



C.R.P.(MD) No.171 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
06.04.2023	30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.171 of 2023

and

CMP(MD)No.802 of 2023

1.Muthurama Subramanian

2.Navaneetha Krishnan

... Petitioners/Petitioners/
Respondents 4&5/3rd parties

Vs.

K.Ramu Reddy (Died)

... 1st Respondent/2nd Plaintiffs

1.Vala Guruvan

... 2nd Respondent/2nd Respondent/
2nd Respondent/2nd Defendant

R.Seetha Lakshmi (Died) (Exonerate)

... 3rd Defendants

2.Subbulakshmi

3.Sudhamani

4.R.Seenivasaperumal

... Respondents 4 to 6/Respondents 4 to 6/
LRs of the 2nd plaintiff

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition by setting aside the fair and decreetal order made in I.A.No.371 of 2022 in



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O.S.No.294 of 2011 dated 15.11.2022 on the file of the Additional District Munsif Court, Kumbakonam.

For Petitioner : Mr.T.Arun Ganesh

For R3 : Mr.D.Senthil

ORDER

The petitioner has filed this Civil Revision Petition against impugned order dated 15.11.2022 which is said to have been passed by the Additional District Munsif Court in I.A.No.371 of 2022 in O.S.No.294 of 2011.

2.However, on perusing the file, it is noticed that there is no such proceedings of the Additional District Munsif Court in I.A.No.371 of 2022 in O.S.No.294 of 2011 between the petitioner and respondents were involved.

3.It appears reference to impugned order dated 15.11.2022 which is said to have been passed by the Additional District Munsif Court in I.A.No.371 of 2022 in O.S.No.294 of 2011 appears to be a typographical error in the prayer in the present Civil Revision Petition.

4.A reading of the stay petition filed indicates that the petitioner is aggrieved by the order dated 09.11.2022 passed by the District Munsif



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Court, Vadipatti, in E.A.No.28 of 2015 in E.P.No.106 of 2008 in O.S.No. 643 of 2004.

5.Arguments were also advanced both in support and against Order dated 09.11.2022 passed by the District Munsif Court, Vadipatti in E.A.No.28 of 2015 in E.P.No.106 of 2008 in O.S.No.643 of 2004.

6.By the impugned order, the District Munsif Court, Vadipatti, Madurai dismissed E.A. 28 of 2015 in E.P.No. 106 of 2008 in O.S.No. 643 of 2004 filed by petitioners under Order 21, Rule 89 of CPC read with section 47 of the CPC.

7.E.A. 28 of 2015 in E.P.No. 106 of 2008 in O.S.No. 643 of 2004 was filed by petitioners herein to set aside the court auction sale dated 20.07.1992 with respect to the petition mentioned property in E.P.No. 445 of 1990 in O.S.No.559 of 1989 and to permit the petitioners to deposit the proclamation of sale amount and to relieve the property from any liability with respect to the decree passed in O.S.No.559 of 1989 and O.S.No. 643.

8.The learned counsel for the third respondent has also placed reliance following decisions:-

1) Shantilal Kothari Vs.Sathrasala Venkatram (since deceased)



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Shatrasala Sharathbabu reported in **2020-1-L.W.561**. The relevant

portion of the order reads as under:-

“19.It is settled proposition of law that the Executing Court cannot go beyond the decree and the Execution Court cannot be a Court of Appeal to reverse the decree. The Execution Court cannot find fault with the judgment or nay question of law or fact. The Executing Court cannot sit in appeal over the ex-parte judgment of the learned Single Judge, which had been confirmed by the Supreme Court. Now, the various contentions put-forth under Section 47 CPC, have already been raised by the appellant by way of defence before the learned Single Judge as well as in the application filed by the appellant to set aside the ex-parte decree as well as before the Division Bench and finally, the findings of the learned Single Judge were confirmed by the Supreme Court. ”

2) Rahul S.Shah Vs. Jinendra Kumar Gandhi & Others reported in **2021 (2) MWN (Civil) 578**. The Head Note of the order reads as under:-

“CODE OF CIVIL PROCEDURE 1908 (5 of 1908), Section 47, Order 21, Rules 2, 11, 22, 97 & 99 – Execution proceedings – Dilatory tactics – steps to ensure unambiguous Decree – Exection Court not to go beyond Decree – Nonetheless, unwarranted practice to conduct re-trial at Execution stage – Decree-holder deprived from fruits of Decree and undue benefit extended in favour of Judgment-debtor – Timely implementation execution of Orders, prevented – Show Cause Notice issued to Judgment-debtor and oral evidence adduced by him indefinitely drag proceedings



