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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 21.03.2022
PRONOUNCING ORDERS ON : 30.03.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Second Appeal No.234 of 2014
and MP No.1 of 2014

Cannou Parimala Rani @
Mary Rosay Parimala Rani ..Appellant/9th Respondent

..Vs..

1.Ilamathy

2.Indumathy (Minor)

3.Minor Sathya
(R2 & 3 respondents are
represented by their mother R1)

4.Kuppumal

5.Kaliyaperumal

6.Rajeswari

7.Minor Pakkiam

8.Minor Thangam

9.Minor Vasanthi

10.Minor Kumaran
(R7 to R10 minors rep.by mother &
natural guardian Rajeswari (6th respondent)

11.Suriyakala ..Respondents/Petitioners 2 to 4 and
Respondents 1 to 8

Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 20.12.2013 made in A.S.No.4 of 2011, on the file of the II Additional District Judge, Pondicherry confirming the Judgment and Decree dated 30.06.2009 made in E.A.No.80 of 1995 in E.P.No.116 of 1994 in O.S.No.293 of 1987 on the file of the Principal Sub-Judge, Pondicherry.



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For Appellant : Mr.T.R.Rajagopalan
Senior Counsel
for Mr.D.Ravichander

For Respondents: Mr.T.P.Manoharan
Senior Counsel
for Mr.K.P.Jotheeswaran
for RR1 to 3

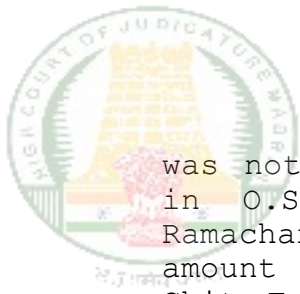
J U D G M E N T

The present Second Appeal is a painful pointer of how a litigant starts facing misery after obtaining a decree from the Court. This Court is reminded of the words of the Hon'ble Supreme Court in N.S.S. Narayana Sarma v. Goldstone Exports (P) Ltd., reported in 2002 1 SCC 662 wherein, the Hon'ble Supreme Court held that "indeed his difficulties in real and practical sense arise after getting the decree". The Code of Civil Procedure is designed to facilitate justice and further its ends. Unfortunately, in many cases, the procedure acts like a penal enactment where the litigant is actually punished and made to run from pillar to post to get the fruits of the decree. This Court is forced to start this judgment with this somber note since a mortgage decree that was obtained in the year 1979 in O.S.No.499/1978, is yet to see the light of the day and 43 years has gone by. If a litigant is made to undergo this mental agony, no wonder people will lose faith in civil litigations and will resort to short cut methods to achieve even those reliefs to which they are rightfully entitled to. As the facts of this case unfurls, one will understand how difficult it is to get a decree executed with the available procedural law in force.

2. The 9th respondent in the petition filed by the respondents 1 to 10 to remove the obstruction, is the appellant in this Second Appeal.

3.This case has a chequered history and the same is briefly stated hereunder:

One Sivabakkayam was the owner of the subject property which is a house property. She executed a donation deed dated 08.07.1965 and thereby she gave the life interest in favour of her daughter Kuppammal and the vested remainder was given absolutely in favour of her grandsons Ramachandran @ Krishnaraj and Kaliaperumal @ Raja. The said Ramachandran took a loan from Visalam Chit Funds Company and his wife stood as a surety for the said loan. Ramachandran mortgaged the entire suit property in favour of Visalam Chit Funds Company. Since the loan amount



was not repaid, a suit was filed by Visalam Chit Funds Company in O.S. No. 499 of 1978 for recovery of money against Ramachandran and his wife. The said suit was decreed. Since the amount was not repaid even after the decree was passed, Visalam Chit Funds filed E.P. No. 590 of 1979 to bring the mortgaged property for sale and to recover the decree amount. The property was brought for auction sale.

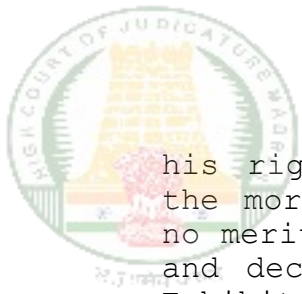
4. Aggrieved by the same, the said Kuppammal filed EP.No.1117 of 1980 in E.P.No. 590 of 1979 under Order 21 Rule 58 r/w Section 47 of C.P.C., to release the property from the mortgage and to set aside the sale. This petition came to be dismissed on the ground of maintainability through an order dated 05.02.1981 and Exhibits P2 and P3 have been marked to substantiate the same.

