

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. Nos.18597 of 2011 and 18687 of 2013

1. Gurnam Singh Dhillon

2. Mrs. Rekha Gurnam

W/o. Gurnam Singh Dhillon

(The 8th respondent herein transposed
as the 2nd petitioner vide court order
dated 03.09.2013 in M.P.No.2/2013
in W.P. No.18597/2013)

... Petitioners W.P.

No.18597/2011

1. Mrs. Pritipal Choudry

2. Amarjit Singh Choudry

3. Jasbir Choudry

4. Ravindir Thakur

5. Dr.K.Rajagopal

6. Anitha Rajagopal

... Petitioners W.P.No.18687/2013

v.

1 Indian Bank

Rep. by its Authorised Officer & Chief Manager
Asset Recovery Management Branch - II
Wellington Estate, Circle Office Buildings
4th Floor, 55, Ethiraj Salai
Chennai - 600 008.

2. Mrs. Pritipal Choudry

3. Amarjit Singh Choudry

4. Dr.Jasbir Choudry

5. Ravindir Thakur

6. Dr.K.Rajagopal

7. Anitha Rajagopal

8. Transposed as the 2nd Petitioner
9.A.M.K.Jambulinga Mudaliar
(R9 - Impleaded as per order
dated 19.6.2013 in M.P.No.1/2013
in W.P.No.18597/2011)

.. Respondents in W.P. No.18597/2013

v.

- 1 M/s. Indian Bank
4th Floor, 55, Ethiraj Salai
Chennai - 600 008.
2. Gurnam Singh Dhillon
3. Mrs. Rekha Gurnam
W/o. Gurnam Singh Dhillon
4. A.M.K. Jambulinga Mudaliar (deceased)
- 5.J.Karthikeyan
6. N.Amuthavalli
7. C.Ezhilarasi
- 8.R.Grahalakshmi
9. G.Arulambigai
(R5 to R9 are substituted in the place of
deceased R4 as per order dated 13.06.2017 in
WMP No.34780 & 34781 of 2016
in W.P.No.18687/2013)
- 10.E.Gayathri
(R10 - Impleaded as per order dated
29.03.2019 in W.M.P.No.34781/2016
in W.P.No.18687/2013)

.. Respondents in W.P. No. 18687/2013

W.P. No.18597/2011 : Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for the records and quash the order dated 03.08.2011 in R.A. (S.A.) No.72 of 2010 on the file of the Debts Recovery Appellate Tribunal, Chennai.

W.P. No.18687/2013 : Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, forbearing the 1st respondent from issuing the sale certificate to the 4th respondent pursuant to the alleged auction sale conducted by the 1st respondent bank on 28.01.2011 of the property admeasuring 101 cents comprised in Survey No.155 in Chembarambakkam Village in Sri Perumbudur Taluk, Tiruvallur District being agricultural land was purchased by S.S.Chowdhary by a deed of sale dated 05.08.1987 registered as Document No.5416 of 1987 in the office of the Sub Registrar, Poonamallee.

For Petitioners in : Mr.Gupta
W.P.No.18597/2011 for M/s.Gupta and Ravi

For Petitioners in
W.P.No.18687/2013 : Mr.A.Uma Shankar

For Respondents : Mr.Nithyanandan - for R1
W.P.No.18597/2011 for M/s.Anand Swamy & Dhurva

Mr.A.Uma Sankar - for R2, R3 &
R5 to R7

Mr.N.Jothi - for R4

R8 - Transposed as P2

For Respondents : Mr.Nithyanandan - for R1
W.P.No.18687/2013 for M/s.Anand Swamy & Dhurva

Mr.Gupta - for R2 & R3

for M/s.Gupta and Ravi

Mr.N.Jothi - for R4

Not Ready in Notice - R5 to R9

Mr.Arun Anbumani - for R10

COMMON ORDER

(Order of the Court made by M.DURAI SWAMY, J.)

Since the issue involved in both the Writ Petitions are in connection with the same transaction, the Writ Petitions are disposed of by this common order.