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– Issues raised by Decree-holder or obstructionist under Order 21, Rule 97, take considerable time for determination – Courts ought to play active role in deciding all disputes during adjudication of Suits to ensure that a clear, unambiguous and executable Decree is passed – Direction to produce documents on oath with regard to rights of Third party, Appointment of Court Commissioner, issuance of Public Notice with details of Suit and Court, where it is pending, addition of necessary parties, ways to ensure a unambiguous Decree.”

3) The relevant portion of the order passed by this Court in **CRP(MD)No.2683 of 2008 dated 21.04.2015 (S.Natesan & Other Vs. K.A.Sankaran)** reads as under:-

“4.In my considered view, the petitioners cannot be permitted to avail the remedy under Section 47 of C.P.C for determining their right, if any, in respect of the suit property. The petition is not maintainable by the third parties/petitioners for the following two reasons:-

“1) The petitioners are not parties to the proceedings and Section 47 of C.P.C cannot be invoked by them; and

2) It is nobody's case that the petitioners claimed title of the suit property as the representative of either of the parties to the suit proceedings.

That being so, the remedy available to the petitioners is not by way of Execution Application, but by way of independent suit.”

4) The relevant portion of the order passed by this Court in **CRP(MD)No.1891 of 2018 dated 29.07.2020 (M.Vaithiyalingam Vs.**



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Balavingayagam and Others) reads as under:-

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“4.The learned Counsel for the petitioner is unable to convince this Court as to how a petition can be filed under Section 47 of CPC by a third party to the suit. It is well settled that a petition under Section 47 of CPC questioning the executability of the decree or taking a defence on the ground of discharge or satisfaction of decree can be filed only by a party to the suit and not by a third party to the suit. In the present case, the revision petitioner and the third respondent herein are not parties to the suit. They claimed independent title to the property. The questions whether the suit agreement was executed by the judgment debtor or not is not relevant, as far as the revision petitioner is concerned, as he claimed independent title to the suit property and his claim is not under the defendant in the suit. Though the petitioner can establish his independent title either by an independent suit or by resorting to an application under Order 21 Rule 97 of CPC, the application filed under Section 47 of CPC is not maintainable and hence, the Civil Revision Petition is devoid of any merits.”

9.By way of rejoinder, the learned counsel for the petitioners would rely on a recent decision of this Court rendered in **Arulmighu Dhandayuthapani Thirukoil, Palani, Rep. by its Joint Commissioner/Executive Officer vs. Chellappan (died) and six others** reported in **2023 (1) MWN (Civil) 602**.



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10.I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the third respondent.

11.The petitioners are the legal heirs of the defendant in O.S.No. 559 of 1989. The said suit was filed by one Valaguruvan against the petitioners' father Ramaiya. The said suit was based on a Promissory Note allegedly executed by the petitioners' father late Ramaiya in favour of said Valaguruvan for a sum of Rs.15,000/-.

12.The suit claim in O.S.No.559 of 1989 was for a sum of Rs.24,400/-. The petitioners' father late Ramaiya remained *exparte*. Therefore, O.S.No.559 of 1989 was decreed *exparte* on 19.11.1990.

13.Pursuant to the aforesaid *exparte* decree dated 19.11.1990 in O.S.No.559 of 1989, the decree holder Valaguruvan filed E.P.No.445 of 1990. Since the petitioners' father late Ramaiya, failed to appear, he was set *exparte*.



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14. Therefore, the land measuring an extent of 6.5 Cents together with 10 x 42 tiled house (420 sq.ft.) was auctioned in a Court auction on 20.07.1992 in E.P.No.445 of 1990.

15. The property was purchased by one K.P.Ramasamy as an auction purchaser (Predecessor of the contesting respondents herein). The auction purchaser deposited a sum of Rs.40,100/-. Thereafter, the sale was also confirmed on 22.02.1994. A Sale Certificate was also issued in favour of the said auction purchaser K.P.Ramasamy on 24.11.1994. E.P. was therefore terminated after recording Full Satisfaction Memo.

