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C.M.S.A.No.7 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

C.M.S.A.No.7 of 2006
and C.M.P.No.1026 of 2006

Rikapchand – Died

2.R.Chandra Bai

3.R.Kamal Kumar

4.R.Kishore Kumar

5.R.Prem Kumar

6.Rakhi

... Appellants

[Appellants 2 to 6 brought on record
as Lrs of the deceased sole appellant
viz., Rikap Chand vide Court order
dated 14.08.2019 made in C.M.P.Nos.15179,
15176, and 15184 of 2019
in C.M.S.A.No.7/2006 (TRJ).]

Vs

1.Maragadhammal

2.Thangapandian

3.Selvaraj Nattar

4.Loganathan

5.Babu

6.Nagammal

7.Raja

8.Gunalan

9.Gopi

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10.B.Babu

11.Jayalakshmi

12.Govindaraj Naidu

13.Gandhi

14.Murugan

15.D.Ramesh

16.The Official Receiver,
Vellore District,
Office at the Integrated Court Complex,
Sathuvachari, Vellore-632 009.

17.Ganapathiraj

18.V.Subramani

19.Bakthavatchalam

20.Shanmuga Mudaliar

21.B.Babu

22.Ravi

23.Saravanan

24.Prema

25.Maharaniammal

26.Muthammal

27.Amsammal

28.Ramachandra Mudaliar

29.Prakash

30.Vijayalakshmi

31.Bakthavatchalam

32.Jagathambal

33.Jayalakshmi

34.Ragavan

35.Parthiban

36.Chandran

37.Nilavalagan

38.Baby

39.Kumar



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- 40.Karthigeyan
- 41.Arumugam
- 42.Subramani Mudaliar
- 43.Nithyanandam
- 44.Radhika
- 45.Karthigeyan
- 46.Govindaraj Mudaliar
- 47.Veeramani
- 48.Vijayakumar
- 49.Vinayagam
- 50.Selvam
- 51.Purushothaman
- 52.Sarojammal
- 53.Koteeswari
- 54.Sowiyya
- 55.Maheswari
- 56.Balarama Mudaliar
- 57.Amsammal
- 58.Vanitha
- 59.Amulu@Vanitha
- 60.Parvathy
- 61.Sekar
- 62.A.Babu
- 63.Vimal
- 64.Thirumagal Chit Financiers
Rep. by its Managing Partner
- 65.Venkatesan
- 66.M.T.Balu
- 67.Shanmugam
- 68.S.Gopi
- 69.Jayanthi
- 70.Thangapandian
- 71.Rukmaniammal
- 72.Maragadammal
- 73.Sumathy



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- 74.Lalithkumar Kataria
- 75.Ganpathraj
- 76.Palani
- 77.Balakrishnan
- 78.Munirathinam Maisthry
- 79.Murali
- 80.Meena
- 81.Mani
- 82.Guru
- 83.Nagaraj
- 84.Jeyaraj
- 85.A.Mani
- 86.Narasimhan
- 87.Shanmugam
- 88.Shanmugam
- 89.Saravanan
- 90.Shanmugamudaliar
- 91.Lakshmanan
- 92.Meerabi
- 93.Nilavalagan
- 94.Karunanidhi
- 95.Chandra, Tea stall
- 96.Rajeswari
- 97.Bakthavatchalam
- 98.Velu
- 99.Purushothaman
- 100.Ramamurthy
- 101.Radhakrishnan
- 102.Gunasekaran
- 103.Karunanidhi
- 104.Pichaimuthu
- 105.Subban
- 106.Sambasivam
- 107.Asokan
- 108.Ramamurthy



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- 109.Bakthan
- 110.Maharani
- 111.Veeramani
- 112.Purushothaman Naidu
- 113.Maragadammal
- 114.Ramamurthy
- 115.Thangaraj
- 116.Karthigeyan
- 117.Ravi
- 118.Govindaraj
- 119.P.Gopi
- 120.Jayaseelan
- 121.Murugesan
- 122.Sydali
- 123.A.Babu
- 124.Anjaneyan
- 125.Ravi
- 126.Gnanasekara Naidu
- 127.Ganpathraj
- 128.Lakshmi
- 129.Prakash
- 130.Kumar
- 131.Kadhiravan
- 132.Muthukumar
- 133.Maragadhammal
- 134.Ganpathraj
- 135.Nithyanandam
- 136.Ganpathraj
- 137.Kumar
- 138.Ravi
- 139.Ravighandhi
- 140.Gunalan
- 141.Soundarrajan
- 142.Ragavan
- 143.Shanmugam



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- 144.Anjaneya
- 145.Anbu
- 146.Ganpathraj
- 147.Sundaram
- 148.Jayalakshmi
- 149.Amsammal
- 150.Selvaraj Nattar
- 151.Dhanasekar
- 152.Balu
- 153.Annadurai
- 154.Tea Shop Kuppan
- 155.Selvarajnattar
- 156.Karunanidhi
- 157.Balachandar
- 158.Raja
- 159.Raja
- 160.Jayalakshmi
- 161.Selvarajnattar
- 162.Thangapandian
- 163.Pannermaisthry
- 164.Lakshmanan
- 165.Balakrishnan
- 166.S.Gopi
- 167.Sampath
- 168.B.Murali
- 169.G.Thenmozhi

... Respondents

PRAYER : This Civil Miscellaneous Second Appeal is filed under Section 100 of Civil Procedure Code, against the decree and judgment of Principal District Judge of Vellore made in A.S.No.21 of 2003 dated 12.10.2004 setting aside the decree and Judgment of the Official



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Receiver, Vellore in O.R.I.P.No.6 of 2001, dated 22.01.2003 and directing to conduct fresh sale.

