



S.A.No.1863 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1863 of 2000

Nagamalai Konar(Died)
2.AN.Selva Raja

... Defendant/Applt./Applt.

-Vs-

P.K.Perumal Nayudu(Died)

...Plff./Respdt./Respdt.

2.A.N.Chellammal

3.A.N.Katturaja

4.A.N.palanichamy

5.A.N.Krishnan

6.Thavamani

7.B.Ayyammal

8.T.Manimegalai

9.V.Packia Lakshmi

*(A2 and RR2 to 9 are brought on record as LRS
of the deceased sole appellant vide Court
order dated 07.08.2020)*

10.P.Ravichandran

11.Dhanalakshmi

12.P.Venkatesan

13.P.Srinivasan

14.Sangeetha



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(RR10 to 14 are brought on record as LRS of the deceased sol respondent vide Court order dated 24.01.2020)

(Memo presented before the Court on 01.4.2022 is recorded as R7 is given up vide Court order dated 01.04.2022)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 22.11.1999 made in A.S.No. 109 of 1998 by the II Additional Subordinate Court, Madurai, confirming the decree and judgment dated 29.06.1998 made in O.S.No.458 of 1993 on the file of the District Munsif Court Madurai Taluk.

For Appellants	:Mr.S.Vellaisamy
For R2 to R5	:No appearance
For R10 to R14	:Mr.S.Ayyanar Prem Kumar
For R1,R6toR9	:No appearance

JUDGMENT

The first respondent herein is the plaintiff who filed a suit in O.S.No.458 of 1993 before the District Munsif Court, Madurai, for declaration and permanent injunction, against the first appellant herein. The said suit was decreed. Challenging the said judgment and decree, the first appellant herein filed an appeal in A.S.No.109 of 1998 before the II



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Additional Subordinate Court, Madurai. The learned Subordinate Judge, dismissed the said appeal and confirmed the judgment and decree passed by the trial Court. Aggrieved by the said judgment of the lower Appellate Court, the first appellant/defendant has filed the present second appeal.

2. While admitting the second appeal, this Court formulated the following substantial questions of law:

“1.Whether the Courts below are right in granting a decree for declaration and injunction, when the appellant is the true owner as per Court sale?

2.Whether the Courts below are right in holding that the Court Sale in favour of the respondent is valid, when the property was under attachment as early as 1972 and when the sale is covered by the provisions of Section 63 C.P.C?”

3. The case of the first respondent/plaintiff is that he purchased the property by virtue of Court auction through execution petition.



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Subsequently, he filed E.A.No.39 of 1979 in E.P.No.153 of 1975 and obtained delivery of possession of the property through Court under Order 21 Rule 95 C.P.C., on 13.02.1979 and paying the kist and enjoying the property continuously. Therefore, he is entitled to get the relief of declaration. Whereas, the Court sale in favour of the first appellant/defendant is said to have taken place on 12.09.1988 in E.P.No.37 of 1988 and confirmed on 18.08.1993. But, he did not take the delivery of possession of the property through Court so far. The respondent/plaintiff participated in the Court auction and purchased the property and took the possession of the property through Court Amin and EP was also terminated, based on the delivery warrant submitted by the Court Amin. Thereafter, patta was transferred in the name of the respondent/plaintiff and he was continuously enjoying the property by paying kists. Since taking advantage of the other decree, the appellant/defendant is trying to interfere with his possession. Therefore, the respondent/plaintiff has filed the present suit for declaration and permanent injunction.



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4. The case of the first appellant/defendant is that he purchased the property through Court auction sale in E.P.No.37 of 1985 in O.S.No.4 of 1972 on the file of the Sub-Court, Sivagangai. Execution Petition was filed and the same was allowed. Therefore, though the respondent/plaintiff stated that he purchased the property through Court auction, no patta was produced and hence, the respondent/plaintiff is not entitled for decree.

5. The learned counsel appearing for the appellant/defendant would submit that the trial Court, without giving any finding and validity of the purchase of the property by the defendant in Court auction and decreed the said suit. Therefore, he filed an appeal before the lower Appellate Court. But, the Lower Appellate Court has not given any reason independently and as to how the judgment of the trial Court is well founded and without discussing anything and without assigned any reason, simply has endorsed the view of the trial Court and therefore, it warrants interference by this Court.



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6. The learned counsel appearing for the respondent/plaintiff would submit that the trial Court elaborately discussed about all the documents and satisfied with the documents and also gave effect to the Amin warrant and about the delivery of the property reported before the Court and the Court also recorded the same and terminated execution petition. Therefore, the possession of the property to the respondent/plaintiff was proved. Since the delivery was effected through Court proceedings, it is a public document and unless it is contrarily proved that the entries made in the public document are not genuine, the trial Court decreed the suit. Hence, the appellate Court also confirmed the the judgment of the trial Court and there is no reason to interfere.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the records available on record.



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8. No doubt, both are claiming title under the Court auction sale.

Now, the dispute is who has taken the delivery of the property and who are in possession of the property and which of the Court auction sale is valid and prevailed over the others. However, the trial Court has assigned any reason. As the appellate Court is a final Court of fact finding, it has to necessarily re-appreciate the evidence and give an independent finding and it cannot simply endorse the view of the trial Court, without assigning any independent reason and finding. Therefore, nothing has been found in the judgment of the lower Appellate Court about the discussion or the validity of any of the documents of both the appellant and the respondent and the reason for his own decision for giving a finding regarding the validity of the document.

9. Under these circumstances, the judgment of the lower Appellate Court is set aside and the matter is remitted back to the lower Appellate Court and the lower Appellate Court is directed to hear the matter afresh and dispose of the appeal on merits and in accordance with law. Since the



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second appeal is pending from more than 22 years, both the parties are directed to appear before the First Additional Subordinate Court, Madurai, on **06.06.2023**. The Registry is directed to send back all the original records to the First Additional Subordinate Court, Madurai, immediately, without any further delay. The First Additional Subordinate Judge, shall take the appeal and hear the matter and dispose of the same, within a month on or before **28.06.2023** and file a report before this Court, on **30.06.2023**. Both the parties are directed to extend their fullest co-operation for disposal of the appeal within the stipulated time before the lower Appellate Court. If any of the parties are not co-operated, the First Additional Subordinate Judge, is directed to record about the non co-operation of the parties and send the records immediately before this Court for passing further orders.

10. List the matter on **30.06.2023**, for filing report by the First Additional Subordinate Court, Madurai.

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Note:Issue order copy on 28.04.2023

To

- 1.The II Additional Subordinate Court,
Madurai.
- 2.The District Munsif Court,
Madurai Taluk.
5. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN,J.

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