16. After the Sale Certificate was issued on 24.11.1994 and after E.P.No.445 of 1990 was terminated, the said auction purchaser K.P.Ramasamy filed E.A.No.596 of 1996 under Order XXI Rule 95 of Code of Civil Procedure, 1908 to take delivery of the property auctioned on 20.07.1992 from the petitioners' father Ramaiya, under Order XXI Rule 95 of CPC.

17. E.A.No. 596 of 1996 was however dismissed on 18.12.2006 in view of the limitation under Article 134 of the Limitation Act, 1963.



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Thus, Late K.P.Ramasamy, the auction purchaser of the property, lost the right to take delivery of the property pursuant to the Sale Certificate issued on 24.11.1994 in E.P.No.445 of 1990 in view of the Article 134 of the Limitation Act. Therefore, the auction purchaser K.P.Ramasamy filed O.S.No.643 of 2004 before District Munsif Court cum Judicial Magistrate Court, Vadipatti. The said suit was filed by the auction purchaser K.P.Ramasamy against the petitioners' father Ramaiya (the defendant in O.S.No.559 of 1989).

18.It appears that during the pendency of O.S.No.643 of 2004, the plaintiff (the auction purchaser K.P.Ramasamy in O.S.No.559 of 1989) died. Therefore, Ramu Reddy, the brother K.P.Ramasamy (of the auction purchaser in O.S.No.559 of 1989/Plaintiff in O.S.No.643 of 2004) was impleaded as the second plaintiff. The said suit was also decreed *exparte* on 08.12.2006, as the petitioners father Ramaiya remained *exparte*.

19.In the light of the *exparte* decree dated 08.12.2006 in O.S.No. 643 of 2004, the decree holder in O.S.No.643 of 2004 namely, Ramu Reddy, filed E.P.No.34 of 2007 to execute the *exparte* decree dated 08.12.2006 in O.S.No.643 of 2004. E.P.No.34 of 2007 was also ordered



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on 25.02.2008. The delivery of the auctioned property was taken and recorded on 13.03.2008. Meanwhile, the petitioners herein filed E.A.No. 16 of 2008 under Order XXI Rule 101 of Code of Civil Procedure, 1908 to set aside the confirmation of sale of the property in favour of auction purchaser K.P.Ramasamy (since deceased) pursuant to the order in E.P.No.445 of 1990 in O.S.No.559 of 1989. The prayer of the petitioners in E.A.No.16 of 2008 reads as under:-

"To pass an order for declaring the confirmation of sale of schedule property (suit property in O.S.No. 643 of 2004) in favour of the 1st respondent in E.P.No.445 of 1990 in O.S.No.559 of 1989 on 22.02.1994 and ordering by delivery of the possession of the same in E.P.No.34 of 2007 in O.S.No.643 of 2004 is not valid under law."

20.E.A.No.16 of 2008 was filed by the petitioners stating that their father Ramaiya the judgment debtor in O.S.No.643 of 2004 had only 1/3 share in the auctioned property and that the respective petitioners had 2/3 share in the said property which was auctioned. E.A.No.16 of 2008 was filed under Order XXI Rule 101 of C.P.C.

21.However, the above E.A.No.16 of 2008 was withdrawn and not pressed for as no E.P. was pending and delivery was taken and recorded



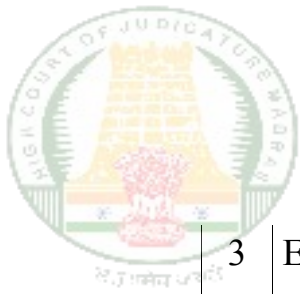
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on 13.03.2008 and therefore dismissed. Thus, E.A.No.16 of 2008 was dismissed as not pressed for.

22.It appears that after the delivery was recorded on 13.03.2008, the petitioners' father Ramaiya appears to have trespassed into the property. Therefore, E.P.No.106 of 2008 in O.S.No.643 of 2004 was filed by the said Ramu Reddy, the brother of the decree holder/plaintiff in O.S.No.643 of 2004 to take delivery of possession of the properties the petitioners' father Ramaiya. During the pendency of E.P.No.106 of 2008, the petitioners' father Ramaiya died. Therefore, these petitioners were impleaded as Respondent Nos.4 and 5 in E.P.No.106 of 2008.

