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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.10.2021

Pronounced on : 02.02.2022

C O R A M

THE HONOURABLE Mrs. JUSTICE S.KANNAMMAL

Second Appeal No.750 of 2021

1.P.S.Soman
2.P.R.Padmini

.. Appellants/Respondents/
Respondents & 3rd Parties

-vs-

1.Anusuya
2.R.Keerthana
3.Sadananthan

.. Respondents/Appellants 2 to 4/
Petitioner 2 to 4
(LRs of the Auction Purchasers)

Prayer : Second Appeal is filed against the judgment and decree, dated 28.04.2021, made in A.S.No.15 of 2017 on the file of Subordinate Court, Mettupalayam, reversing the fair and final order, dated 14.09.2017, in E..A.No.26 of 2016 in E.A.No.20 of 1995 in EP No.310 of 1995 in O.S.No.875 of 1978, passed by the District Munsif cum Judicial Magistrate, Mettupalayam.

For Appellants .. Mr.S.S.Rajesh
For Respondents .. Mr.C.Veeraraghavan

JUDGMENT

This Second Appeal is preferred against the judgment and decree, dated 28.04.2021, made in A.S.No.15 of 2017 on the file of Subordinate Court, Mettupalayam, reversing the fair and final order, dated 14.09.2017, in E..A.No.26 of 2016 in E.A.No.20 of 1995 in EP No.310 of 1995 passed by the District Munsif, Mettupalayam.

2. Facts briefly narrated and necessary for disposal of this Second Appeal are as follows:



2.1. As per the sale deed, dated 19.11.1964, one Devanna Gounder purchased the land land belonging to Ranga Gounder. The said Devanna Gounder, along with one Chinna Gounder, borrowed Rs.5800/- as loan from one K.Rangasamy for interest at the rate of 12% per annum and executed a promissory note on 13.11.1975. Since the said loan amount was defaulted, a suit in O.S.No.875 of 1978 was filed by K.Rangasamy against both Devanna Gounder and Chinna Gounder and the same was decreed ex-parte on 31.10.1978, since they had not contested. Since the suit amount was not repaid, Rangasamy, in order to execute the decree, filed E.P.No.310 of 1981 for selling the suit property. As per the same, the suit property was brought for sale on 20.06.1983 and it was purchased by one R.Rangaraj for a valuable consideration of Rs.20,005/-. Accordingly, a certificate was given to R.Rangaraj on 20.01.1984. Since Rangaraj was the owner of the property as per the Court auction, he filed a petition to settle the same in his favour and also obtained an order. Since Rangaraj and his legal heirs are the owners of the property, the suit in O.S.No.130 of 1985 filed for partition by sons of Devanna Gounder was dismissed on 17.08.1989 and the appeal filed by them in S.A.No.912/1989 was also dismissed. In the meanwhile, after the death of Devanna Gounder, the legal heirs of Devanna Gounder sold the suit property to third parties viz., defendants 4 and 5. Since the suit property belonged to the legal heirs of Rangaraj, after the death of the said Rangaraj, they filed another suit in O.S.No.414 of 2005, seeking for declaration and settlement.

2.2. Before the trial Court, the defendants 4 and 5, stated that the suit property has not been valued properly; the burden of proof lies on the plaintiffs to prove their share and the suit property is the self acquired property of Devanna Gounder. Since 1995, the defendants 4 and 5 and the 2nd defendant are in possession and enjoyment of the suit property and they have established their property by obtaining loan for a sum of Rs.16 lakhs from a bank and necessary tax has also been paid by the defendants. Patta, Chitta and Adangal stood in the name of the wife of the 4th defendant and the 5th defendant. Since the suit was barred by limitation, they prayed for dismissal of the suit.

3. On considering the pleadings, the trial Court framed the following issues for consideration :

1. Whether the sale executed in favour of defendants 4 and 5 is valid ?
2. Whether the suit property is in possession of the defendants 4 and 5 ?



3. Whether the plaintiffs are the legal heirs of R.Rengaraj and they are entitled for settlement?

4. For what relief?

4. Before the trial Court, on the side of the plaintiffs, one witness was examined as P.W.1 and 11 exhibits were marked. On the side of the defendants, one witness was examined and 17 exhibits were marked.

5. After considering the oral and documentary evidence, the trial Court dismissed the suit on the ground that though the suit property was purchased by the husband of the plaintiffs through Court auction, possession has not been taken. It is the further finding of the trial Court that the plaintiffs ought to have approached the competent Court within a period of 12 years from the date of purchase. However, since the possession has not been taken, on the ground of limitation, the trial Court dismissed the suit, against which, no appeal was preferred.

