



C.R.P.Nos.227 & 244 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2024

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition Nos. 227 & 244 of 2021
and
C.M.P. Nos. 2123 & 2337 of 2021
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C.R.P.No.227 of 2021

T.Sakthivel .. Petitioner/Defendant

Versus

Seethalakshmi .. Respondent/Plaintiff

C.R.P.No.244 of 2021

T.Sakthivel .. Petitioner/Defendant

Versus

Samalambal .. Respondent/Plaintiff

C.M.P.No.7233 of 2023 in C.R.P.No.244 of 2021

P.Suresh Babu ... Petitioner/Third Party

Versus

1.T.Sakthivel
2.Samalambal .. Respondents

C.R.P.No.227 of 2021 :- Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decreetal order passed by the learned District



C.R.P.Nos.227 & 244 of 2021

Munsif Judge, Pollachi, in I.A.No.1060 of 2017 in O.S.No.2 of 2008 dated 31.07.2020.

C.R.P.No.244 of 2021 :- Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and decreetal order passed by the learned District Munsif Judge, Pollachi, in I.A.No.1059 of 2017 in O.S.No.592 of 2007 dated 18.09.2020.

Prayer in C.M.P.No.7233 of 2023 in C.R.No.244 of 2021:- Civil Miscellaneous Petition filed under Order 1 Rule 10(2) of CPC read with Section 151 of CPC, to permit the Petitioner to implead him as the Respondent No.2 in C.R.P.No.244 of 2021.

C.R.P.No.227 of 2021

For Petitioner : Mr. R. Venkatajalapathy
for Mr. S. Kadarkarai
For Respondent : Mr. D.R. Arun Kumar

C.R.P.No.244 of 2021

For Petitioner : Mr. R. Venkatajalapathy
for Mr. S. Kadarkarai
For Respondent : Mr. D.R. Arun Kumar

C.M.P.No.7233 of 2023 in C.R.P.No.244 of 2021

For Petitioner : Mr.N.Manoharan
for Mr.C.Prabakaran
For R1 : Mr.R.Venkatajalapathy
for Mr.S.Kadarkarai
For R2 : Mr. D.R. Arun Kumar

COMMON ORDER

These Civil Revision Petitions have been directed against the order

dated 31.07.2020 and 18.09.2020 in I.A.No.1060 of 2017 in O.S.No.2 of 2008



and I.A.No.1059 of 2017 in O.S.No.592 of 2007 respectively on the file of the District Munsif Court, Pollachi.

2. The Revision Petitioner is the Defendant in the two suits filed against him namely O.S. No. 2 of 2008 (Seethalakshmi Vs. T. Sakthivel) and O.S. No. 592 of 2007 (Samalambal Vs. T.Sakthivel) before the learned District Munsif, Pollachi.

3. The plaint averments as well as the written statement in both the suits are detailed hereunder:

3.1. Both the suits in O.S. No. 592 of 2007 as well as O.S. No. 2 of 2008 were filed by the respective Respondents/Plaintiffs for recovery of money for a sum of Rs.63,050/- and Rs.61,250/- respectively along with further interest for the principal amount of Rs.50,000/- with interest at the rate of 12% per annum from the date of suit till the date of realization. According to the Respondents-Plaintiffs, on 25.10.2004, the Revision Petitioner-Defendant borrowed a sum of Rs.50,000/- from them by citing urgent family and agricultural expenses. On the same day namely 25.10.2004, the Revision Petitioner-Defendant executed promissory notes in their favour agreeing to repay the principal amount with interest at the rate of 12% per annum.



However, inspite of repeated demands made, the Revision Petitioner-Defendant did not pay the principal or interest. Therefore, on 05.04.2007, the Respondents-Plaintiffs issued a notice calling upon the Revision Petitioner-Defendant to repay the amount. On 13.04.2007, the Revision Petitioner-Defendant sent a reply containing false averments. Therefore, the suits were filed for recovery of Rs.63,050/- and Rs.61,250/- with subsequent interest on the principal sum of Rs.50,000/-.

3.2. On notice in the plaint in O.S. No. 592 of 2007 as well as O.S. No. 2 of 2008, a written statement was filed by the Revision Petitioner-Defendant contending *inter alia* that he never received the amount of Rs.50,000/- at all or executed any promissory note. The alleged promissory notes are fabricated and they have to be sent to the experts for their opinion with respect to his signature.