5. Aggrieved by the above order, Kuppammal filed A.S.No.50 of 1981 and this Appeal was also dismissed through Judgment and Decree dated 12.03.1981. The same is substantiated through Exhibits P6 and P7. The Appellate Court reiterated the findings of the Execution Court.

6. Thereafter, Kuppammal and Kaliaperumal filed E.A.No.1209 of 1981 against Visalam Chit Funds Company and the legal representatives of Ramachandran, under Section 47 of C.P.C., to declare that Kuppammal has a life interest over the property and Kaliaperumal is entitled for his share as the absolute vested remainder. This petition was also dismissed on the ground of maintainability through order dated 03.12.1981. This is substantiated through Exhibits P4 and P5.

7. The subject property was sold in Court auction in favour of one Vedachalam and sale certificate dated 01.10.1982 was issued in his favour and the same was marked as Exhibit P8. Under Ex.P9 delivery report dated 11.6.1983, the subject property was delivered to the said Vedachalam. This delivery was also recorded by order dated 29.04.1985 by the executing Court and the EP was terminated. The same is evident from Ex.P10.

8. Once again Kaliaperumal filed O.S.No.405 of 1982 before the Principal Sub Court, Pondicherry against Sri Visalam Chit Funds Company, Kuppammal, legal representatives of Ramachandran and the auction purchaser Vedachalam praying for the relief of declaration that he is entitled to the subject property under the donation deed, to set aside the order of attachment and the Court auction sale of the suit property and for a permanent injunction restraining the defendants from interfering with the possession and enjoyment of the suit property. This suit was contested and the Trial Court found that the said Kaliaperumal has no right to question the sale since he has already waived



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his right by paying the money towards partial satisfaction of the mortgage decree. The Trial Court also found that there was no merit in the suit and the suit was dismissed through judgment and decree dated 29.04.1983. The same is substantiated through Exhibits P13 and P14.

9.The above said Kaliaperumal filed an Appeal in A.S.No. 101 of 1983 before the First Additional District Judge, Pondicherry and the Appeal was also dismissed through judgment and decree dated 29.09.1984. The Appellate Court specifically found that the said Kaliaperumal and Kuppammal were aware about the auction proceedings and sale and they never attempted to stop or question the auction proceedings by claiming for ownership over the subject property and the mortgage decree became final. The Appellate Court also found that Ramachandran had incurred the debt for the benefit of the family and that is the reason why Kaliaperumal did not raise any objection when the suit was decreed and the property was brought for sale. The Appellate Court also took into consideration the interest of the auction purchaser and ultimately confirmed the judgement of the Trial Court. The same is substantiated through Exhibits P15 and P16. It is brought to the notice of this Court that S.A.No. 1223 of 1985 which was filed against the Judgment and decree of the Lower Appellate Court was also dismissed on 12.03.1985.

10.The auction purchaser Vedachalam sold the subject property in favour of Ramanathan and Ilamathy through two registered sale deeds dated 05.05.1986 and handed over possession of the property. The same is evident from Exhibits P11 and P12.

11.Kaliaperumal filed yet another suit in OS.N0.872 of 1986 before the IInd Additional District Munsif Court, Pondicherry against the said Ramanathan and Ilamathy seeking for the relief of Permanent Injunction. In the said suit, the said Kaliaperumal obtained an ex parte interim injunction order and he is said to have trespassed into the suit property on 13.08.1986 on the strength of the interim injunction order. The interim injunction was subsequently vacated through order dated 020.9.1986 and the same is evident from Exhibits P17 and P18.

12.Ultimately, the suit itself came to be dismissed through judgment and decree dated 25.1.1988. The Trial Court took into consideration the earlier orders passed in different proceedings and rendered a finding to the effect that the suit is barred after the validity of the Court auction has become final. The Trial Court also found that the delivery of possession was recorded by the Execution Court and the auction purchaser was put in possession of the property and hence, Kaliaperumal will not be entitled for the relief of permanent injunction.



