IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP NPD No.3131 of 2013 and
CRP NPD No.3132 of 2013

Alamelu ... Petitioner in both CRPs

Vs.

1. The Branch Manager,
   Stat

e Bank of India,
   Gobichettipalayam,
   Erode Distict.

2. Kumutha

3. Kannan
4. Subramaniam
5. P.Sridhar ... Respondents in both CRPs

Prayer in CRP No.3131 of 2013 Civil Revision petition filed under Section 115 of the Code of Civil Procedure against the order dated 29.04.2013 passed in E.A.No.15 of 2012 in E.P.No.35 of 2011 in O.S.No.14 of 2004 by the III Additional District, Erode at Gobichettipalayam.

Prayer in CRP No.3132 of 2013 Civil Revision petition filed under Section 115 of the Code of Civil Procedure against the order dated 29.04.2013 passed in E.A.No.25 of 2013 in E.A.No.15 of 2012 in E.P.No.35 of 2011 in O.S.No.14 of 2004 by the III A dditional District, Erode at Gobichettipalayam.

In both CRPS

For Revision Petitioner : Mr.N.Manokaran

For Respondent No.1 : Mr.I.C.Vasudevan

For Respondent No.5 : Mr.R.Karthikeyan

For Respondent No.2 to 4 : No appearance

ORDER

CRP NPD No.3131 of 2013

This revision petition has been filed challenging the order of dismissal, passed by the trial court in E.A.No.15 of 2012 in E.P.No.35 of 2011 in O.S.No.14 of 2004 filed to set aside the auction sale conducted on 23.02.2012.

CRP NPD No.3132 of 2013

This revision petition has been filed challenging the order of dismissal, passed by the trial court in E.A.No.25 of 2013 in E.A.No.15 of 2012 in E.P.No.35 of 2011 in O.S.No.14 of 2004 filed to grant leave to file a reply statement in the petition in E.A.No.15 of 2012.

2. The brief facts leading to filing of these CRPs are as follows: Originally, the first respondent bank had filed a suit in O.S.No.14 of 2004 against one Ramasamy for recovery of a sum of Rs.6,96,108.65 on the basis of equitable mortgage said to have been executed by the said Ramasamy, and in the event of failure to pay the decree amount, the mortgaged properties would be brought to sale to adjust the sale proceeds towards the suit amount. Pending suit, the said Ramasamy died and his legal heirs were impleaded as defendants 2 to 4. In that suit, preliminary decree was passed on 29.10.2004 in favour of the plaintiff. Pursuant to the same, final decree was also passed on 15.02.2005. Thereafter, execution petition was filed by the plaintiff bank for recovery of a sum of Rs.21,04,564/- and the property was brought to sale on 23.02.2012, and the 5th respondent became a successful bidder for a sale consideration of Rs.9,20,000/-.

3. The revision petitioner herein, immediately, had filed an application in E.A.No.15 of 2012 in the said EP proceedings under Order 21 Rule 90 of the Code of Civil Procedure to the effect that she is the purchaser of the suit property, and the bank in collusion with the judgment debtors played fraud by suppressing the sale in favour of the revision petitioner and had conducted the auction sale. The above application was resisted by the decree holder as well as by the auction purchaser. Subsequently, the revision petitioner has filed another application in E.A.No.25 of 2013 in E.A.15 of 2012 in E.P.No.35 of 2011 to file a reply statement to the E.A.No.15 of 2012 on the ground that by oversight, some important points were omitted to be stated in the said petition.

4. It is to be noted that immediately after the auction sale, the revision petitioner had filed the application in E.A.No.15 of 2012 to set aside the auction sale, on the ground that the auction sale purchaser is a *pendente lite* purchaser. The trial court considering the entire records, dismissed both the applications. Against which, the revision petitioner came up with these revision petitions.

5. The main contention of the learned counsel for the revision petitioner is that, the civil court ought not to have conducted the sale, since it has no jurisdiction at the relevant point of time. His further contention is that even after passing of preliminary decree, the property has been sold to the revision petitioner and the revision petitioner has stepped into the shoes of the mortgagor and till the sale is completed or confirmed, the mortgagor or his person, who stepped into the shoes of the mortgagor, have a right to redeem the property on payment of entire mortgage amount.