2. The Writ Petition in W.P. No.18597/2011 has been filed by the petitioners, viz., Gurnam Singh Dhillon and Mrs. Rekha Gurnam, to issue of Writ of Certiorari, to call for the records and to quash the order dated 03.08.2011 in R.A. (S.A.) No.72 of 2010 on the file of the Debt Recovery Appellate Tribunal, Chennai.

3. The Writ Petition in W.P. No.18687/2013 has been filed by the petitioners, viz., Mrs. Pritipal Choudry and others, who are respondents 2 to 6 in W.P. No.18597/2011, to issue of Writ of Mandamus, forbearing the 1st respondent from issuing the sale certificate to the 4th respondent pursuant to the alleged auction sale conducted by the 1st respondent-bank on 28.01.2011, which was purchased by Col. S.S.Choudry, by a registered sale deed dated 05.08.1987.

4.1 The husband of the 1st petitioner in W.P.No.18687 of 2013, viz., Col. S.S.Choudry was carrying on business in the name and style of "Mohan Motors". The petitioners 2 to 6 are the children of late Col. S.S.Choudry. The subject property, having an extent of 101 cents in Survey No.155 in Chembarambakkam Village, Sri Perumbudur Taluk, Tiruvallur District, was purchased by late Col. S.S.Choudry. The said

property was given as collateral security for granting financial assistance by Indian Bank. After the demise of Col. S.S.Choudry, the 1st petitioner sold an extent of 56 cents in favour of the petitioner in W.P.No.18597 of 2011. The sale was effected during the pendency of the recovery proceedings and in fact, it was during the currency of an interlocutory order restraining the land owners from alienating the property.

4.2 The petitioners in W.P. No.18597 of 2011 challenged the SARFAESI proceedings initiated against the petitioners in W.P.No.18687 of 2013 in S.A.No.15 of 2010 on the file of the Debts Recovery Tribunal-III, Chennai. The Debts Recovery Tribunal, found that the petitioners in W.P. No.18597 of 2011 were not the bona fide purchasers and accordingly, the application was dismissed. As against the said order, the petitioners in W.P. No.18597 of 2011 preferred an appeal in R.A. (S.A.) No.72 of 2010 before the Debts Recovery Appellate Tribunal, Chennai. The Appellate Tribunal, by order dated 03.08.2011, dismissed the appeal. As against the same, the petitioners have filed the Writ Petition in W.P. No. 18597 of 2011.

4.3. The legal representatives of the original owner, viz., Col. S.S.Choudry, who have filed W.P.No.18687 of 2013, filed the Writ Petition, forbearing the 1st respondent from issuing the sale certificate to the auction purchaser, the 4th respondent, viz., A.M.K.Jambulinga Mudaliar, who had died during the pendency of the Writ Petition and his legal representatives were brought on record as respondents 5 to 9 in the Writ Petition.

5. With respect to the contentions raised by the petitioners in W.P. No. 18597 of 2011, the bank contented that the petitioners were not the bona fide purchasers and in fact, knowing fully well about the interim order operating against the land owners, they have chosen to purchase the property covered by litigation.

6. The petitioners in W.P.No.18687 of 2013, who are the legal heirs of Col. S.S.Choudry, have also challenged the possession notice dated 20.09.2005 and the auction sale of the property dated 29.01.2010 in pursuance of the sale notice dated 22.12.2009, with an application in I.A.No.184 of 2010 in S.A. (SR) No.1088 of 2010 to condone the delay of 1603 days in filing the appeal before the Debts Recovery Tribunal-III, Chennai. The Debts Recovery Tribunal, by order dated 04.11.2010, dismissed the application and consequently rejected S.A.(SR) No.1088 of 2010.

7. Aggrieved over the order passed by the Debts Recovery Tribunal, the petitioners in W.P.No.18687 of 2013 filed an appeal in M.A.(S.A.)No.657 of 2010 before the Debt Recovery Appellate Tribunal and the Appellate Tribunal dismissed the appeal by order dated 03.08.2011.