13. Unfortunately, the story did not end here. Kuppammal continued the relay race by taking the baton from Kaliaperumal and she filed the suit in O.S.No. 57 of 1987 before the Principal Sub Court, Puducherry against Sri Visalam Chit Funds Company, legal representatives of Ramachandran, auction purchaser Vedachalam and Ramanathan and Ilamathy, the subsequent purchasers and she sought for the relief of declaration to declare that she is the life interest holder of the suit property under the donation deed, to declare that the decree passed in O.S.No.499 of 1978 is null and void and not binding on her, to declare the auction sale dated 07.06.1982 in favour of Vedachalam as null and void and to declare the sale deeds executed by Vedachalam in favour of Ramanathan and Ilamathy as null and void and she also claimed the relief of permanent injunction restraining Vedachalam, Ramanathan and Ilamathy from interfering with her possession and enjoyment of the subject property.

14. The above suit was dismissed for default through judgment and decree dated 22.02.1989. The same is evident from Exhibits P21 and P22.

15. The flurry of litigations on the side of Kuppammal and Kaliaperumal came to an end with the above suit. However, by taking advantage of the interim injunction order passed in O.S.No.872 of 1986, they managed to take possession of the property. Therefore, the subsequent purchasers viz., Ramanathan and Ilamathy were forced to file a suit in O.S.No.293 of 1987 before the Principal Sub Court, Pondicherry against Kuppammal, Kaliaperumal and the legal representatives of Ramachandran and they sought for the relief of ejectment and for delivery of possession of the subject property and for mesne profits.

16. The above suit was contested on merits and the suit was decreed through judgment and decree dated 22.02.1989. This decree was put to execution in E.P.No. 116 of 1994. The said Kuppammal further complicated the execution by selling the property in favour of one Suryakala through sale deed dated 26.11.1993. In the said sale deed, she also included the legal representatives of Ramachandran and Kaliaperumal. The same is evident from Ex.R3.

17. During the pendency of the execution proceedings, EA.No. 80 of 1995 was filed under Order 21 Rule 97 of C.P.C., to remove the obstruction caused by third parties. By the time this petition was filed, Suryakala sold the property in favour of the appellant in this Second Appeal through sale deed dated 19.01.1995 which was marked as Ex.R4.



18. The execution Court considered the obstruction petition and the counter filed by the third party obstructors and also conducted a trial. Ultimately, through judgment and decree dated 30.06.2008, the petition was allowed and the obstruction caused by Suryakala viz., the 8th respondent and the subsequent purchaser viz., the 9th respondent was directed to be removed and they were further directed to handover possession of the suit property within a month.

19. Aggrieved by the same, the 9th respondent filed A.S.No.4 of 2011 and the Lower Appellate Court on re-appreciation of the evidence available on record and after considering the findings of the Trial Court, dismissed the appeal through judgment and Decree dated 20.12.2013 and confirmed the order passed by the Execution Court. Aggrieved by the same, the present Second Appeal has been filed by the subsequent purchaser, viz., the 9th respondent.

20. This Court framed the following substantial questions of law:

a) Whether both the Courts below failed to see that one Kuppammal had a life interest in the subject property and the vested remainder was given in favour of her grandsons Ramachandran alias Krishnaraju and Kaliyaperumal alias Raja and for the decree suffered by Ramachandran alias Krishnaraju, whether the entire property can be sold on an auction sale without the life estate holder and one of the vested remainder namely Kaliyaperumal alias Raja being a party to the proceedings ?

b) Whether the appellant, who had purchased the entire property will be entitled to sustain her possession till the life time of Kuppammal and will also be entitled to sustain the life interest and title in the suit property, insofar as the share of one of the vested remainder namely Kaliyaperumal alias Raja ?

c) Where the executor of the donation deed, marked as Ex.R2, had intended to vest the property in a particular manner, whether it will be permissible for the Courts to virtually rewrite the intention of the donor in order to confirm the auction sale in favour of the auction purchaser ?

d) Whether after the auction purchase becomes absolute, the appellant and the 11th respondent who are the purchasers pendente-lite will have the right to cause obstruction in view of the bar contained



under Order 21 Rule 102 of CPC ?

21. Heard Mr.T.R.Rajagopalan, learned Senior Counsel for the appellant and Mr.T.P.Manoharan, learned Senior Counsel the respondents. This Court also carefully went through the materials available on record and the findings of both the Courts below.