6. The learned counsel appearing for the revision petitioner further contended that the auction purchaser is none other than a close associate of the counsel appearing for the bank and in an earlier suit filed by the revision petitioner for specific performance, the bank was also made as one of the parties to the suit and they were aware of all the proceedings that the sale was in favour of the revision petitioner. Such being the position, the encumbrance certificate reflected the sale in favour of the revision petitioner was totally suppressed in the proclamation of the sale and such transaction is nothing but a fraud and hence, the alleged auction sale is not valid

under law. His further contention is that the amount payable to the bank as on date is more than 21 lakhs, but the property was auctioned only for Rs.9,20,000/-, which clearly proved the collusion between the parties in conducting the auction.

7. The learned counsel for the revision petitioner further contended that the earlier encumbrance certificate, which reflected the name of the petitioner has been subsequently inserted in the court records and hence the sale conducted was in contravention to the rules and suppressing of material facts and hence, such sale is not valid in law. He further added that the petitioner being the purchaser of the property, subject to the mortgage, he has right to question such sale under Order 21 Rule 90 of the Code of Civil Procedure and while the petitioner filed an application, she had shown her interest to pay the entire due amount payable to the bank, namely the mortgage amount, but the trial court has not permitted her deposit the mortgage amount. However, on the direction of this court, she paid the entire mortgage amount of Rs.21,04,564/- payable to the bank. Whereas, the properties have been sold to the auction purchaser, only for a sum of Rs.9,20,000/- and hence the sale in favour of the 5th respondent/

auction purchaser is liable to be set aside and prayed to allow the revision petition.

8. In support of his arguments, the learned counsel appearing for the revision petitioner placed reliance upon the following judgments.

1. A. Gnanam Vs. M/s Palaniappa and Co. Regd. Partnership firm through its partner Palaniappa Chettiar and another reported in 2001-1 L.W. 630.

2. S.Sivaprakasam Vs. B.V.Muniraj and others reported in (1997) o Supreme Court Cases 636

3. Punjab National bank, Dausuya vs. Chaiju Ram and others reported in AIR 2000 Supreme Court 2671.

9. Per contra, the learned counsel appearing for the 5th respondent/auction purchaser would contend that the auction purchaser had purchased the property bonafidely and even assuming that the encumbrance certificate has not reflected the name of the

purchaser, it is only for the auction purchaser to face such risk. His further contention is that the revision petitioner was all along watching the proceedings, but she has not deposited the entire amount, and in order to avoid payment, filed an application under Order 21 Rule 90 of CPC, instead of filing application under Order 21 Rule 89 of CPC and to deposit the amount. He further added that since the revision petitioner has registered the document for lessor value and was watching the proceedings all along and when the court has sold the property to the purchaser in the auction sale, now she has no right to question the auction sale and hence, the revision petition is liable to be dismissed. In support of his arguments, the learned counsel for the 5th respondent, relied upon a judgment in ***Janak Raj Vs. Gurdial singh and another reported in AIR 1967 S.C. 608***, wherein, it has been held thus:

> *"24. For the reasons already given and the decisions noticed, it must be held that the appellant auction purchaser was entitled to a confirmation of the sale notwithstanding the fact that after the holding of the sale, the decree had been set aside. The policy of the legislature seems to be that unless a stranger auction*

purchaser is protected against the vicissitudes of the fortunes of the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrower and the credition alike if sales were e to be impugned merely because the decree was ultimately set aside or modified. The Civil Procedure Code of 1908 make ample provision for the protection of the interest of judgment-debtor, who feels that the decree ought not to have been passed against him. On the facts of this case, it is difficult to see why the judgment debtor did not take resort to the provision of Order 21, Rule 89. The decree was for small amount and he could have easily deposited the decreetal amount besides 5 percent of the purchase money and thus have the sale set aside. For reasons which are not known to us he did not do so."

10. Originally, the bank had filed a suit for recovery of a sum of Rs.6,96,108.65 on the basis of equitable mortgage created by the first defendant. Subsequently, on 29.10.2004, preliminary decree

was passed and ultimately final decree was also passed on 14.06.2005 for a sum of Rs.14,06,456/-. Thereafter, execution petition was filed on 17.04.2010 for recovery of a sum of Rs.21,04,564/- and the properties were brought to auction and the 5th respondent/auction purchaser, had purchased the property for a sum of Rs.9,20,000/-.

11. It is to be noted that after commencement of Recovery of Debts Due to Banks and Financial Institutions Act (51 of 1993), the application for executing the decree exceeding Rs.10,00,000/-, can be entertained only by the Tribunal and not by the civil court , though the original decree was for the value less than Rs.10 lakhs. At this juncture, it is useful to refer the judgment in ***Punjab National Bank, Dasuya, Vs. Chaiju Ram and others reported in AIR 2000 Supreme Court 2671***, wherein, in para 9 held has follows.

