



S.A.No.360 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.360 of 2021

and C.M.P.No.6698 of 2021 and 16024 of 2021

V.Valarmathi

... Appellant / Plaintiff

Vs

1. The Branch Manager
Tamil Nadu Industrial Investment
Corporation Ltd,
Special Recovery Branch,
D No.3-6, Vaalmeeki Street,
Subramanya Nagar,
Salem – 636 004.

2. K.Murugesan

Parvathi (died)

3. V.Arivuselvam

4. V.Manoharan

5. P.Mangairkarasi

6. V.Jayaraman

... Respondents/Defendants

[*cause title accepted vide order of
court dated 19.03.2021 made in C.M.P.No.5190 of 2021
in S.A.Sr.No.24766 of 2021]



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Prayer: Second Appeal is filed under Section 100 of C.P.C against the Decree and Judgment dated 08.09.2014 made in A.S.No.17 of 2012 on the file of the learned Additional District Court, Dharmapuri confirming the judgment and decree dated 21.02.2012 made in O.S.No.30 of 2008 on the file of the Sub Court, Harur (Transferred from O.S.No.79 of 2004 on the file of the Sub Court, Dharmapuri).

For Appellant : Mr.N.Manokaran

For Respondent-1 : Mr. K.Magesh

For Respondent-2 : Mr.V.R.Rajasekaran

For Respondents
3 to 6 : Served – No Appearance

JUDGMENT

The plaintiff, who has concurrently lost before both the Courts below, has filed this second appeal, which has been admitted on the following substantial questions of law:



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“Is the judgment and decree of the first Appellate Court dated 08.09.2014 made in A.S. No. 17 of 2012 post remand is vitiated due to disregarding directives of this Court qua trial of issues post remand particularly regarding adherence to principles laid down by Hon'ble Supreme Court in Kerala Financial Corporation principle i.e., 2011 (6) CTC 554 (SC)?.

2. The facts which has led to the filing of the above second appeal are briefly set out herein below and the parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff had filed the suit for the following reliefs:

(i) To declare the mortgage of schedule-A properties by Vedippan in favour of the defendants as illegal, void ab initio and unenforceable;



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(ii) To declare the proposal auction sale of the Schedule-A and B properties by the defendants as void ab initio, arbitrary and illegal.

(iii) To grant permanent injunction restraining the defendants from proceeding any further against the schedule A and B properties on the basis of the impugned auction proceedings and;

(iv) To grant costs of suit to the plaintiff.

4. It is the case of the plaintiff that she and one D.Sundararajan were partners of the firm M/s.Sri Vaitheeswaran Pipes”. The firm had obtained a loan from the first defendant and had mortgaged the “B” schedule property as security. “A” schedule property is the ancestral property of Vediappan, the father of the plaintiff and he has mortgaged the property as collateral security for repayment of the said loan. It is the further case of the plaintiff that he has mortgaged the property without the consent of the other



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co-owners and to the derogation of their rights.

5. On 13.06.1999, Sundarrajan had died and with that, the Firm had come to an end. Since the plaintiff did not have the technical expertise to continue the business, the repayment of the loan, which was being paid regularly during the life time of D.Sundararajan, had fallen into arrears after his demise.

6. It is the case of the plaintiff that “B” schedule property is a valuable property and the proceeds from its sale would fetch sufficient income to discharge the loan. On 21.07.2001, Vediappan had died, leaving behind him surviving his wife, sons and daughters, namely defendants 4 to 7 and the plaintiff.

7. The plaintiff would submit that in the first week of May 2004, she had come to learn that the first defendant was planning to bring “A” and “B” schedule properties to sale by public auction in the last week of May 2004. No notice has been given and further the guidelines and norms set



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out by the Hon'ble Supreme Court in various pronouncements have also not been followed up. Therefore, the plaintiff had come forward with the suit in question.

8. Pending the suit, the plaintiff had conducted the auction sale and the second defendant was declared as the successful bidder.