4. It appears that in both the suits, an *ex parte* decree was passed on 08.02.2010 as the Petitioner's Counsel reported 'no instruction'. On coming to know about the *ex parte* decree dated 08.02.2010, the Revision Petitioner-Defendant had instructed his Counsel to file petition to set aside the *ex parte* decree on time. However, his Counsel had not deliberately prosecuted the said



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application. The petition filed by the Revision Petitioner to set aside the *ex parte* decree was returned by the Court as it was defective. The said petition was not at all re-presented and numbered by the Counsel, however, the Counsel had been assuring the Petitioner that he will take care of the suit. The Petitioner is aged 86 years. Believing the representation of his Counsel the Petitioner remained silent. The Petitioner was shocked to receive the notice in Execution Petition in E.P.No.119 of 2011 in O.S.No.592 of 2007. Immediately he contacted his Counsel. His Counsel again assured him that the set aside petition had been filed and yet to be numbered and that he would do the needful and obtained his signatures in blank papers and also told him to receive all the notices from the Court and inform him over phone. Though he had been informing his Counsel, he was re-assured that he will take care of his case.

5. On 25.07.2017, the Petitioner came to know through his village people that his property was sold away to the Respondent's/Plaintiff's relative in O.S.No.592 of 2007 namely one Suresh Babu. Immediately, the Petitioner contacted his Counsel and his Counsel told the Petitioner that the Petitioner had no other alternative except to receive the balance of sale consideration.

Therefore, the Petitioner engaged a different Counsel for verifying the stage of



the case and he was shocked to know that the *ex parte* decree was not set aside, but his previous Counsel had filed a counter statement in E.P.No.119 of 2011 and not appeared for enquiry. That the Counsel without setting aside the *ex parte* decree or the sale, filed counter in the petition filed to reduce the upset price and had been a mute spectator throughout the Court proceedings when the immovable property belonging to the Revision Petitioner was sold through public auction. Therefore, he filed the applications in I.A. No. 1059 of 2017 and I.A. No. 1060 of 2017 for condoning the delay of 2709 and 3123 days respectively in filing the applications to set aside the *ex parte* decree, the orders passed thereon are impugned before this Court.

6. In both the applications, the Respondents/Plaintiffs filed their counter affidavit denying the contentions of the Revision Petitioner/Defendant. It was stated that there is an inordinate delay of 7½ years in preferring the petitions to condone the delay and the reason for delay has not been properly explained. According to them, the applications have been filed only to protract the proceedings and defeat the rights of the Respondents to recover the suit amount. The Trial Court after due enquiry passed the orders dated 18.09.2020 and 31.07.2020 respectively dismissing the applications on the ground that the Petitioner had not given sufficient reasons for condoning



the delay of 7 ½ years. Challenging the said orders dated 18.09.2020 as well as 31.07.2020, the present Civil Revision Petitions are filed.

7. The learned Counsel for the Revision Petitioner/Defendant submitted that the petitioner is 86 years old. The suits were filed for recovery of money based on the promissory notes allegedly executed by him for Rs.50,000/- in both the cases, with interest. The valuable property of the Petitioner herein which is his only means of livelihood measuring an extent of 2.40 acres had been undervalued and sold for realising the decretal amount. As per the guideline value maintained by the concerned Sub-registrar, 1 acre of the property fetches Rs.3 lakhs. Now the property had been brought to sale by public auction and sold without adhering to the provisions of Order XXI of C.P.C. by issuing public notice in prominent places and also causing paper publication for a throw away price of Rs.3 lakhs and odd. The property was purchased by none other than the close relative of the Plaintiff in O.S. No. 592 of 2007 namely one Suresh Babu. It is also stated that the auction purchaser Suresh Babu also filed C.M.P. No.7233 of 2021 in C.R.P. No. 244 of 2021 as intervenor seeking permission of this Court to implead himself as 2nd Respondent in C.R.P.No.244 of 2021.



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8. The learned Counsel for the Revision Petitioner further submitted that when the suits came up for trial, the earlier Counsel engaged by the Revision Petitioner/Defendant had reported “no instruction” instead of cross-examining the Plaintiff as P.W.1 and allowed the suit to be decreed *ex parte*. When the Revision Petitioner/Defendant came to know about the same, he immediately contacted the Counsel and sought to file a petition to set aside the *ex parte* decree in time. The earlier Counsel also obtained the signature of the Revision Petitioner and filed it defectively and the same was returned for certain compliances. Therefore, at the earliest point of time, he has filed an application to set aside the *ex parte* decree, which could be evident from the register maintained by the Registry of the trial court. However, the earlier Counsel had not complied with the returns and presented the petition on time. He did so either by negligence or with ulterior motive and did not present the petition and thereby the *ex parte* decree could not be set aside. The Revision Petitioner believed his Counsel and the Counsel assured him that he had done his work by filing the petition and it will be numbered. However, his Counsel allowed the *ex parte* decree to be executed by the decree holder by bringing the property to public auction thereby the valuable property and the only property which serves as his livelihood had been knocked off for a meagre



value of Rs.3 lakhs by the act of negligence or fraud played upon him by his earlier Counsel. Therefore, he has filed the instant applications through a different Counsel. After change of Counsel, he came to know about due to the deliberate act of omission by his earlier Counsel, the valuable property of the Revision Petitioner-Defendant has been brought to sale by public auction for a meagre amount of Rs.3,10,000/-.