6. However, the plaintiffs filed E.A.No.26 of 2016 for removal of obstruction recorded in E.P.No.39 of 2009 and for delivery of possession under Order XXI Rule 95 r/w Section 151 of the Code of Civil Procedure. The said petition came to be dismissed on the ground that the plaintiffs should prefer an appeal, against which, the plaintiffs preferred A.S.No.15 of 2017 before the first appellate Court.

7. The first appellate Court framed the following substantial questions of law:

1. Whether the non-preferring of appeal over the order passed in E.A.No.39/2009 is fatal to the case of the appellants herein ?

2. Whether the order passed in EA No.26/16 in EA No.20/1995 in EP 310/1995 by District Munsif of Mettupalayam is to be interfered on the ground of mistaken appreciation of facts relating to CRP 2005 of 1999 ?

8. On considering the oral and documentary evidence, the first appellate Court allowed the appeal in favour of the plaintiffs and held that the theory of res judicata is not applicable to EA No.26/2016 and EA No.20/1995 is not barred by limitation and that the order of this High Court in CRP.NPD.No.2005 of 1999 is binding upon the respondents, against which, the defendants are before this Court with this Second Appeal.

9. Heard the learned counsel for the appellants and the



learned counsel for the respondents.

10. The following Substantial Questions of law arise for consideration in this Second Appeal :

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(1) Whether the first appellate Court was right in holding that C.R.P.(NPD) No.2005 of 1999 is binding on the parties when the very Order was pronounced after the petitioner, Mr.Devanna Gounder, had died without impleading his legal representatives ?

(2) Whether the decision in O.S.No.414 of 2005 operates as res judicata to E.A.No.26 of 2016 ?

(3) Whether the first appellate Court was right in holding that the Order for delivery of property to the respondents / auction purchasers in Execution Proceedings preceded the sale made to the appellants / third parties by Mr.Devanna Gounder ?

(4) Whether the non-registration of sale certificate will give a right of ownership to the respondents / auction purchasers ?

(5) Whether the respondents / auction purchasers, who have failed in the suit for declaration of title as against the appellants / third parties, be entitled to possession by way of an execution of decree, to which the appellants are not parties ?

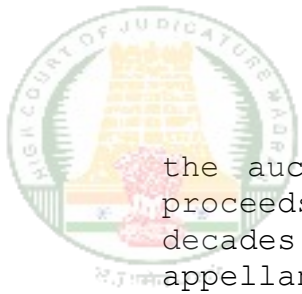
11. At the outset, the suit in O.S.No.875 of 1978 on the file of District Munsif Court, Coimbatore, was filed by one K.Rangasamy against one Devanna Gounder and Chinnaiah Gounder for recovery of money and the said suit was decreed ex parte. Thereafter, an Execution Petition was filed vide E.P.No.310 of 1981, in which, sale was ordered and the suit property was put to auction. In the Court auction on 20.06.1983, one R.Rangaraj, the father of the respondents herein, purchased the property for a sum of Rs.20,005/- and on 20.01.1984, the sale was confirmed. Thereafter, within a period of one year i.e., on 07.12.1984, the auction purchaser filed an application in E.A.No.2244 of 1984 for delivery of possession. On 07.02.1985, delivery of possession was ordered in the said application. On 09.04.1985, Devanna Gounder produced a Memo before the lower Court, stating that in I.A.No.155 of 1985 in O.S.No.130 of 1985, which was the suit filed by his sons, an order of temporary injunction was granted, restraining the auction purchaser from taking delivery of possession. Therefore, an order was passed on 09.04.1985 closing E.A.No.2244 of 1984, for delivery of possession temporarily, in view of the order of interim injunction. As such, the order passed in E.A.No.2244 of 1984 could not be



executed. Thereafter, O.S.No.130 of 1985, which was filed by the sons of the judgment debtor against the auction purchaser, for partition, was dismissed on 17.08.1989 on merits and the interim order of injunction was also vacated. Pursuant to that, within a week, on 23.08.1989, the father of the respondents herein / auction purchaser, filed an application in E.A.No.951 of 1989 for delivery of possession and the said application was transferred to the file of District Munsif, Mettupalayam, and renumbered as E.A.No.20 of 1995. The order of delivery of possession, dated 07.02.1985, could not be proceeded with, merely because of the temporary closure of the application in E.A.No.2244 of 1984, following the interim order of injunction in the original suit in O.S.No.130 of 1985. Since the said suit itself was dismissed, the second Execution Application was filed. There was no impediment in filing the said application, as the original Execution Application was filed within a period of one year and, therefore, it was well within the time and it was only revival of the earlier application. Finally, E.A.No.20 of 1995 filed by the auction purchaser for delivery of possession was ordered on 09.04.1999.