9. The first defendant had filed a written statement *inter-alia* denying the allegations contained in the plaint. It is their contention that on 28.05.2004, auction sale was held and prior to the auction sale, the first defendant had given publication in daily Thanthi on 15.05.2004 and the said Vediappan was also issued with notice on 17.05.2004. They would also submit that though the death of Vediappan was prior to the notice and it was only on 05.02.2004 that his death was informed by his wife to the first defendant. The first defendant would further submit that they had brought the property to sale, exercising their rights under Section 29 of Tamil Nadu State Finance and Corporation Act, 1951 and no exception could be taken to



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the same. Further, they had questioned the capacity in which the plaintiff was contesting the suit as to whether she was instituting the suit in her personal capacity or as a partner of the firm. The first defendant sought for dismissal of the suit on the ground of non joinder of necessary parties as well.

10. After the legal representatives were brought on record, the seventh defendant had filed a written statement *inter-alia* contending that “A” schedule property which has been mortgaged by Vediappan is a joint family property. The first block of the schedule was allotted to Vediappan under a registered Partition Deed dated 24.01.1957 and the second block was purchased in the name of Vediappan on 12.07.1972 as kartha of the joint family. The property was mortgaged on 22.08.1973 by Vediappan and defendants 4, 5, 6 and 7 for loan that has been taken for putting up the superstructure.

11. An additional written statement has been filed by the first



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defendant, wherein they have stated that the defendants and the plaintiff have unsuccessfully instituted two suits, namely O.S.No.3 of 2009 on the file of the Sub Court Harur and O.S.No.649 of 2004 on the file of the District Munsif, Harur, both of which were dismissed. It is also their contention that on 03.03.2004, the second defendant had taken possession of the “B” schedule property and the first defendant has the right to bring the “B” schedule property for sale under Sections 29 and 99 of the State Financial Corporation Act. Further, the plaintiff has failed to settle the dues under one time settlement scheme. Therefore, they sought for dismissal of the suit.

12. The learned Subordinate Judge, Harur had framed the following issues:

1. Whether the suit framed is maintainable?

2 Whether the plaintiff is entitled to the relief of declaration as the mortgage of 'A' Schedule



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property by Vedyappan in favour of defendant as voidab initio and un-enforceable?

3. Whether the plaintiff is entitled to the declaration that the proposed auction sale of the suit properties are void-ab-initio and un- enforceable?

4. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

5. The plaintiff examined PW1, Ex.A.1 to A45 marked. The defendant examined DW1 & DW2, Ex.B.1 & B2 marked.

13. The plaintiff had examined herself as P.W1 and marked Exs.A1 to 45 and the defendants had examined one Murugesan, Branch Manager, TIIC Ltd as D.W1 and the 7th defendant was examined as D.W2 and marked Exs.B1 and B2.



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14. The suit was dismissed by the learned Subordinate Judge, Harur, by her judgment and decree dated 21.02.2012. Challenging the same, the plaintiff had filed A.S.No.17 of 2012 on the file of the Additional District Court, Dharmapuri and the learned Additional District Judge, by her judgment and decree dated 08.09.2014 was pleased to dismiss the appeal. This concurrent judgment and decree was challenged by the plaintiff before this Court in S.A.No.22 of 2015. By judgment and decree dated 05.12.2019, this Court had allowed the appeal and remitted the matter back to the lower appellate Court with certain directions on what the appellate Court should, upon remand, do. After remand, the learned Additional District Judge, Dharmapuri by judgment and decree dated 29.10.2020 was pleased to once again dismiss the appeal and it is this Judgement and decree which is the subject matter of challenge before this Court.



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15. The substantial question on which this second appeal has been admitted has been set out supra.

16. The matter was extensively argued by Mr.N.Manoharan, learned counsel for the appellant, who stated that the evidence of D.W.1 clearly shows that the procedure as laid down by the various dicta of the Hon'ble Supreme Court has not been followed. Notice of the auction sale has been issued to a deceased person, despite the fact that the first defendant had come to know about his demise nearly three months prior to issuing the notice. That apart, the plaintiff had brought an offer for a sum of Rs.17,78,000/- for "B" schedule property. However, ultimately, the same has been sold for just a sum of Rs.7,70,000/- In fact, the auction was accepted for a sum of Rs.7,70,000/- and later, it was enhanced in a private negotiation between the defendants 1 and 2 to a sum of Rs.12,10,000/-. He would