> *9. The aforesaid Section 31-A is clearly applicable in the present case. The decree was passed by Court before the commencement of the Amendment Act and*

the same has not yet been executed. At least after the amendment, it is only the Tribunal which would have the jurisdiction of entertaining the application for execution of the decree in as much as the amount due for which the decree was sought to be executed is over Rs.10 lakhs. We are also unable to agree with the High Court that because the original decree which was passed was for principal sum of Rs.6,19,250/- the Tribunal would get no jurisdiction. It is to be seen that decree was for a sum of Rs.6,19,250/- plus interest at the rate of 16.5 percent per annum from the date of filing of the suit till the recovery of money. As and when the amount due to the bank under the decree became more than Rs.10 lakhs and an application for execution was filed, it could only be entertained by the Tribunal and not by the civil court. It is clear that inview of the provisions of Section 34 of the Act, the provisions of Order 21 Rule 10 CPC would have no application.

Considering the above judgment, there is a specific bar under Section 31-A of the Recovery of Debts due to Banks and Financial Institutions Act from filing the execution petition to execute the decree exceeding Rs.10 lakhs before the civil court, which ought to have filed only before the Tribunal, though the original decree was passed by the civil court. But it is not so in the present case.

12. Be that as it may, after the preliminary decree was passed, it appears that the judgment debtor has entered into an agreement for sale in favour of the revision petitioner and based on such unregistered sale agreement dated 19.01.2007, the revision petitioner had filed a suit in O.S.No.937 of 2008 for specific performance against the vendors as well as the bank. During the pendency of that suit, it appears that the property has been sold and registered in favour of the revision petitioner, much prior to the auction of the property by the civil court in the execution proceedings. In fact, the sale deed was executed on 24.06.2008 in favour of the revision petitioner, whereas, the auction was conducted on 23.02.2012, much after 4 years of the purchase by the revision petitioner. No doubt, the above purchase by the revision petitioner during the pendency of the suit proceedings was

subject to the mortgage and the title to the revision petitioner is always subject to the result of the suit as well as the mortgage.

13. The suit, which is the subject matter on hand was filed for recovery of mortgage money by the bank. At the time of bringing the property for sale, the bank, who was already made as a party in an earlier suit for specific performance, had not disclosed the purchase made by the revision petitioner in the encumbrance certificate. Though now an attempt has been made to show that originally encumbrance certificate was also filed before the trial court, this court is of the view that the original encumbrance certificate has been inserted in the court records subsequently. Such collusion is proved by the fact that when the certified copies were obtained by the court, the original encumbrance certificate reflecting the sale in favour of the revision petitioner, was not found in the court records. Only the encumbrance certificate without the entry of sale in favour of the revision petitioner had been filed as a document in the sale proclamation. Further, the counter filed by the bank also clearly indicates that the encumbrance certificate filed by them did not reflect the sale in favour of the revision petitioner. Therefore, it makes it very

clear that the bank while bringing the property for sale, has purposely suppressed the original encumbrance certificate, which reflected the sale in favour of the revision petitioner.

1. Of course, any sale in favour of the revision petitioner is always subject to the mortgage. Order 21 Rule 66 of the Code of Civil Procedure, it makes it clear that while proclaiming the sale, all the details of the properties should be shown in the proclamation. One of the mandatory condition in Order 21 Rule 66(2)(c) is with regard to "any encumbrance to which the property is liable" and the same makes it very clear that any encumbrance over the property should be properly disclosed in the proclamation of sale. The purpose and object of the above rule is to make the purchaser to know the deficiencies in the title of the property, which he is going to purchase. If really the encumbrance of sale was shown at the time of auction purchase, the auction purchaser would have not been ventured to purchase the property with such deficiencies. No doubt, such purchase is also subject to the payment of entire mortgage money.
2.

15. The fact remains that the suit had been filed for recovery of mortgage money. In this regard, it is useful to refer Order XXXIV Rule 5 of CPC which reads as follows.