22. The main focus of the argument advanced by the learned Senior Counsel appearing on behalf of the appellant, revolved around the extent to which the mortgage decree and the subsequent right of the auction purchaser will take away the rights of Kuppammal and Kaliaperumal who were not parties to the suit and whose right over the property remains intact by virtue of the donation deed dated 08.07.1965. The learned Senior Counsel submitted that the life interest conferred on Kuppammal and the vested remainder which was absolutely conferred for half share in favour of Kaliaperumal can never be disturbed and at the best, the decree holder and the auction purchaser can only get the right confined to the vested remainder on the other half of the property that was given under the donation deed in favour of Ramachandran. Consequently, even the subsequent purchaser will get the right of Kuppammal and Kaliaperumal and if at all, the auction purchaser wants to enjoy the property, he can only file a suit for partition and seek for his share that was derived by him from Ramachandran. The learned Senior Counsel further submitted that in none of the earlier proceedings including the present proceeding, this issue was gone into and on that ground, the Judgment and Decree passed by both the Courts below is liable to be interfered in this Second Appeal.

23. Per contra, the learned Senior Counsel appearing on behalf of the respondents 1 to 3 submitted that Kuppammal and Kaliaperumal individually claimed for their rights and sought for setting aside the Court auction sale and to declare the sale certificate and the subsequent sale deeds as null and void by initiating separate suits and all the suits came to be dismissed and it has also become final. Hence, even Kuppammal and Kaliaperumal have lost their right to claim for any relief against the auction purchaser and the respondents 1 to 3 and the subsequent purchaser cannot have a better right and is bound by all the earlier orders and Judgments passed against Kuppammal and Kaliaperumal. The learned Senior Counsel also relied upon Order 21 Rule 98 (2) and Order 21 Rule 102 C.P.C., and contended that the pendente lite purchaser does not have the right to cause obstruction. The learned Senior Counsel also submitted that the earlier orders and Judgments act as res judicata and the subsequent purchaser cannot be allowed to reagitate the same issue. The learned Senior Counsel concluded his argument by submitting that the obstruction made by the subsequent purchaser



has dragged on for the past 26 years and hence, sought for the dismissal of the Second Appeal with exemplary cost.

24. There is no dispute with regard to the fact that the donation deed dated 08.07.1965 conferred a life interest on Kuppammal and vested remainder absolutely in favour of her grandsons Ramachandran and Kaliaperumal. It is an admitted case that Ramachandran had taken loan from Visalam Chit Funds and mortgage was created with respect to the entire property. The Decree passed in the suit filed by Visalam Chit Funds Company has become final. It is also admitted that E.P.No.590 of 1979 was filed to execute the Decree and the entire property was brought for sale and it was sold in favour of one Vedachalam through sale certificate dated 01.10.1982 and the property was also delivered in favour of the auction purchaser and it was recorded by the Execution Court and the proceedings were terminated by Order dated 29.04.1985. In the meantime, the applications filed by Kuppammal and Kaliaperumal under Order 21 Rule 58 and Section 47 of C.P.C., came to be dismissed as not maintainable. While dismissing the application, the Execution Court did not go into the rights claimed by Kuppammal and Kaliaperumal and deal with the merits of the case. It was merely dismissed on the ground of maintainability.

25.If the proceedings had stopped here, one can contend that there was no occasion for a competent Civil Court to go into the right of Kuppammal and Kaliaperumal and hence requires an independent consideration, as attempted to be projected by the learned Senior Counsel for the appellant. However, the facts are otherwise in this case.

26. Kaliaperumal filed O.S.No.405 of 1982 and prayed for a declaration that he is entitled to the property as per the donation deed and to set aside the attachment and the Court auction sale and for a permanent injunction restraining the defendant from interfering with the possession and enjoyment of the property. While dismissing this suit, the Trial Court rendered the following finding:

"But curiously the Plaintiff assumed that there was court attachment of the property and it was sold consequently in a public auction by the Principal DistrictMunsif in E.P.590/79 and this false assumption is the foundation for the plaint filed by the plaintiff. As the sale of the property did not take place on account of attachment proceedings in E.P.590/79 as imagined by the plaintiff and no cause of action has been made out against the Preliminary and final Decree passed by the Principal District Munsif in O.S.499/79 on 26.2.79 and 26.10.79 respectively the present suit filed on a non



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existing cause of action has to necessarily fail. The plaintiff failed to prove his case as stated in the plaint. In my opinion the plaintiff has no right to question the sale since he has already waived the right by paying the money towards partial satisfaction of the decree before the Principal District Munsif and therefore it is obvious that the suit has been filed only to gain time by protracting the execution proceedings. In the circumstance I find the issues against the plaintiff."