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also draw the attention of this Court to the information that the plaintiff has received from the Sub Registrar Office, Sooramangalam as well as from the defendants to his query under the Right to Information Act that the market value of the property is a sum of Rs.615/- per sq.ft. However, the property has been purchased at a rock bottom price at Rs.17.86 per sq feet. The defendants' witness has also admitted this fact during the cross examination. He would further submit that without following the guidelines, "B" schedule property was sold to the second respondent. With reference to the guidelines for bringing the property to sell by public auction, he would rely on the following judgments:

<i>Sl.No</i>	<i>citation</i>
1	1995(4) SCC 495 [Chairman and MD, SIPCOT and Others Vs.Contramix Pvt.Ltd and Another
2	2002(3) SCC 496 Haryana Financial Corporation and Another Vs Jagdamba Oil Mills and Another
3	2004(7) SCC 151 Gajraj Jain Vs State of Bihar and Others
4	2005(4) SCC 456



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<i>Sl.No</i>	<i>citation</i>
	Karnataka State Industrial Investment and Development Corporation Ltd Vs- Cavalet India Ltd and Others
6	2011(4) SCC 171 Kerala Financial Corporation Vs Vincent Paul and Another.

He would further submit that "A" schedule is an ancestral property and had been mortgaged to a Cooperative Society under Ex.B1. The "B" schedule property is the property of Vediappan and not the property of Firm and therefore, the defendants have erred in following the procedure under Section 29 of the Tamil Nadu State Finance and Corporation Act, 1951 and they ought to have brought the property for sale following the provisions of Section 31 of the aforesaid Act. He would further submit that the judgment of this Court dated 05.12.2019 in S.A.No.22 of 2015 has been given a total go-by by the learned Additional District Judge, Dharmapuri, while disposing of the suit A.S.No.17 of 2012. A mere perusal of the judgment in S.A.No.22 of 2015 would clearly show that this Court has dealt with the merits of the case and had remitted the matter back to the appellate Court only on

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account of the fact that the documents which have been filed under the provisions of Order 41 Rule 27 of Code of Civil Procedure Code have been simply rejected by the learned Judge and this Court has considered these documents to come to the conclusion that the sale which had been conducted was a clear breach of the guidelines issued by the Hon'ble Supreme Court.

17. Mr.K.Magesh, learned counsel appearing on behalf of the first respondent would submit that the one time settlement offer given by the plaintiff could not be proceeded with since he has not come forward to give his concrete offer. That apart, it is the contention of the second defendant that the plaintiff had failed to prove that “A” schedule property is the ancestral property. He would further argue that the judgement of the Hon'ble Supreme Court upon which the plaintiff would place great reliance, namely **2011 (4) SCC 171 [Kerala Financial Corporation Vs. Vincent Paul and Another]**, is the



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judgment which has been passed after the disposal of the instant suit.

Therefore, it is the contention of the respondents that the judgment under appeal is in order.

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

19. The present second appeal arises out of a judgment passed by the learned Additional District Judge, Dharmapuri to whom the matter had been remitted by orders of this Court dated 05.12.2019 in and by which the parties were directed to resolve their dispute. The present second appeal is the second round of litigation in as much as this Court in the earlier second appeal namely S.A.No.22 of 2015 had remanded the matter back to the first appellate Court to receive the additional documents on file and appreciate the case on hand based upon the documents that were directed to be received. A few of the findings of



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this Court in the earlier second appeal has to necessarily be set out herein below in order to demonstrate as to how the learned Additional District Judge, Dharmapuri has totally given a go-by to the dicta laid down in the judgment of this Court.

“21....The Hon'ble Supreme Court had in various cases relating to sales by the State Financial Corporations had held that there should be a minimum of 30 days gap between the public notice and the actual sale, so one of the essential pre-conditions prescribed by the Hon'ble Supreme Court had been violated.

