned counsel for the 7th respondent has rightly pointed out here about the inordinate delay in filing the above E.P., which is barred by limitation. He further contended that while taking into consideration regarding the question of limitation arises in the subject matter of this execution petition, it is not necessary to go in detail with regard to the queries raised by the executing court while returning / rejecting the E.P., since the revision petitioner has filed the above petition beyond the period of limitation and hence the same is not maintainable in the eye of law.

16.The learned counsel for the 7th respondent further submits that the learned Subordinate Judge, Coimbatore has rightly rejected the above petition (C.F.R.No.16624/2011) in S.R. stage filed by the Revision Petitioner for the delivery of the petition mentioned schedule of property on the ground set out in its order.

17.The arguments advanced by Mr.T.M.Hariharan, the learned counsel for the revision petitioner and Mr.U.M.Ravichandran, the learned counsel for the 7th respondent are heard. The copies of the documents produced in the form of typed set of papers and the written arguments submitted by both sides are also perused.

18.It is the admitted facts that the auction sale was conducted and the petitioner become auction purchaser in the execution proceedings in E.P.No.85/85-86 in A.R.C.No.17/1985 and as such the petitioner is a purchaser of the schedule mentioned petition property. Hence the petitioner's right to seek delivery of possession of the immovable property at a sale in execution of a decree is accrued to him under is governed by Article 134 of the Limitation Act. Here, it is worthy to reiterate that Article 134 of the Limitation Act, 1963 prescribed the period of limitation in filing the execution petition for the possession by the auction purchaser is One Year from the date of sale becomes absolute. In order to compute one year period of limitation in filing the petition for execution for delivery of immovable property as stated above in Article 134 fixes the time from which the period begins to run when the sale becomes absolute and as such in order to ascertain and understand the words "when the sale becomes absolute" as fixed under Article 134 of the Limitation Act, 1963. The Article 134 of the Limitation Act, 1963 is states as follows:



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Description of suit	Period of limitation	Time from which period begins to run
134. For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute.

19.A careful reading of Section 94 of The Multi State Cooperative Societies Act and the Rule 37(1) of the Multi State Cooperative Societies Rules, 2002 would show that the award being the decision of the Central Registrar of Cooperative Societies is executable in accordance with the above provisions and as such execution of the award by treating the same as a decree by filing the execution petition before the civil court does not arise. Section 94 of the Multi State Co-operative Societies Act is as follows:

"94.Execution of decisions, etc.—Every decision or order made under section 39 or section 40 or section 83 or section 99 or section 101 shall, if not carried out,—

(a) on a certificate signed by the Central Registrar or any person authorised by him in writing in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as if it were a decree of such court and such decree shall be executed by the Central Registrar or any person authorised by him in writing in this behalf, by attachment and sale or sale without attachment of any property of the person or a multi-State co-operative society against whom the decision or order has been made; or

(b) where the decision or order provides for the recovery of money, by executed according to law for the time being in force for the recovery of arrears of land revenue: Provided that any application for the recovery of any sum shall be made in such manner—

(i) to the Collector and shall be accompanied by a certificate signed by the Central Registrar or by any person authorised by him in writing in this behalf;

(ii) within twelve years from the date fixed in the decision or order and if no such date is fixed, from the date of decision or order, as the case may be; or



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(c) be executed by the Central Registrar or any person authorised by him in writing in this behalf, by attachment and sale or sale without attachment of any property of the person or a multi-State co-operative society against whom the decision or order has been made."

Rule 37(1) of the Multi State Co-operative Societies Rules, 2002, is as follows:

"37. Procedure in execution of decrees, orders and decisions.- (1) Any decree-holder requiring the provisions of clause (c) of section 94 to be applied, shall apply to the recovery officer in whose jurisdiction the cause of action arose and shall deposit the necessary costs as fixed by the Central Registrar. If the judgment debtor resides, or the property to be proceeded against is situated, outside the jurisdiction of such recovery officer, the recovery officer shall transfer the application to the recovery officer in whose jurisdiction the judgment debtor resides or the property is situated."