27. The said Kaliaperumal went on an appeal in A.S. No. 101 of 1983 against the above Judgment and the Appellate Court dismissed the appeal after rendering the following finding:

"It is clear that the plaintiff and D.7 were aware of the auction proceedings and of the sale. The plaintiff did not choose to stop the auction proceedings by raising any question of ownership of the suit property. The deceased Ramachandran is the elder brother in the family. The debt incurred by him was apparently for the benefit of the family including the plaintiff. The plaintiff felt his liability to pay the debt and he did not raise any objection for the attachment of the entire house for the debt incurred by Ramachandran. He allowed the auction of the house to be conducted. In the public auction so conducted by the court, the 8th defendant is the bonafide purchaser who has deposited the entire auction amount before court. The plaintiff is estopped from disputing the court auction. He can claim only a share in the sale price deposited into the court. Moreover delivery of the auctioned property was obtained by the 8th defendant who is a bonafide purchaser. His possession cannot be disturbed at this stage. The learned Principal Sub judge has rightly dismissed the suit. Points are answered accordingly."

28. The concurrent judgment and decree passed against Kaliaperumal was further confirmed by this Court in S.A. No. 1233 of 1985.

29. Kaliaperumal once again filed a suit in O.S. No. 872 of 1983 claiming for a decree of permanent injunction and this suit was also dismissed by Judgment and Decree dated 25.1.1988. The relevant finding of the Trial Court is extracted hereunder:

"The plaintiff herein was a party to the execution application filed for setting aside the sale under Order 21 Rule 90 C.P.C. The perusal of Ex. A1 copy of the Order makes this point amply clear that he was the party in the E.P. proceedings



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and the only remedy available in view Order 21 Rule 92 Sub Rule 3 of C.P.C. is to agitate in the higher forum and not by way of filing separate suit like this. Order 21 Rule 92 Sub Rule 3 C.P.C. expressly bars the suits of this nature. The learned counsel for the plaintiff correctly cited a decision of the Madras High Court reported in 98 Law Weekly, dt.30.11.85 at page 772 and the said decision is to the effect that the suit challenging the validity of the court-auction sale is barred after the dismissal of an application under Order 21 Rule 90 CPC. His Lordship observed as follows:

The object of Order 21 Rule 92 of C.P.C. is to seethatthe finalityis to be given to the order passed by the Court in an application filed under Order 21 Rule 90 C.P.C.

The perusal of Ex. A1 shows that the plaintiff herein admitted that himself and his mother filed an execution application for setting-aside the sale and it was dismissed. Ex. B1 the delivery receipt would show that the plaintiff

was removed from the suit property and possession was handed over to the auction-purchaser, Vedhachalam after the dismissal of the application on the same set of facts an injunction suit cannot be filed."

30. Kuppammal filed another suit in O.S. No. 57 of 1987 and she claimed for a declaration that she is the life estate holder under the donation deed and that the decree made in O.S. No. 499 of 1978 is null and void and not binding on her and that the auction sale in favour of Vedachalam was null and void and the subsequent sale deed executed in favour of the 1st and 2nd respondents are null and void and she also claimed for the relief of permanent injunction. After filing this suit, Kuppammal did not contest the case and it was dismissed for default on 22.2.1989.

31. It is clear from the above proceedings that Kuppammal and Kaliaperumal had taken all steps to establish their right in the property and all the suits came to be dismissed. This Court is not testing the findings rendered in the above suits. Even if it is taken for the sake of argument that the above findings are erroneous, it is certainly binding on Kuppammal and Kaliaperumal since the judgment has been passed in their suits by a court of competent jurisdiction. Hence the attempt made by the Learned Senior Counsel to project a case as if Kuppammal and Kaliaperumal are innocent and that their rights cannot be taken away, completely falls flat.