8. As against the order passed by the Debt Recovery Appellate Tribunal, the petitioners have filed a Writ Petition in W.P.No.20392 of 2011 and a representation was made before the Division Bench of this Court while hearing the Writ Petitions in W.P.Nos.20392 and 18597 of 2011 that the petitioners are willing to settle the matter. Accordingly, the Division Bench of this Court, by order dated 12.11.2011, while disposing of both the Writ Petitions, made it clear that in case the Writ Petitioners in W.P.No.20392 of 2011, who are the petitioners in W.P.No.18687 of 2013, fail to pay the amount as agreed, liberty was given to the petitioners in W.P.No.18597 of 2011 to file an application to reopen the Writ Petition.

9. Since the petitioners in W.P.No.18687 of 2013 failed to pay the amount as agreed, at the instance of the petitioners in W.P.No.18597 of 2011, the Writ Petition in W.P.No.18687 of 2013 has been restored, by order dated 09.07.2012 in M.P.No.2 of 2012 and taken up for hearing.

10. In spite of the order of injunction granted in I.A.No.393 of 2000 in O.A.No.1104 of 1999, by the Debts Recovery Tribunal-I, Chennai, restraining the petitioners in W.P.No.18687 of 2013, from alienating or disposing of the property without the permission from the Debts Recovery Tribunal. The petitioners in W.P.No.18687 of 2013, who are the legal heirs of Col. S.S.Choudry, sold the property to the petitioners in W.P.No.18597 of 2011, violating the order of injunction granted by the Debts Recovery Tribunal.

11. The learned counsel appearing for the petitioners, in support of his contentions, relied upon the following judgments:-

(i) 2014 (50 SCC 610 [Mathew Varghese v. M.Amrita Kumar and others] wherein the Hon'ble Hon'ble Apex Court held as follows:-

"28. Keeping the said stipulation contained in Section 13(1) in mind, it will have to be examined as to what are the other statutory requirements to be fulfilled when enforcement of a right created in favour of any SECURED CREDITOR in respect of a security interest is created. As we are concerned with the sale of property mortgaged by the borrowers, for the present, we leave aside any other form or mode of enforcement, except the one relating to the equitable mortgage created in favour of the Bank. For that purpose, we find that sub-section (8) of Section 13 would be relevant.

29. A careful reading of sub-section (8), therefore, has to be made to appreciate the legal issue involved and the submissions made by the respective counsel on the said provision.

29.1 A plain reading of sub-section (8) would show that a borrower can tender to the SECURED CREDITOR the dues together with all costs, charges and expenses incurred by the SECURED CREDITOR at any time before the date fixed for sale or transfer. In the event of such tender once made as stipulated in the said provision, the mandate is that the SECURED ASSET should not be sold or transferred by the SECURED CREDITOR. It is further reinforced to the effect that no further step should also be taken by the SECURED CREDITOR for transfer or sale of the SECURED ASSET. The contingency stipulated in the event of the tender being made by a debtor of the dues inclusive of the costs, charges, etc., would be that such tender being made before the date fixed for sale or transfer, the SECURED CREDITOR should stop all further steps for effecting the sale or transfer. That apart, no further step should also be taken for transfer or sale.

29.2 When we analyze in depth the stipulations contained in the said sub-section (8), we find that there is a valuable right recognized and asserted in favour of the borrower, who is the owner of the SECURED ASSET and who is extended an opportunity to take all efforts to stop the sale or transfer till the last minute before which the said sale or transfer is to be effected. Having regard to such a valuable right of a debtor having been embedded in the said sub-section, it will have to be stated in uncontroverted terms that the said provision has been engrafted in the SARFAESI Act primarily with a view to protect the rights of a borrower, inasmuch as, such an ownership right is a Constitutional Right protected under Article 300A of the Constitution, which mandates that no person shall be deprived of his property save by authority of law.