12. In E.A.No.39 of 2009, which was filed by the appellants against the order in E.A.No.20 of 1995, the appellants admit that they purchased the suit property on 12.06.1995. However, in this case, the Court auction was conducted on 20.06.1983 and the sale was confirmed in favour of R.Rangaraj on 20.01.1984. Even after the confirmation of the sale of the property, the appellants filed the above E.A. to record obstruction. It is very important to note that the appellants, knowing pretty well that the suit property has been put to Court auction and the same is pending delivery of possession, ventured to purchase the said property, ignoring the consequences. From this, it is ostensible that the appellants are pendente lite purchasers of the property.

13. It is also seen from the records that after the suit property was attached by the Court, the judgment debtors filed applications after applications for adjournment of sale and obstructed the sale to be proceeded with. Further, even after the confirmation of sale on 20.01.1984, the judgment debtors did not stop with that and they continued with the same attitude by obstructing the delivery proceedings, and, they, in turn, sold the suit property to the appellants herein, even during the pendency of the delivery of possession to the auction purchaser. Thereafter, the appellants stepped into the shoes of the judgment debtors, and they also continued to drag on the proceedings infinitely, by adopting dilatory tactics to prevent



the auction purchaser and the decree holder from enjoying the proceeds of sale and the fruits of the decree for over four decades in execution proceedings. Such an attitude of the appellants is to be highly deprecated and condemned.

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14. This is a manifest case of abuse of process of Court. The suit in O.S.No.875 of 1978 was decreed as early as in the year 1981. The Execution Petition vide E.P.No.310 of 1981 was filed in the year 1981. The sale was effected even in the year 1983 and was confirmed in the year 1984. While that being so, the judgment debtor set up his own sons to file the suit O.S.No.130 of 1985 for partition of the suit property and they managed to obtain an interim order of injunction in I.A.No.155 of 1985, thereby, restraining the Court auction purchaser, who was the father of the respondents herein, from taking delivery of possession. It is pertinent to note that at the time of obtaining the interim order in I.A.No.155 of 1985 in O.S.No.130 of 1985, delivery of possession was already ordered in I.A.No.2244 of 1984 in E.P.No.310 of 1981 in O.S.No.875 of 1978. Since the suit in O.S.No.130 of 1985 was dismissed, the said interim injunction was vacated. Thereafter, the respondents herein, as the legal heirs of the auction purchaser, filed E.A.No.20 of 1995 for delivery of possession and it was ordered. Against the said order passed in E.A.No.20 of 1995 by the trial Court, the judgment debtor filed C.R.P.(NPD) No.2005 of 1999 on the file of this Court and this Court dismissed the said Civil Revision Petition, holding that it was only to harass the Court auction purchaser. By not ending with that, the appellants / third party purchasers, filed E.A.No.39 of 2009 to record obstruction in the delivery of possession and it was allowed by the trial Court. Aggrieved over that, the respondents herein preferred E.A.No.26 of 2016 to remove the obstruction recorded in E.A.No.39 of 2009, which was dismissed, against which, the respondents preferred A.S.No.15 of 2017 and it was allowed. Hence, this Second Appeal, at the instance of the appellants, who are the third party purchasers.

15. If it be the contention of the learned counsel for the appellants that as against the order passed in E.A.No.39 of 2009 only appeal lies to the appellate Court, the same yardstick applies to the appellants as well with regard to the order passed in E.A.No.20 of 1995, which means, as against the order passed in E.A.No.20 of 1995, the appellants ought to have filed appeal, instead of filing E.A.No.39 of 2009. Further, in this connection, it is also significant to note that the trial Court, while allowing the application filed by the appellants in E.P.No.39 of 2009, has observed in Paragraph 8 of its order that



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the merits of the claim of both the parties shall be decided in detail in the proceeding the respondents 2 to 4 initiate to remove the obstruction. The relevant portion of the said order is necessary, which reads as follows :

'8. The merits of the claim of both the parties shall be decided in detail in the proceeding the respondents 2 to 4 may initiate to remove the obstruction. The point is answered accordingly.'

16. Following the said order of the trial Court, when the respondents herein filed an application in E.A.No.26 of 2016 against the order in E.P.No.39 of 2009 to remove the obstruction, the trial Court, instead of deciding the application E.A.No.26 of 2016 on merits, as stated by itself, as above, fell in utter error in dismissing the said application, holding that the applicants therein/respondents herein should prefer appeal before the appellate forum to work out their remedy against the order passed by the said Court in E.A.No.39 of 2009. The relevant portion of the said order reads as under :

'19. In this case, the petitioner who was unsuccessful respondent in EA N.39 of 2009 should prefer appeal against the order passed by this court in execution application E.A.No.39 of 2009 (sic). It is pertinent to note down from the records the petitioners did not prefer any appeal in E.A.No.39 of 2009 and after expiry of limitation period this petitioner filed the petition under Order 21 Rule 95 of CPC to remove the obstruction. Hence, it is decided that the petitioners should prefer appeal before the appellate forum to work out their remedy against the order passed by this Court in EA No.39 of 2009. Instead of preferring appeal, the petitioners filed petition under Order 21 Rule 95 of CPC for removal of obstruction is not maintainable under law.'