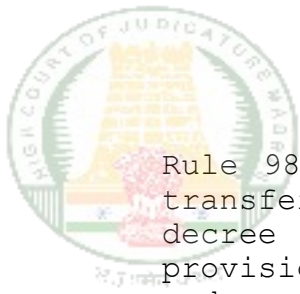


32. Both the Courts below have properly dealt with these issues and rendered their findings to the effect that the Judgment and Decree passed in the earlier suits against Kuppammal and Kaliaperumal will bind the subsequent purchasers also. In view of the same, Kuppammal and Kaliaperumal have completely lost their rights in the subject property and since all the earlier Orders and Judgments touching upon their rights over the subject property have gone against them, they no more retain their rights as conferred under the donation deed dated 8.7.1965.

33. The rule of res judicata prevents the parties to a judicial determination from litigating the same question again, even if the determination is demonstrably wrong. When the proceedings have attained finality, parties are bound by the Judgments/Orders and are estopped from questioning it. An adjudication is conclusive and final not only as to the actual matters determined but also to every other matter that is incidental or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action. Parties can never be permitted to start afresh with a new litigation just because the party entertains some new views or new version. If this is permitted, there will be no end to litigation. If Kuppammal and Kaliaperumal are allowed to continuously agitate their rights over the property till they get satisfied on the findings regarding their rights to the property, it will become an endless process. Ultimately what is important is that, the judgment of the competent Court concerning the rights of the parties have reached finality and the reasons given in support of the judgment is not really relevant. The first, second and third substantial questions of law are answered accordingly, against the appellant.

34. There is yet another reason for this Court to conclude that Kuppammal and Kaliaperumal are not innocent and they are armed with sufficient legal advice. After having lost in all the proceedings initiated by them, they went ahead and sold the property in favour of one Suryakala through a registered sale deed dated 26.11.1993. The said Suryakala in turn sold the property in favour of the appellant through registered sale dated 19.01.1995. They both started causing obstruction to the 1st and 2nd respondents 1 to 3, who were the purchasers from the auction purchaser.

35. Both Suryakala and the appellant are purchasers pendente lite. They cannot get any additional right than what their vendor possessed. As rightly contended by the learned Senior Counsel appearing on behalf of the respondents 1 to 3, Order 21



Rule 98 (2) r/w Order 21 Rule 102 clearly bars a pendente lite transferee from resisting or obstructing the execution of a decree of the possession of the immoveable property. These provisions are meant to prevent unfair, inequitable or undeserved protection for a pendente lite purchaser. If this is permitted, every time the decree holder seeks for the execution of the decree, the property will be transferred to a new transferee and he will offer resistance or cause obstruction and this game will never end. Thus, Order 21 Rule 102 is an absolute bar for the appellant and the 11th respondent to cause obstruction and hence both the Courts below were perfectly right in ordering for the removal of obstruction and for handing over possession to the respondents 1 to 3. The 4th substantial question of law is answered accordingly against the appellant.

36. In view of the above discussion, this Court finds that there are absolutely no merits in this Second Appeal. That apart, the 11th respondent, the appellant and their vendors have indulged in abuse of process of Court and they have virtually toyed with the procedural law and successfully dragged on the proceedings for more than 40 years. It will be a mockery of justice if any more indulgence is shown by this Court. This Court taking into consideration the conduct of the parties is also inclined to impose compensatory cost for the false and vexatious claims and also for causing such a humongous delay in keeping the proceedings pending for more than four decades.

37. In the result, the Second Appeal deserves to be dismissed and accordingly, the Judgment and Decree of both the Courts below stands confirmed. Considering the facts and circumstances of the case, this Court is inclined to impose a consolidated exemplary cost (cost of litigation, compensatory cost and cost for causing delay) of a sum of Rs.50,000/- [Rupees Fifty Thousand only] payable by the appellant, 4th respondent, 5th respondent and the 11th respondent jointly and severally to the credit of the suit. The Execution Court is directed to effect delivery and handover possession of the suit property to the respondents 1 to 3 on or before 27.4.2022 and submit a compliance report before this Court.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

KP



To

1.The II Additional District Judge, Pondicherry.

2.The Principal Sub-Judge, Pondicherry.

Copy To:

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

2.The Section Officer,
Judicial Section, High Court, Madras.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.21301

+1cc to Mr.K.P.Jotheeswaran, Advocate, S.R.No.21206

Second Appeal No.234 of 2014

PA(CO)
SB(07/04/2022)