For Appellant	: Mr.A. Palaniappan for Mr.M.V.Krishnan
For Respondents 1,4,5,13 to 15	: Notice Served - No Appearance
For Respondents 2,3,6 to 10 and 12	: Mr.R.Subramanian for Mr.T.R.Rajaraman
For Respondents 11 and 16	: No Appearance
For Respondents 17 to 169	: Given up

JUDGMENT

The auction purchaser is before this Court, challenging the judgment and decree passed by the learned Principal District Judge, Vellore in A.S.No.21 of 2003, in and by which, the learned Judge has set aside the judgment and decree passed by the Official Receiver, Vellore in O.R.I.P.No.6 of 2001 and directing the Official Receiver to conduct a fresh sale, after giving proper publication and notice to the creditors.



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2. The brief facts which has culminated in filing of this C.M.S.A are herein below briefly narrated.

The 15th respondent herein had filed I.P.No.2 of 2000 on the file of the Subordinate Judge, Ranipet to adjudge him as an insolvent under the provisions of the Provincial Insolvency Act. It was his case that he was originally a partner in Thirumal and Thirumal Finance Corporation at Sholinghur. Since he was of a young age and lacked experience, he had been misled by his own friends, which had resulted in huge business losses to him. In order to offset the loss, the petitioner had borrowed extensively from the respondents arrayed in the insolvency petition. That apart, people who have borrowed from the petitioner have also not repaid the amounts and some of them have also moved out from the original address, as a result of which, the 15th respondent was unable to collect the dues. Consequently, the petitioner would submit that he had become an insolvent on account of this huge loss and therefore, he had come forward with the petition in question. The petitioner had stated that his assets were detailed in “B” schedule and his liabilities were over a sum of Rs.88,56,500/-/



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3. (i) The 167th respondent who is the appellant herein as well as the auction purchaser had filed a counter *inter-alia* contending that the very insolvency petition was a false and vexatious petition. He would contend that the petitioner continued to be the partner of Thirumal and Thirumal Finance on the date of the petition. However, the business was being carried on by one A.G.Anandan and the 15th respondent's wife, Vijayarani as partners. The appellant has erred in not impleading the firm as a party to the proceedings and on this ground, the petition ought to have been dismissed.

(ii) The appellant would submit that he had subscribed to several chits with the petitioner's firm to the extent of Rs.8,72,000/- and these amounts have not been given credit to in the insolvency proceedings. Apart from that, the 15th respondent had also borrowed from the 167th respondent, his wife and sons on various dates and these amounts have not been given credit to. If the two loans are put together, the 15th respondent owes a total sum of Rs.15,72,500/- to the appellant.



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The appellant would further submit that the 15th respondent had discharged his dues to some of the creditors by giving preference to them. That apart, he has also sold several properties to third parties in order to defraud the creditors and these properties and sites are to be included in the petition. Therefore, it was the contention that the assets and liability did not contain the true state of affairs.

4. The 15th respondent was adjudged as an insolvent as per the orders of the Official Receiver, Vellore in O.R.I.P.No.6 of 2001 dated 21.06.2001 and all the estates have been vested with the Official Receiver. The Official Receiver had taken charge of the assets of the 15th respondent herein. In the meanwhile, the Official Receiver, namely, the 16th respondent had ordered an auction sale of the properties to be held on 22.01.2003. Since there were no bidders, the Court has *suo-motu* adjourned the sale to 03.06.2003 without any notice to the creditors of the 15th respondent including the appellant herein. Aggrieved by the same, the appellant herein had filed O.R.I.P.No.6 of 2001 before the Official Receiver, Vellore to set aside the sale, which had taken place



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with just 7 persons including the auction purchaser and the property was knocked off at a meagre sum of Rs.5,27,500/-. Challenging the said order, the creditors had filed an appeal in A.S.No.21 of 2003 on the file of the Principal District Judge, Vellore. The learned Judge, by her dated 12.10.2004, allowed the appeal and directed the Official Receiver to conduct a fresh sale, after giving proper publication and notice to the creditors. Challenging the same, the appellant is before this Court.

6. Heard the learned on either side and perused the materials available on record.

7. One of the grounds raised by the appellant is that the property has been sold after giving wide publicity and in the auction, 7 persons had participated, out of which, the auction purchaser, the appellant herein had emerged successful. He would submit that even according to the 15th respondent-Insolvent, the value of the property was a sum of Rs.8,72,000/- and the highest bid was that of the appellant at Rs.5,27,000/-. However, in the counter filed by the appellant, he has



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himself stated that the value of the property is over a sum of Rs.25,00,000/-. Therefore, the fact that the bid has been closed at a sum of Rs.5,27,000/- shows that all is not well with the auction sale. This doubt is further clarified by the fact that though the Official Receiver had adjourned the auction sale to 03.06.2003, however *suo-motu*, on an advance hearing petition, the hearing was advanced to 22.01.2003. The order has been passed in the advance hearing petition without notice to all the creditors and on the date to which the hearing was advanced, the property had been sold at a very low price. The lower Court has taken note of the same and has rightly set aside the same. I see no reason to interfere with the said judgment and decree. Accordingly, this Civil Miscellaneous Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes / No

Speaking Order : Yes /No

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To
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1. The Principal District Judge,
Vellore.
2. The Official Receiver,
Vellore District,
Office at the Integrated Court Complex,
Sathuvachari, Vellore-632 009.
3. The Section Officer,
V.R. Section, High Court, Madras



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P.T.ASHA, J.,

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