23.The petitioners filed the following E.As. in E.P.No.106 of 2008 :-

<i>Sl. No</i>	<i>E.A.No.</i>	<i>Provisions</i>	<i>Status</i>
1	E.A.No.8/2014	Order XXI Rules 91 & 101 of C.P.C r/w Section 47.	Withdrawn
2	E.A.No.23/2015	To withdraw E.A.No.8/2014 with liberty to file a fresh application under Order XXI Rule 89 of C.P.C.	Allowed



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3	E.A.No.27/2015	Order XXI Rule 89 of C.P.C to ascertain the auction amount and to inform the petitioners	Dismissed on 21.08.2017
4	E.A.No.28/2015	Order XXI Rule 89 and section 47 of C.P.C to set aside the court auction sale dated 22.02.1994 and to relieve the property from any liability with respect to decree in O.S.No.559/1989 and in O.S.No. 643/2004	Dismissed on 09.11.2022

The above mentioned four applications in E.P.No.106 of 2008 in O.S.No. 643 of 2004 were also filed by the petitioners as third parties.

24.E.A.No.8 of 2014 was filed by the petitioners under Order XXI Rules 91 & 101 r/w. Section 47 of Code of Civil Procedure, 1908. However, it was withdrawn with liberty to file a fresh E.A. under Order XXI Rule 89 of Code of Civil Procedure, 1908 to set aside the sale by permitting the petitioners to deposit of the amount that the proclamation of sale together with 5% of the purchase money. Thus, the petitioners filed E.A.No.23 of 2015 for leave to file fresh E.A. E.A.No.23 of 2015 was allowed, pursuant to which, E.A.Nos.27 and 28 of 2015 came to be filed.

25.Both E.A.Nos.27 and 28 of 2015 were filed by the petitioners under Order XXI Rule 89 of the Code of Civil Procedure, 1908. Order



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XXI Rule 89 of the Code of Civil Procedure, 1908 reads as under:-

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"89. Application to set aside sale on deposit.

(1) Where immovable property has been sold in execution of a decree, any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person, may apply to have the sale set aside on his deposit in Court,-

(a) for payment to the purchaser, a sum equal to five per cent of the purchase-money, and

(b) for payment, to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immovable property, he shall not unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale."

26.As far as E.A.No.27 of 2015 is concerned, it was filed under Order XXI Rule 89 of Code of Civil Procedure, 1908 to ascertain the auction amount and to inform the petitioners. E.A.No.27 of 2015 was however dismissed on 21.08.2017.



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27. Aggrieved by the same, the petitioners filed C.R.P.(MD) No. 2083 of 2017. C.R.P.(MD) No. 2083 of 2017 was dismissed by this Court by its order dated 19.01.2021. Operative portion of order dated 19.01.2021 in C.R.P.(MD) No. 2083 of 2017 of this Court, reads as under:-

"6. Now, the petitioners had filed E.A. No. 27 of 2015 to ascertain the amount to deposit which was due on the pro-note which was the subject matter of O.S. No. 559 of 1989. Sale was confirmed in the year 1994. This petition was filed in the year 2015. Both decrees in O.S. No. 559 of 1989 and 643 of 2004 were obtained against the father of these revision petitioners/petitioners. After 21 years from the date of sale confirmation, they cannot file petition to ascertain the decree amount."

28. During the pendency of the above E.A. No. 28 of 2015 in E.P. No. 106 of 2008 in O.S. No. 643 of 2004, the petitioners filed O.S. No. 1264 of 2021 before the Sub Court, Madurai, for partition and allotment of 2/3rd share to the petitioners in the property auctioned on 20.07.1992 in E.P. No. 445 of 1990 in O.S. No. 559 of 1989 pursuant to the judgment and decree dated 19.11.1990.

29. The grounds taken in O.S. No. 1264 of 2021 were the grounds taken by the petitioners in E.A. No. 16 of 2008 in E.P. No. 34.2007 in O.S. No. 643 of 2004 as mentioned above.