29.3 Therefore, de hors, the extent of borrowing made and whatever costs, charges were incurred by the SECURED CREDITOR in respect of such borrowings, when it comes to the question of realizing the dues by bringing the property entrusted with the SECURED CREDITOR for

sale to realize money advanced without approaching any Court or Tribunal, the SECURED CREDITOR as a TRUSTEE cannot deal with the said property in any manner it likes and can be disposed of only in the manner prescribed in the SARFAESI Act.

29.4 Therefore, the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property or at least ensure that in the process of sale the SECURED ASSET derives the maximum benefit and the SECURED CREDITOR or anyone on its behalf is not allowed to exploit the situation of the borrower by virtue of the proceedings initiated under the SARFAESI Act. More so, under Section 13(1) of the SARFAESI Act, the SECURED CREDITOR is given a free hand to resort to sale of the property without approaching the Court or Tribunal.

39 When we apply the above principles stated with reference to Section 60 of the T.P. Act in respect of a secured interest in a SECURED ASSET in favour of the SECURED CREDITOR under the provisions of the SARFAESI Act and the relevant Rules applicable, under Section 13 (1), a free hand is given to a SECURED CREDITOR to resort to a sale without the intervention of the Court or Tribunal. However, under Section 13(8), it is clearly stipulated that the mortgagor, i.e. the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the SECURED CREDITOR at any time before the date fixed for sale or transfer. Under sub-section (8) of Section 13, as noted earlier, the SECURED ASSET should not be sold or transferred by the SECURED CREDITOR when such tender is made by the borrower at the last moment before the sale or transfer. The said sub-section also states that no further step should be taken by the SECURED CREDITOR for transfer or sale of the SECURED ASSET. We find no reason to state that the principles laid down with reference to Section 60 of the T.P. Act, which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a SECURED ASSET created in favour of a SECURED CREDITOR, as all the above-stated principles apply in all fours in respect of a transaction as between the debtor and SECURED CREDITOR under the provisions of the SARFAESI Act."

(ii) 2011 (6) CTC 369 [P.Kumaran v The Debts Recovery Appellate Tribunal and others], wherein the Division Bench of this Court held as follows:-

"24. However, Rule 57(2) of the Second Schedule to the Income Tax Act shall be considered with reference to Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, which gives the power to the Recovery Officer to modify the sale conditions. Sub-rule (2) of Rule 57, though provides that the purchaser shall pay the full amount of purchase money on or before the fifteenth day from the sale of the property, in the event the Recovery Officer is of the view that the said time could be also extended, he may do so in the sale notice for payment of the balance of 75 percent of the purchase money. It must be noticed that keeping in mind the necessity for speedy recovery of money due to the bank from borrowers, when rules were framed under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, such power for the Recovery Officer to grant extension is also provided. In this context, we may refer to sub-rules (3) and (4) of Rule 9 of the Security Interest (Enforcement) Rules, 2002. Sub-rule (3) of Rule 9 states that the purchaser shall immediately pay the deposit of 25 percent of the amount of sale price to the Authorised Officer conducting the sale and in default of such deposit, the property shall forthwith be sold again. This rule is similar to sub-rule (1) of Rule 57 of the Second Schedule to the Income Tax Act and is mandatory. Sub-rule (4) of Rule 9 states that the balance amount of purchase price shall be paid by the purchaser to the Authorised Officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties. This provision for extension was intended only keeping in mind the speedy recovery of debt. In our opinion, while considering the provisions of sub-rule (2) of Rule 57 read with Section 29 of the Recovery of Debts Due to Banks and Financial Institutions Act, sub-rule (4) of Rule 9 must also be taken into consideration. That apart, under sub-rule (2) of Rule 57, no stipulation is prescribed for resale immediately after the expiry of the fifteenth day from the date of sale in the event of failure of the purchaser to deposit 75 percent of the purchase money as per the said rule. Here again, the judgments of the Apex Court relied upon by Mr.AR.L.Sundaresan, learned senior counsel in Rao Mahmood Ahmed Khan's case and in Lakshmanasami Gounder's case holding mandatory the provisions of Order XXI Rule

85 while considering Rule 285-D of the U.P. Zamindari Abolition and Land Reforms Act and Section 36 of the Tamil Nadu Revenue Act relating to the deposit of balance purchase money within 15 days of sale are distinguishable, as those judgments were rendered with regard to those provisions where no discretion was available to the Sale Officer to modify the conditions provided in the relevant provisions. Hence, we hold that sub-rule (2) of Rule 57 cannot be said to be mandatory as the rules can be applied with necessary modification.