22. Evidence of D.W.1 would also show that the sale was held without fixing any upset price. The sale price is less than the guideline value of the property on the date of the auction. It is also conceded that Vediappan, the mortgagor/guarantor had died. Though his death was informed to the first defendant only on 05.02.2004, the notice dated 17.05.2004 for the auction sale was issued to him. This is also in violation of the guidelines prescribed



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by the Hon'ble. Supreme Court in various cases, the latest being in Kerala Financial Corporation v. Vincent Paul and Another reported in 2011 (4) SCC 171. It is also seen from the judgment of the Hon'ble Supreme Court in Subhransu Sekhar Padhi v. Gunamani Swain and others, reported in (2014) 12-50C 368, the Hon'ble Supreme Court had held that the scope of Sections 31 are different and the property of the guarantor mortgaged with State Financial Corporation, can only be dealt the following procedure under Section 31 of the Financial Corporation Ltd Admittedly, in the case on hand the procedure prescribed under Section 31 of the State Financial Corporation Act, has not been, adopted. No Application has been filed before the District Court seeking sale of the property.

24.. A perusal of the evidence of D.W.1 would show that none of the above guidelines issued by the Hon'ble Supreme Court have been followed by the first respondent. However, the Courts below have not considered the entire suit in the right



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perspective. Though the information obtained from the State Financial Corporation, viz. the first respondent regarding the conduct of the auction sale and breach of the guidelines issued by the Hon'ble Supreme "Court were attempted to be produced, the Lower Appellate Court, on erroneous grounds, rejected the said Application. The conclusion of the Lower Appellate Court that a suit is not Maintainable, in my considered opinion, is erroneous. A Suit is a general remedy and a Writ Petition under Article 226 is for special remedy.

Writ Petition could be maintained only ran alternative remedy is not efficacious. That does not however mean that if a Writ Petition would lie, a suit would not lie”

Therefore, a mere reading of the above findings would clearly show that this Court had dealt with the appeal on merits. This Court had held that there was interval but the advertisement of the auction sale. That apart provisions of Section 31 of the State Finance Corporation Act had not been followed for the sale of the “B” schedule property. This Court



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has also found fault with the appellate Court for not following procedure. This is also evident from the substantial questions of law that had been framed by this Court in the earlier appeal, which reads as follows:

“1. Whether the Courts below were right in dismissing the suit by holding that the remedy for the appellant is only to file a writ petition and not a suit?

2. Whether the right of the the appellant to file a writ petition would amount to an implied bar for a suit in terms of Section 9 C.P.C.?

3. Whether the Courts below were right in holding that the first defendant has got right to proceed against the guarantor's property under Section 31 of the State Finance Corporation Act?

After the appeal was remitted back to the learned Additional District Court, Dharmapuri, the learned Judge has totally overlooked the



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findings of this Court and a mere perusal of the judgment would indicate the total non application of mind on the part of the learned Judge. The learned Judge has not even comprehended the issue that was the subject matter of appeal before him. This is evident from the following observations of the learned Judge.

14.iii) *The Ex.B1 23.10.1991 Vediappan and others executed a mortgage deed in favour of Harur Co-operative Housing board certified copy, the averments in nutshell are as follows: Vediappan (1), his wife Parvathi (2), his son Arivuselvam (3), his son ADJ Court, Dharmapuri, [A.S.No. 17/2012](#), Dated: 29.10.2020 Manoharan (4), his son Rajendran (5), his son Jayaraman (6) were **executed a mortgage deed infavour of Harur Co-operative Housing Board Ltd. Now, the present appellant is challenging the said mortgage deed and filed a suit for declare the mortgage deed as null and void.***



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20. The operative portion of the judgment starts from paragraph

No.14(vi) which reads as follows:

“14.vi. The dispute between the parties may classified in two ways. First, The A and B schedule properties whether ancestral property or self acquired property of Vediappan? Second, the plaintiff/appellant basic point for declaration either co-parceners interest or joint family interest in the A, B schedule properties? No doubt the plaintiff is daughter of said Vediappan. The plaintiff/appellant has not filed any suit for partition for her legal share, she filed only the present suit for declaring the mortgage deed as void.

21. Therefore, the above extracts would clearly prove that the appellate Court had not disposed of the first appeal in tune with the terms of the remand. The second appeal is therefore allowed and the matter is once again remitted back to the learned Additional District Judge, Dharmapuri to dispose of A.S.No.17 of 2012 on the lines of the judgment in S.A.No.22 of 2015 within a period of two months from the

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date of receipt of a copy of this order and report. The records shall also be immediately forwarded back to the Appellate Court. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No
Speaking order/non-speaking order
srn

To

1. The Additional District Court, Dharmapuri
2. The Sub Court, Harur
3. The Section Officer, V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

srn

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