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30.E.A.No.28 of 2015 was dismissed by the District Munsif Court,

Vadipatti, vide impugned order dated 09.11.2022. Operative portion of the impugned order reads as under:-

“18.மனு சொத்தில், இந்த மனுதாரர்கள்/4,5 எதிர்மனுதாரர்கள்/3ம் கோரிக்கை தரப்பினர்களுக்கு பாக உரிமை இருக்கும் பட்சத்தில் இந்த அசல் நிறைவேற்று மனு தாக்கல் செய்யப்பட்ட காலத்திலேயே அதாவது இந்த மனு அபிடவிட்டில் கடந்த 2007ம் வருடம் நீதிமன்றத்தின் மூலம் மனுச்சொத்தை சுவாதீனம் மீட்பு (Delivery) எடுக்க வந்த சமயத்தில் தான் வழக்கு விபரங்கள் தெரியவந்ததாக சொல்லிய நிலையில், மா.சா.ஆ.4ன் கீழ் அசல் வழக்கு 1264/2021ன் கீழ் காலம் கடந்து மனுச்சொத்தை பொறுத்து பாகப்பிரிவினை வழக்கு தாக்கல் செய்யப்பட்டுள்ளது.

19) AIR 2000 SC 3402 & AIR 1986 SC 2099

If the petitioner does not plead or prove that substantial injury is caused due to the material irregularity in the conduct of sale, the sale need not be set aside. Mere irregularity is not a ground to set aside the sale under Order 21 Rule 90 CPC.

IN Rahul S Shan v. Jinendrakumar Gandhi, 2021 SCC OnLine SC, 341, it has been held as follows:-

The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which



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இவ்வாறு மாண்புமிகு உச்சநீதிமன்ற தீர்ப்புரையில் சுட்டிக்காட்டுப்பட்டுள்ளதை இந்த மனுவிற்கு சமூக நீதிமன்றத்தால் கவனத்தில் எடுத்துக்கொள்ளப்பட்டது.

20) ம.சா.ஆ.4-ன்படி மனு சொத்தில் இந்த மனுதாரர்கள்/4,5 எதிர்மனுதாரர்கள்/3ம் கோரிக்கை தரப்பினர்களுக்கு பாக உரிமைமூலம் உள்ளதை நிரூபணம் செய்யும் பட்சத்தில் தான், தாவா மனு சொத்திலோ அல்லது அசல் நிறைவேற்று மனுவிலோ பரிகாரம் கேட்க இயலும் என சமூக நீதிமன்றத்தால் அறிந்து கொள்ள முடிவதால், இம்மனு நிரூபணம் செய்யப்படவில்லை என சமூக நீதிமன்றத்தால் எடுத்துக்கொள்ளப்படுகிறது.

இறுதியாக,

மனுதாரர்கள்/4,5 எதிர்மனுதாரர்கள்/3ம் கோரிக்கை தரப்பினர்களால் தாக்கல் செய்யப்பட்ட இந்த மனு காலம் கடந்து தாக்கல் செய்யப்பட்டுள்ளதாக சமூகம் நீதிமன்றத்தால் அறிந்து கொள்ளப்படுவதால் செலவுதொகையுடன் தள்ளுபடி செய்யப்பட்டு உத்தரவு பகரப்படுகிறது."

31.The sale pursuant to auction on 20.7.1992 in favour of K.P.Ramasay in the execution proceedings in the previously stands concluded. The rights flowing therefrom is protected in terms of section 65 read with Order 21 Rule 92 of the Code of Civil Procedure, 1908. They reads as under:-

Section 65 of C.P.C.	Order 21 Rule 92 of C.P.C.
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65. Purchaser's title-

Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

92. Sale when to become absolute or be set aside.

(1) When no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute:

Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within sixty days from the date of sale, or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale:



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WEB COPY 32.O.S.No1264 of 2021 has been filed by the petitioners as third parties. The rights of the petitioners for their shares in the auctioned property will be subject to the final outcome of the partition suit in O.S.No1264 of 2021 before the Sub Court, Madurai.

33.The rights of the petitioners have to be determined based on the averments in O.S.No1264 of 2021. Their rights stands protected in terms of Order XXI Rule 92(4) of Code of Civil Procedure, 1908 subject to limitation.

34.The case of the petitioners is that they are not only willing to deposit the amount that was borrowed by their father Late.Ramaiya from Valaguruvan, but were willing to pay the auction amount paid by late K.P.Ramasamy, the deceased plaintiff/decreed holder in O.S.No.643 of 2004.

35.The Court below in the impugned order dated 09.11.2022 in E.A.No.28 of 2015 filed by the petitioners in E.P.No.106 of 2008 in O.S.No.643 of 2004 has concluded that Ex.P2 House Tax Receipt in the name of the petitioners' grandfather Muthu Reddiyar and Ex.P3



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Certificate of Vadipatti Municipality, dated 03.09.2010 did not conclusively determine whether the petitioners were in possession of the suit schedule properties or not.