20. In the case on hand, admittedly, in the execution proceedings in E.P.No.85/85-86 in A.R.C.No.17/85-86, Chennai, the sale was confirmed in the name of the petitioner on 10.06.1988 and the Sale Certificate issued to the petitioner on 28.07.1999 and as such the period of 1 year limitation in filing the execution petition for the delivery of possession in E.P. C.R.F.No.16624/2001 in A.R.C.No.17/85-86 begins to run from the date of Confirmation of Sale, i.e. on 10.06.1988 and as such the execution petition was filed by the petitioner on 23.06.2000, i.e. after the period of 12 years from the date of confirmation of sale dated 10.06.1988. Therefore the above petition (E.P.SR.No.16624/2000) filed by the petitioner under Order XXI Rule 11, 35 and 95 of C.P.C. read with Rule 15 of the Multi State Cooperative Societies Rule, 1985 is barred by the limitation and not maintainable in the eye of law.

21. In a similar situation, while advancement of arguments, the learned counsel for the 7th respondent placed reliance on the decision of our Madurai Bench of Madras High Court, reported in MANU/TN/0463/2015/(2015(3) CTC & (2015-2-LW-323) - Kamal Batcha Vs. Gokulam Ammal and Ors., wherein in paragraphs 17 & 18 held as follows:

... 17. In the case on hand, the auction purchaser was made a party even in the subsequent suit, which also went up to the appellate stage. On the date of final decree, the sale was confirmed. While so, the revision petitioner ought to have applied for issuance of sale certificate within the



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period of one year. Being fully aware of the consequences of not applying for the sale certificate within the period prescribed, the Court auction purchaser has taken the risk of losing the property. Article 134 of the Limitation Act prescribes the limitation of one year for an Application of delivery of possession by a purchaser of an immovable property in the court auction. The limitation of one year will be computed only from the date of confirmation of sale. Thus, the period of limitation for delivery of possession of the property produced at the Court sale has been reduced to a considerable extent.

18. In fact, the application is filed in the year 2001 i.e., after 20 years and only Article 134 of the Limitation Act will apply to the application for issuance of sale certificate. The result is that where the application is made beyond the period of limitation, the auction purchaser cannot get any remedy much less who has made the application after 20 long years. It is also not the case of the petitioner that he was kept in dark and he was kept out of the proceedings. He had been taking part in all the other proceedings and also filed several applications to correct the description of the suit property. In such circumstances, the revision petitioner cannot have any indulgence as he has woken up after a long time. The relief sought for by him is barred by limitation. The contention made on behalf of the Court auction purchaser is without substance and the same cannot be sustained.

From the reading of the above decision, it is clear that once the sale is confirmed, it becomes absolute and the certificate is only a evidence of the sale. It is for this reason why the Hon'ble Supreme Court has held that the limitation will start running from the date of confirmation under Order 21 rule 92 of Code of Civil Procedure.

22. From the above question of law and the decision, I am unable to agree with the learned counsel for the revision petitioner in setting aside the order of the learned II Additional Subordinate Court, Coimbatore dated 01.11.2001, rejecting the E.P. C.R.F.No.16624/2001 in A.R.C.No.17/85-86 in S.R. stage filed by this Revision Petitioner for the relief of delivery of the petition mentioned schedule of property and consequential reliefs sought for in this revision petition. Further, on a careful examination of all the documents produced in the form of typed set of papers and the written arguments submitted by both sides and also the cases cited above and the relevant provisions of law, I clearly reach the conclusion that the petition filed by the revision petitioner before the executing court is absolutely beyond the period of limitation and consequently, the petition in E.P. C.R.F.No.16624/2001 in A.R.C.No.17/85-86 is not maintainable.



23.It has to be borne in mind that this is more than 20 year old litigation and the 7th respondent being the bonafide purchaser of the petition mentioned schedule of property should not be harassed by running pillar to post and it will be inhuman to deny his title.

24.In the result, this Civil Revision Petition is dismissed and the order of the learned II Additional Subordinate Court, Coimbatore dated 01.11.2001, rejecting the E.P. C.R.F.No.16624/2001 in A.R.C.No.17/85-86 in S.R. stage is confirmed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are also closed, if any.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

The II Additional Subordinate Court,
Coimbatore.

+1 CC to Mr.T.M. Hariharan, Advocate sr 35656.

+1 CC to Mr.UM. Ravichandran, Advocate sr 35090.

CRP(PD)No.929 of 2003

SP(13/06/2018)