> *5. final decree in suit for sale (1) Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule(3) of this rule, the defendant makes payment into court of all amounts due from him under sub-rule(1) of Rule 4, the Court shall, on application made by the defendant in this behalf, pass a final decree or, if such decree has been passed, an order*
>
> *(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree and if necessary,*
>
> *(b) ordering him to transfer the mortgaged property as directed in the said decree, and also if necessary,*
>
> *(c) ordering him to put the defendant in possession of the property.*

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule(3) of this rule, the court shall not pass an order under sub-rule(1) of this rule, unless the defendant, in addition to the amount mentioned in sub-rule(1), deposits in court for payment to the purchaser a sum equal to five percent of the amount of the purchase-money paid into court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into court by him together with a sum equal to fiver percent thereof.

(3) Where payment in accordance with sub Rule(1) has not been made, the court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner

provided in sub-rule (1) of Rule 4.

16. Similarly Order 34 Rule 8 of the Code of Civil Procedure also makes it clear that before confirmation of sale, held in pursuance of a final decree passed under sub-rule(3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of Rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree, or, if such decree has been passed an order, ordering him to retransfer the mortgaged property. Therefore, the provision of Order 34 makes it very clear that as long as the sale is not confirmed, the mortgage money is paid, the mortgagor or any person claiming under him certainly entitled to redeem the property. Ultimately, in this case, the revision petitioner had purchased the property from the legal heirs of the mortgagor. In fact, by such purchase, she has stepped into the shoes of the mortgagor. Immediately after purchase, she had also filed an application that she is willing to pay the entire mortgage money, including interest. However, the trial court has not appreciated her contentions, in terms of Order 34 Rule 5 and 8 of the Code of Civil Procedure. Whereas, the trial court has simply dismissed the

application on the ground that the petitioner is a third party purchaser.

17. In a judgment in ***S.Sivaprakasam Vs.B.V.Muniraj and others reported in 1997(9) Supreme Court Cases 636, in paragraph 5 & 6,*** it has been held thus.

" 5. It is seen that since the simple money decree had been duly executed through the court and the selfsame property had been brought to sale, was duly confirmed and possession taken in execution thereof, the auction purchasers of the said property in the money decree stepped into the shoes of the judgment-debtor, Manickam Mudaliar. Consequently, they got transposed themselves to be defendants in the mortgage decree. Therefore, before the confirmation of the final decree, they are entitled to make an application under Order 34, Rule 5 depositing all the decreetal amount and request the court to pass a final decree and directing the mortgagee, Catholic Syrian Bank Ltd., to deliver all the documents to them duly endorsing that the

decree stands discharged. Thereby having had the right thus fructified, the subrogation eclipsed right of the purchaser in the mortgage decree. Thus, his right stands nullified by operation of Order 34, Rule 5 CPC. Thus, the appellant did not get any right, though he was a successful auction-purchaser.

6. Shri S.Balakrishnan, learned counsel for the appellant, seeks to contend that under Order 21, Rule 92 CPC as soon as objections have been raised and rejected, the court is required to confirm the sale and in this case, the act of confirmation being the ministerial act, that does not defeat the right of the auction-purchaser nor confer any right on the subsequent purchaser under a simple money decree. The doctrine of lis pendens applies. We find no force in the contention. Section 52 of the Transfer of Property Act has no application to the facts. The procedure under Order 34 is entirely distinct and different from the procedure prescribed under Order 21. Order 21 deals with execution of decrees and *orders and objections therein other than those relating to the property covered in mortgage decree. Order 34 is a special procedure prescribed relating to mortgages. Therefore, the procedure prescribed under Order 21, Rule 92 has no application as regards the passing of final decree under Order 34, Rule 5 CPC. Thus considered, we hold that the action taken by the executing court is not vitiated by any error of law, warranting interference."*

In this case also, though the revision petitioner had purchased the property, pending suit, much prior to the auction, she has deposited the entire amount, as per the direction of this court, namely Rs.21,04,564/-. Admittedly, when the entire amount due to the bank had been deposited, the sale cannot be confirmed and the depositor is certainly entitled to redeem the mortgaged property. Ultimately, the object of the mortgage is to realize the mortgage money.

18. In a judgment in ***A.Gnanam Vs. M/s Palaniappa & Co., registered partnership firm through its partner Palaniappa***

Chettiar and Union Bank of India, Thiruchangal Branh through its Manager Thiruthangal reported in 2001-1-L.W. 630, it has been held thus.