36.The fact however remains that E.P.No.34 of 2007 was ordered earlier on 25.02.2008. Delivery was taken and recorded on 13.03.2008. However, the petitioners' father late Ramaiya appears to have trespassed into the suit schedule properties.

37.Therefore, second execution proceedings in E.P.No.106 of 2008 was filed by the second plaintiff/decreed holder in O.S.No.643 of 2004 namely, Ramu Reddy as the legal representative of the auction purchaser K.P.Ramasamy/Decreed holder/plaintiff, to take delivery of the property, which was auctioned earlier on 20.07.1992, in respect of which, there was a Sale Certificate was issued in favour of the said auction purchaser K.P.Ramasamy on 24.11.1994.

38.The fact that E.P.No.106 of 2008 has been filed and is pending itself makes it clear that the petitioners are in possession and continue to be in possession of the auction property. Otherwise, E.P.No.106 of 2008



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would not have been kept pending to take delivery of the property from the petitioners. Therefore, the conclusion arrived by the Additional District Munsif Court, Vadipatti, in the impugned order dated 09.11.2022 that the petitioners may not be in possession of the property cannot be countenanced.

39. Therefore, what remains to be answered is whether after dismissal of E.A.No.27 of 2015 filed under Order XXI Rule 89 of Code of Civil Procedure, 1908 *vide* order dated 21.08.2017, which order was confirmed and affirmed by this Court by its order dated 19.01.2021 in C.R.P.(MD)No.2083 of 2017, the petitioners are still entitled to deposit the auction amount as prayed in E.A.No.28 of 2015 which has been rejected by the Additional District Munsif Court *vide* impugned order dated 09.11.2022.

40. The Hon'ble Supreme Court in **Harnandrai Badridas v. Debidutt Bhagwati Prasad, (1973) 2 SCC 467** has held as follows:-

"6....Having regard to this consideration, if any question is raised by the judgment-debtor at the time of delivery of possession concerning the nature of the rights purchased and if the judgment-debtor offers any resistance to delivery of possession the question must be one which in our view relates to



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the execution, discharge and satisfaction of the decree and arises between the parties to the suit.

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*8. It is important to remember that after the decision of the Privy Council in Ganapathy case, there has been an amendment of Section 47 as a result of which **the purchaser at a sale in execution of a decree, whether he is the decree-holder or not, is unquestionably a party to the suit for the purpose of Section 47.** Having regard to this, all questions arising between the auction-purchaser and the judgment-debtor must in our view be determined by the executing court and not by a separate suit."*

41.The Hon'ble Supreme Court in **Pattam Khader Khan v. Pattam Sardar Khan** reported in **JT 1996 (5) SC 201** held as follows:

*"13. There can be a variety of factors conceivable by which delay can be caused in issuing the sale certificate. **The period of one year limitation, now prescribed under Article 134 of the Limitation Act 1973, in substitution of a three year period prescribed under Article 180 of the Indian Limitation Act of 1908. is reflective of the legislative policy of finalizing proceedings in execution as quickly as possible by providing quick forum to the auction-purchaser to ask delivery of possession of the property purchased within that period from the date of the sale becoming absolute, rather than from the date of issuance of the sale certificate. On his failure to avail such quick remedy the law relegates him to the remedy of a suit for possession in a regular way.**"*

42.The Hon'ble Supreme Court in **K.R. Lakshminarayana Rao v. New Premier Chemical Industries**, (2005) 9 SCC 354 referred to its



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earlier decision in **Harnandrai Badridas v. Debidutt Bhagwati Prasad,**

WEB COPY (1973) 2 SCC 467 and held as follows:

"8. A bare perusal of the aforementioned provisions would leave no manner of doubt and in particular having regard to the amendments carried in CPC by reason of the CPC Amendment Act, 1976 that the steps for obtaining delivery of property in occupancy of the judgment-debtor is required to be taken by the auction-purchaser in terms of Order 21 Rule 95 CPC and, thus, a separate suit to enforce such a right would, therefore, be not maintainable.