26. In fine and for the above discussions, we hold:

(i) sub-rule (1) of Rule 57 is mandatory;

(ii) sub-rule (2) of Rule 57 is not mandatory, as it could be applied as far as possible with necessary modifications;

(iii) such modifications can be made by incorporating the same in the terms and conditions in the sale notice itself and in the absence of such modification in the sale notice, the Recovery Officer cannot extend the time for payment of the balance amount of 75 percent beyond the period of 15 days;

(iv) in the event the conditions of the sale notice provide for such extension and on the strength of the same if any extension is granted, the same can be tested before the competent authority on the ground of arbitrary exercise of power, unjustifiable for extraneous consideration or on the ground of mala fide in the given facts and circumstances of the case.

(iii) 2012 (5) CTC 1 [Hemalatha Ranganathan v. The Authorised Officer] wherein the Division Bench of this Court held as follows:-

"19. The Authorised Officer has produced a copy of the letter issued by Thiru B. Subramani appointing Thiru S. Manisekaran as his nominee to pay the balance amount and he also made a request to the Bank to issue the sale certificate in favour of the nominee. The date of the letter was corrected as 7 January 2011. There is no indication as to the actual time of receipt of the said letter by the Authorised Officer. The confirmation letter proceeds as if Thiru S. Manisekaran himself took part in the auction and the sale was concluded in his favour for a sum of Rs.1,15,00,000/-. The subsequent correspondence exchanged between Thiru S. Manisekarn and the Authorised Officer shows that 75% of the bid

amount viz., Rs.86,25,000/- was not paid within the outer time limit of fifteen days stipulated by the Bank in the order of confirmation issued on 7 January 2011. Thiru S. Manisekaran has been taking time to deposit the balance 75% of the amount under the pretext that the Bank is yet to give him vacant possession. The series of correspondence exchanged between Thiru S. Manisekaran and the Authorised Officer shows that the so called auciton purchaser was not prepared to deposit the balance amount in spite of the ultimatum given by the Bank. The amount was deposited only on 11 June 2012 and it was readily accepted by the Authorised Officer not withstanding the mandatory condition that the amount should be deposited within fifteen days of confirmation.

28. It is therefore, evident that 75% of the bid amount expected to be paid on or before 22 January 2011 was paid after a period of about one year and five months, in utter violation of the provisions of SARFAESI Act and the Security Interest (Enforcement) Rules, the mandatory conditions of the auction notification and the letter of confirmation."

12. It is also pertinent to note that Col. S.S.Choudry availed loan on 09.06.1990 and the bank had filed the Original Application for recovery of the outstanding amount on 25.10.1999. The petitioners in W.P.No.18597 of 2011 have purchased the property from the petitioners in W.P.No.18687 of 2013 only on 05.05.2003, in spite of the order of injunction granted by the Debts Recovery Tribunal in I.A.No.393 of 2000. The alienation made by the petitioners in W.P.No.18687 of 2013 in favour of the petitioners in W.P.No.18597 of 2011 is hit by doctrine of lis pendens under section 52 of the Transfer of Property Act.

13. The learned counsel appearing for the 4th respondent, in support of his contentions, relied upon a judgment reported in 2010(8) SCC 383 [Meghmala & Ors v. G.Narasimha Reddy & Ors] wherein the Hon'ble Supreme Court held as follows:-

"31. In United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors. AIR 2000 SC 1165, this Court observed that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has never lost its temper over all these centuries.

32. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played

fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. Vs. M. Tripura Sundari Devi (1990) 3 SCC 655; Union of India & Ors. Vs. M. Bhaskaran (1995) Suppl. 4 SCC 100; Vice Chairman, Kendriya Vidyalaya Sangathan & Anr. Vs. Girdharilal Yadav (2004) 6 SCC 325; State of Maharashtra v. Ravi Prakash Babulalsing Parmar (2007) 1 SCC 80; Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Company AIR 2007 SC 2798; and Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr. (2009) 8 SCC 751).

33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. (Vide Dr. Vimla Vs. Delhi Administration AIR 1963 SC 1572; Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550; State of Andhra Pradesh Vs. T. Suryachandra Rao AIR 2005 SC 3110; K.D. Sharma Vs. Steel Authority of India Ltd. & Ors. (2008) 12 SCC 481; and Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir & Ors. (2008) 13 SCC 170).

34. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P. Changalvaraya Naidu (supra); Gowrishankar & Anr. Vs. Joshi Amba Shankar Family Trust & Ors. AIR 1996 SC 2202; Ram Chandra Singh Vs. Savitri Devi & Ors. (2003) 8 SCC 319; Roshan Deen Vs. Preeti Lal AIR 2002 SC 33; Ram Preeti Yadav Vs. U.P. Board of High School & Intermediate Education AIR 2003 SC 4628;

and Ashok Leyland Ltd. Vs. State of Tamil Nadu & Anr. AIR 2004 SC 2836).

35. In *kinch Vs. Walcott* (1929) AC 482, it has been held that "...mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury."

Thus, detection/discovery of constructive fraud at a much belated stage may not be sufficient to set aside the judgment procured by perjury.

36. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of *res judicata* are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est."

14. Admittedly, the petitioners have not obtained any permission from the Debts Recovery Tribunal for selling the property to the petitioners in W.P.No.18597 of 2011. The petitioners contended that they obtained no objection certificate from the respondent-bank and therefore, there is no infirmity in selling the said property. However, before the Debts Recovery Tribunal, it was established that the so called no objection certificate dated 17.08.2002 was found to be a forged document. That apart, even if the bank had given no objection for selling the property, the parties to the proceedings should only to obey the orders of the Tribunal and cannot get the consent from the party and violate the order of injunction granted by the Debts Recovery Tribunal. When the Debts Recovery Tribunal has granted an order of injunction and specifically stated that the property can be alienated or disposed of only after getting prior permission from the Debts Recovery Tribunal, the sale made in favour of the petitioners in W.P.No.18597 of 2011 by the petitioners in W.P.No.18687 of 2013, is not valid in law. When the property has been sold in favour of A.M.K.Jambulinga Mudaliar as early as in the year 2010 and the sale was also confirmed in his favour, the relief sought for in W.P.No.18687 of 2013 cannot be granted. That apart, the sale was also challenged before the Debts Recovery Tribunal by the petitioners and the Debt Recovery Appellate Tribunal rejected the case of the petitioners.

15. Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned counsel for the petitioners, since the facts and circumstances are different, the same are not applicable to the case on hand.

16. As held in the judgment reported in 2010(8) SCC 383 (cited supra), relied upon by the learned counsel appearing for the 4th respondent, fraud and justice never dwell together. The said ratio squarely applies to the facts and circumstances of the present case.

17. In such view of the matter, both the Writ Petitions are liable to be dismissed. Accordingly, the Writ Petitions are dismissed.

s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

Rj
To

1.The Authorised Officer & Chief Manager
Indian Bank
Asset Recovery Management Branch - II
Wellington Estate, Circle Office Buildings
4th Floor, 55, Ethiraj Salai
Chennai - 600 008.

2. The Presiding Officer
Debts Recovery Appellate Tribunal
Chennai.

+1 CC to M/s.Gupta & Ravi, Advocate sr 30338.

W.P. Nos.18597 of 2011 and 18687 of 2013

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