> *" 10. Mr.Shanmugham, learned counsel appearing on behalf of the plaintiff/ appellant earnestly raised a contention that firstly by a mere court-sale it could not be said that the plaintiff had lost her title to the property and along with it the right of redemption. We are of the considered opinion that the contention lacks the necessary logic - A right of redemption does not remain independent of the property itself. A sale of the property, that too to a stranger like the 1st defendant, who had nothing to do with the mortgage and who was not a party to the same, would convey a complete title of the property to him and once the title to that property goes, the equity of redemption shall also accompany the property. In short,the 1st defendant would then be in a position to substitute himself in place of the plaintiff and to*

step in her shoes. In a reported decision in AIR 1981 SC 160 (C.V.Raghavachar V. Lakshminarasamma), the Supreme Court has reiterated this principle and observed:

"The High Court has held rightly that the prior mortgagee when he himself purchased the mortgaged property, became entitled as assignee of the equity of redemption to redeem the subsequent mortgages".

In that decision, the facts show that the owner had created as many as four mortgages and the first mortgagee, C.K.Ramachandra Rao had instituted a suit against the mortgagor for recovery of the mortgage debt by the sale of the house, which suit was decreed and the property was brought to sale and the mortgagee himself had purchased that property and the sale was confirmed. The first mortgagee also proceeded to obtain the possession of the mortgaged property and sold this property to one Srinivasamoorthy. In a suit filed by the *subsequent purchaser on C.V.Raghavachar who had purchased the property subject to the rights of the first mortgagee, the trial court rejected the plea raised by Srinivasamoorthy that he was entitled to redeem the property being a purchaser from the first mortgagee who himself had purchased the right of redemption from the mortgagor as he had purchased the property was negatived by the trial court and the appellate court and it was held that the subsequent purchaser viz. C.V.Raghavachar was entitled to redeem the first mortgage. It is also seen from the facts that the legal representatives of Srinivasamoorthy had come up in second appeal before the High Court and had also filed a suit, O.S.No.563 of 1964, against the original mortgagor and his son for possession of the property and for mesne profits. This suit was also dismissed by the trial court and the appellate court and another second appeal was filed against this decision also. The High Court, however, allowed both the appeals* *talking aview that since the predecessor in title of Srinivasamoorthy was prior mortgage and he himself had purchased the mortgaged property, he became entitled as an assignee of equity of redemption to redeem the subsequent mortgages. The High Court also held that if there was a conflict between the right of the prior mortgagee as assignee of equity of redemption to redeem the puisne mortgagee and the right of the puisne mortgagee to redeem the prior mortgage, the right of the prior mortgagee takes priority. The Supreme Court in this behalf observed as follows.*

There can be no dispute that while the puisne mortgagee had a right to redeem the prior mortgagee, the prior mortgagee after he himself auction purchased the property had the last right of redemption as the assignee of the equity of redemption".

In our opinion, this position recognises the fact that the right of redemption goes along with the *property even if it is sold in the court-auction.*

13. The other case is also extremely relevant, but again on facts,the observations become inapplicable. It is reported in 1996(5) SCC 626 (Parichham Mistry Vs. Achhiabar Mistry). Here also was a case of usufructuary mortgage. Here under the mortgage deed, the mortgagor was liable to pay the rent in respect of the holding and since the rent remained unpaid by the mortgagor in a suit instituted by the landlord for arrears of rent, a decree had been obtained and in execution thereof, the property was put to sale and the defendant mortgagee paid the decreetal amount in question and, therefore, claimed that the suit for redemption would not a lie at the behest of the mortgagor. The trial court had decreed the suit, but both the appellate court and the High Court had accepted the contention of the mortgagee and dismissed the suit. When the matter came up before the Supreme Court , the Supreme Court, however, allowed the plea by *the mortgagor and held that the right of redemption can be extinguished only by the act of parties an by the decree of the court and the High Court was not right in holding that in this case, the right of redemption has got extinguished. The Supreme Court observed:*

"A usufructuary mortgagee cannot by mere assertion of his own or by a unilateral act on his part, convert his position on moiety of the property as mortgagee into that of an absolute owner. It is no doubt true that the mortgagee would be entitled to purchase the entire equity of redemption from the mortgagor. The mortgagee occupies a peculiar position and therefore, the question as to what he purchased at a court sale is a vexed question, but being in an advantageous position where the mortgagee availing himself of his position gains and advangage, he holds such advantage for the benefit of the mortgagor. It has been so held by this court in the case of Sidhakamal Nayan Remanuj Das V.

Bira Nayak (AIR 1954 sC 336) and Mritunjoy Pani V. Narmanda Bala Sasmal (AIR 1961 SC 1353). This being the position of law, if, for some default, in payment of rent a rent decree is obtained and the mortgagee pays off the same even then the mortgagee in question is liable to be redeemed at the option of the mortgagor.