9. There cannot be any doubt whatsoever that when the decree is satisfied, the execution case comes to an end. Once a decree is satisfied, the question of invoking the provisions of Article 136 of the Limitation Act, 1963 would not arise, inasmuch as a bare perusal thereof would clearly go to show that the same would be attracted only when an application is filed for executing the decree. Article 136 of the Limitation Act is, therefore, not attracted when an application is required to be filed in the execution proceedings for a purpose other than for execution of the decree. Once a decree stands satisfied, the execution proceedings come to an end and, in that view of the matter, a proceeding in the nature of one contemplated under Order 21 Rule 95 CPC is required to be initiated for the purpose of obtaining delivery of possession of the property purchased in court auction by the decree-holder. Such an application must be filed within the prescribed period of limitation as provided for under Article 134 of the Limitation Act, 1963. The Schedule appended to the Limitation Act, 1963 having provided for a specific provision prescribing limitation for filing an appropriate application for recovery of possession of any property in possession of the judgment-debtor, it is idle to contend that Article 136 of the Limitation Act would apply even in relation thereto. The law enunciated by the majority opinion of the Full Bench of the Calcutta High Court in Kailash Chandra Tarafdar v. Gopal Chandra Poddar [AIR 1926 Cal 798 : ILR 53 Cal 781 (FB)] has been approved by this Court in Harnandrai



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case [(1973) 2 SCC 467] in the following terms: (SCC pp. 470-71, para 5)

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*12. A bare perusal of the said judgment, therefore, would clearly go to show that **although it was held therein that a separate suit would not be maintainable for the purpose of recovery of possession of a property which was in possession of the judgment-debtor, but, Their Lordships proceeded to grant relief to the decree-holder ex debito justitiae by directing that the plaint be treated as an application under Order 21 Rule 95 of the Code of Civil Procedure.***"

43.The Hon'ble Supreme Court in **Balakrishnan v. Malaiyandi Konar, (2006) 3 SCC 49** dealt with a similar case. The Court has held as follows :-

"13.The limitation for the purpose of Article 134 starts from the date of confirmation of sale. (See Ganpat Singh v. Kailash Shankar [(1987) 3 SCC 146]) In Pattam Khader Khan v. Pattam Sardar Khan [(1996) 5 SCC 48] this Court held that it is not from the date when sale certificate is issued that the limitation starts running. The sale becomes absolute on confirmation under Order 21 Rule 92 of the Code effectively passing title. It cannot be said to attain finality only when sale certificate is issued under Order 21 Rule 94. There can be variety of factors conceivable for which delay can be caused in issuing a sale certificate. The period of one-year limitation now prescribed under Article 134 of the Limitation Act in substitution of a three-year period prescribed under Article 180 of the Limitation Act, 1908 is reflective of the legislative policy of finalising proceedings in execution as quickly as possible by providing a quick forum to the auction-purchaser to ask for the



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*delivery of possession of the property purchased within that period from the date of the sale becoming absolute rather than from the date of issuance of the sale certificate. **On his failure to avail such a quick remedy the law relegates him to the remedy of a regular suit for possession based on title, subject again to limitation."***

44.Thus, if option is not availed under Order XXI Rule 95 of C.P.C. is not availed within one year of date of sale, a regular suit for possession based on title can be filed subject to limitation.

45.This Court in **T. Muthukumarasamy v.J. Selvasundarraaj 2017 SCC OnLine Mad 13672**, has held as follows:-

*"29. Therefore, the questions of law raised herein are answered by holding that the suit for declaration of title and for recovery of possession on the basis of the title of the auction purchaser is not barred under Section 47 C.P.C. and that even after dismissal of an application filed by the auction purchaser under Order 21, Rule 95 for delivery of possession for default or on the ground of limitation, the auction purchaser can file a suit for declaration of title and for recovery of possession **within twelve years**. Hence, the above second appeal is dismissed confirming the judgment and decree of the Courts below. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.*

46.In the case of **The Nazereth Co-operative Building Society Ltd. v. Kanagaraj** reported in **2003 (3) CTC 217**, this Court has



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followed the above views of the Hon'ble Supreme Court and observed

as follows:

"25. The principles laid down by the High Courts and the Honourable Apex Court would disclose that the fact of not initiating proceedings under Section 47 of the Code of Civil Procedure as contemplated under Article 134 of the Limitation Act, which is for quicker remedy, cannot bar the auction purchaser to approach the competent Court under common law to take delivery of possession within a period of 12 years from the date of the sale being made absolute. Therefore, the contention raised by the learned counsel appearing for the respondent that the suit is barred under Section 47 of the Code of Civil Procedure cannot be sustained in view of the case laws cited above."