17. Moreover, recording of obstruction is only an administrative act and it will not end up the proceedings once for all. Hence, filing of the application in E.A.No.26 of 2016 under Order 21 Rule 95 of CPC is the proper proceeding, initiated by the auction purchasers, who are the respondents herein. Hence, the decision in E.A.No.39 of 2009 will not act as a res judicata for the proceeding in E.A.No.26 of 2016. Therefore, the contention of the learned counsel for the appellants in this regard does not merit acceptance.

18. Order XXI Rule 95 of Civil Procedure Code deals with



delivery of property in occupation of judgment debtor. According to this Rule, when the immovable property sold is in the occupancy of the judgment debtor or of some person on his behalf or of some person claiming under a title created by the judgment debtor subsequently to the attachment of property and a certificate in respect thereof has been granted under Rule 94, the Court shall, on the application of the auction purchaser, order the delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person, who refuses to vacate the same. This is what has happened in this case. However, in this case, the appellants are claiming title to the property through Devanna Gounder, who is the judgment debtor. Admittedly, they are the pendente lite purchasers, which means, they purchased the property from Devanna Gounder in the year 1995 after the order of confirmation of sale on 20.01.1984 and delivery to auction purchaser was made in E.A.No.20 of 1995. When the facts remain thus, the appellants continued to obstruct the execution proceedings, by initiating multiplicity of proceedings, when they are not entitled to do so. Therefore, the said act of the appellants also amounts to abuse of process of law.

19. With regard to the contention that the decision in O.S.No.414 of 2005 operates as res judicata to E.A.No.26 of 2016, it is to be stated that the issue in question is to be decided only on merits of the execution proceedings and the decision in some other dismissed suit for declaration of ownership will not bind the claim for possession through execution proceedings by auction purchasers in E.A.No.20 of 1995. Non-preferring of appeal over the dismissed suit in O.S.No.414 of 2005 is also not fatal to the present case. As such, the said decision in O.S.No.414 of 2005 will not operate as res judicata, as the issue for possession is to be decided only in execution proceedings.

20. Adverting to the contention that the decision in C.R.P.(NPD) No.2005 of 1999, dated 10.09.2013, of this High Court will not bind the appellants as they are not parties thereto, it has to be stated that the appellants herein are purchasers from Devanna Gounder, who is the revision petitioner therein, and also who is the judgment debtor, in the year 1995, after delivery of possession was ordered on 07.02.1985, and also, as already stated above, in view of Order XXI Rule 95 CPC, the order in the said C.R.P. is binding on the appellants.

21. It is an old saying that the difficulties of the



litigant in India begin when he has obtained a decree. This evil was noticed as far back in 1872 by the Privy Council in relation to the difficulties faced by the decree holder in execution of the decree. Even after more than a century and a half, there has been no improvement and still the decree holder faces the same problem what was being faced in the past. A litigant coming to Court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. What he or she primarily wants from the Court of Justice is the relief and, if it is a money decree, he/she wants that money what he/she is entitled for in terms of the decree, and must be satisfied by the judgment debtor at the earliest possible without fail, keeping in view the reasonable restrictions/rights, which are available to the judgment debtor under the provisions of the statute or the Code, as the case may be. The instant case is a live illustration of the situation, as the decree holder is yet to enjoy the fruits of the decree even after a lapse of nearly four-and-a-half decades i.e., in a litigation of the year 1978 in O.S.No.875 of 1978. All the attempts made by the judgment debtor and his successors for the past four-and-a-half decades to stall the execution of a civil decree are hereby despised.

22. In view of the elaborate discussion and for the reasons stated as above, this Court deems it fit to dismiss this Second Appeal with appropriate costs. Accordingly, this Second Appeal is dismissed with costs of Rs.10,000/-, to be payable by the appellants to the respondents, as one unit, within a period of one month from the date of receipt of a copy of this order. As such, the judgment and decree, dated 28.04.2021, passed in A.S.No.15 of 2017 are confirmed. If the amount is not paid by the appellants to the respondents within the time stipulated as above, it is open for the respondents to initiate revenue recovery proceedings against the appellants through the District Collector concerned. Consequently, the connected C.M.P.Nos.14715 and 14717 of 2021 also stand dismissed.

Sd/-

Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

RR/dixit



To

1. The Subordinate Court,
Mettupalayam.

2. The District Munsif cum Judicial Magistrate,
Mettupalayam.

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The Section Officer,
V.R. Section, High Court,
Madras.

+2cc to Mr.S.S.Rajesh, Advocate SR.No.6280

+1cc to Mr.C.Veeraraghavan, Advocate SR.No.6248

S.A.No.750 / 2021

SRA(CO)
GN(25/02/2022)