The observations in this case are seemingly in conflict with the observations made in C.V.Raghavachar case, cited supra, where the Supreme Court had held that a purchase by the mortgagee of the property had put him in the boots of the mortgagor. However, on a deeper consideration, it will be seen that there is no conflict. In the earlier case, the mortgagee had purchased the rights in a suit properly brought by him in the mortgage suit itself and in that suit, after the decree was passed in that execution, he purchased the property in the court sale. That was a question of inter se rights between the first mortgagee and the *subsequent mortgagees, whereas in the present case, the peculiar dominant position of the mortgagee has been considered by the Supreme Court and the Court has come to the conclusion that it is because of that dominant position of a mortgagee, again in a usufructuary mortgage, that the mortgagor doe snot lose his right of redemption because of the unilateral act on the part of the mortgagee of purchase of the moiety. Such is not the case in our case. In the first place, in the present case we are not dealing with the usufructuary mortgagee, We are dealing with a simple mortgage that too, where the conflict is not between the mortgagor and a stranger, who has brought the money suit, earned a decree and in pursuance thereof, had purchased the property. This case also, therefore, would be of no consequence.*

14. In short, the appeal has no merits and must be dismissed. However, in the circumstances, we do not propose to saddle any costs. Parties to bear their own cost. Connected CMP is closed.

19. No doubt, in the process of execution of auction purchase, the 5th respondent had purchased the property and it is to be noted that the specific allegation of the revision petitioner is that the auction purchaser is highly connected with the counsel appearing for the bank, thereby the property was sold for a minimum amount of Rs.9,20,000/-, when the amount due to the bank is more than 21 lakhs. Though several documents have been filed in the additional typed set to prove that the auction purchaser is highly connected with the counsel appearing for the bank, I am of the view that those documents are not necessary at this stage for deciding the issue, since the auction sale through the civil court is without jurisdiction, in view of the fact that the amount to be recovered on the date of execution petition is more than Rs.21 Lakhs and the execution petition ought to have been filed only before the Debt Recovery Tribunal. At that relevant point of time, there is a specific bar under the Recovery of

Debts Due to Banks and Financial Institutions Act, for entertaining the execution petition for more than Rs.10,00,000/-. Therefore, any sale conducted by civil court cannot be given much importance.

20. It is to be noted that the sale has not been conducted in terms of the Order 21 Rule 66 of CPC. Earlier sale in favour of the revision petitioner has been purposely suppressed. The suppression has been fortified by the fact that the original encumbrance certificate has been incorporated in the court records subsequently. These facts in fact countenanced the submission of the revision petitioner to the effect that there was a collusion between the advocate and the auction purchaser and though the amount payable to bank is more than 21 Lakhs, the property was sold for lessor amount. These factors, in fact probablize the contention of the revision petitioner that the sale is only on collusion and fraud and suppression of material facts**.** When the bank has suppressed the material facts, having known that the revision petitioner has already got some interest over the suit property and filed a suit for specific performance and that the bank was also made as a party, such suppression or such omission to file the encumbrance certificate, cannot be taken lightly and it has its own

meaning. Such suppressing material facts deliberately amounts to fraud. Hence, I am of the view that the auction conducted in this case is not according to law and the transaction of the court is liable to be set aside. Admittedly, the revision petitioner has deposited a sum of Rs.21,04,564/- on 26.09.2013, towards the entire mortgage money payable to the bank and hence the interest of the bank is protected and the entire money payable to them is fully realised.

21. In the result,

(i) The revision petition in CRP No.3131 of 2013 is allowed. No costs. The order of the trial court is set aside and the sale in favour of the 5th respondent is set aside.

(ii) The first respondent-bank is at liberty to withdraw the entire amount of Rs.21,04,564/- towards the decree amount lying in the Court deposit and the bank shall return the amount to the auction purchaser, if they realised the amount with simple interest. In the event of purchase money is in the Court deposit, the same shall be returned to the Auction Purchaser with accrued interest.

(iii) In view of the findings rendered in CRP No.3131 of 2013, the civil revision petition in CRP No.3132 of 2013 is dismissed as infructuous. No costs.

26.04.2019

Index : yes/no
Internet : yes/no
Speaking order/non-speaking order
mst

To

The III Additional District Judge, Erode at Gobichettipalayam.

N.SATHISH KUMAR. J.,
mst

CRP NPD No.3131 of 2013 and
CRP NPD No.3132 of 2013

26.04.2019