47. Similar view was taken by this court in **K.Palanichamy Gounder v. Kandasamy Gounder and others** in S.A(MD)No.1145 of 2011.

48. Although, these two decisions of this Court have taken the above view, as mentioned above, as per the decision of the Hon'ble Supreme Court in **K.R.Lakshminarayanan Rao V. New Premier Chemical Industries, (2005) 9 SCC 354**, a separate suit to enforce the right was held not maintainable. Only an application under Order XXI Rule 95 of C.P.C. was maintainable. Such application was to be filed within a period



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of 1 year in terms of Article 134 of the Limitation Act, 1963.

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49. Therefore, O.S.No.643 of 2004 filed for recovery of possession of immovable property before the Additional District Munsif Court, Vadipatti, was actually not maintainable. However, to do complete justice, it can be opined that O.S.No.643 of 2004 filed for recovery of possession of immovable property before the Additional District Munsif Court, Vadipatti, could be treated as a second application under Order XXI Rule 95 of the Code of Civil Procedure in terms of the decision of the Hon'ble Supreme Court in **Nandarani Mazumdar v. Indian Airlines (1983) 4 SCC 461**, wherein it was held as follows:-

*"We indicated to the counsel for the respondents that even if there be some force in the plea that a separate suit did not lie (though the argument advanced by Mr Govindan Nair for the appellant in support of the stand that a separate suit for the reliefs claimed lay was forceful), the suit could as a measure of ex debito justitiae be treated as an execution petition. **There is good authority for converting an execution application into a suit and there could, in our opinion, be no valid objection to the counter-process of converting a suit into an execution proceeding...**"*

50. In other words, O.S.No.643 of 2004 filed for recovery of possession of immovable property before the Additional District Munsif



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Court, Vadipatti, although is a suit filed within the period of limitation, is nothing but an application under Order XXI Rule 95 of C.P.C.

51.Thus, O.S.No.643 of 2004 filed for recovery of possession of immovable property before the Additional District Munsif Court, is to be treated as a fresh petition under Order XXI Rule 95 of the Code of Civil Procedure and the judgment and decree passed on 08.12.2006 as an order under Order XXI Rule 95 of the Code of Civil Procedure.

52.The petitioners have filed O.S.No.1264 of 2021 for partition of the suit schedule property, the rights of the petitioners to have their rights redressed stands preserved under Order XXI Rule 92(4) of the Code of Civil Procedure, 1908 subject to limitation.

53.However, dismissal of E.A.No.28 of 2015 *vide* impugned order dated 09.11.2022 would not preclude the petitioners from a filing of fresh obstruction petition under Section 47 of Code of Civil Procedure in view of pendency of O.S.No.1264 of 2021 before the Sub Court Madurai.

54.As per the decision in **Harnandrai Badridas v. Debidutt Bhagwati Prasad, (1973) 2 SCC 467**, it is the Execution Court which has



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to determine the rights of the petitioners. Therefore, O.S.No.1264 of 2021 pending on the file of the Sub-Court, Madurai, shall be transferred to the Execution Court namely, Additional District Munsif Court, Vadipatti.

55.O.S.No.1264 of 2021 pending on the file of Sub-Court, Madurai, shall on being re-numbered shall be disposed by the Execution Court namely, Additional District Munsif Court, Vadipatti, along with any fresh application that may be filed under Section 47 of C.P.C. provided if such an application is filed by the petitioners within 30 days of this order. Impugned order dated 09.11.2022 passed in E.A.No.28 of 2015 is therefore set aside and the case is remitted back to the Additional District Munsif, Vadipatti, to decide the issue afresh in the light of the observations made herein.

56.Issue as to whether bar under Explanation XVII to Section 11 of C.P.C. was applicable or not is left open to be decided by the Execution Court either way. Pending such decision, status quo as on date shall prevail.



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57. Accordingly, this Civil Revision Petition stands allowed with the

above observations. No costs. Consequently, connected Miscellaneous

Petition is closed.

NCC : Yes/No

30.06.2023

Index : Yes/No

Internet: Yes/No

dss/smn2

To

1. The Sub-Judge,

Madurai.

2. The Additional District Munsif,

Vadipatti.



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C.SARAVANAN, J.

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Pre-delivery order made
in
C.R.P(MD).No.171 of 2023

30.06.2023