9. Therefore, considering the livelihood of the senior citizen aged 86 years and the fact that the earlier Counsel had played havoc with the life of the Revision Petitioner the Revision Petition filed by the Revision Petitioner under Section 115 of the Code of Civil Procedure is to be allowed to prevent miscarriage of justice. Accordingly, the learned Counsel for the Revision Petitioner seeks to set aside the orders which are impugned in these Civil Revision Petitions.

10. The learned Counsel for the Revision Petitioner also submitted that the Revision Petitioner is ready to deposit the decretal amount to the credit of the suit. To this effect, the Revision Petitioner also filed E.A. No. 123 of 2017 in EP No. 119 of 2011 in O.S. No. 592 of 2007 praying to permit him to deposit Rs.2,21,529.75 before the trial court and prayed to set aside the sale



conducted on 27.03.2017. The said application in E.A. No. 123 of 2017 has been filed to show the bonafides of the Revision Petitioner. Accordingly, the learned Counsel prayed for allowing these Civil Revision Petitions.

11. Per contra, the learned Counsel for the Respondents/decreed holders submitted that this Revision Petitions lacks merit. The Revision Petitioner is simply blaming his Counsel as though his Counsel had deliberately brought the property to sale through public auction by misleading the Revision Petitioner. The learned Counsel for the Respondents invited the attention of this Court to the written statement filed by the Revision Petitioner wherein he has simply denied the promissory notes. Even though he has stated that his signature is forged, he has not taken any steps to get it compared through the experts. In any event, the written statement is a cryptic statement which contains only a general denial and no specific denial. The suits have been instituted in the year 2007 and 2008 respectively. The *ex parte* decree was passed in the suit in 11.02.2008 and 08.02.2010 respectively. Later, Execution Petitions were filed in the year 2011 and auction sale was conducted and concluded on 12.07.2017. A sale certificate dated 12.09.2017 was also issued to the Auction Purchaser in exercise of the powers conferred under Order 21 Rule 94 of the Code of Civil Procedure in E.P. No. 119 of 2011 in



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O.S. No. 592 of 2007 after the auction purchaser deposited the auction amount. Thereafter, the auction purchaser filed E.A. No. 122 of 2017 seeking delivery of possession to him. The Revision Petitioner did not earnestly contest the suit filed against him and after sale certificate has been issued, he has filed the present Civil Revision Petitions to nullify all the suit proceedings hitherto taken place. The learned Counsel for the respective Plaintiffs/Respondents therefore prayed for dismissal of the Civil Revision Petitions.

12. The learned Counsel for the Intervenor/Auction Purchaser submitted that the auction purchaser had purchased the property in the auction sale conducted by the trial court. It is common knowledge that whenever a property is brought to sale by public auction through the Court, it will not fetch higher price and it will be lesser than the normal price at which properties are sold or purchased according to its market value. Therefore, the auction purchaser purchased the property as per the value fixed after issuing notice to the owner of the property/the judgment debtor in O.S. No. 592 of 2007. The Revision Petitioner had opportunity and is having knowledge of the fact that the properties are brought through public auction and sale price is likely to be reduced. The property was sold in public auction after several



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adjournments over a period of time as there were no bidders for purchasing the property at the rate fixed by the Court. The upset price was reduced gradually and finally on 27.03.2017 it was fixed at Rs.3,10,000/- on which date the auction purchaser participated in the auction and declared as successful bidder. The auction purchaser was also permitted to deposit the auction purchase money and upon payment of the amount, he was issued sale certificate by the Court. The auction purchaser also filed an application for delivery of possession of property and it is pending before the Executing Court. Therefore, it is submitted that the Civil Revision Petitions has no merit and he prayed for impleading himself as a party to the present proceedings. If he is not impleaded, he will be highly prejudiced, as, any order that may be passed in these Civil Revision Petitions will have an adverse effect in his right as an auction purchaser. The auction purchaser is a proper and necessary party to the present Civil Revision Petitions and accordingly, the learned Counsel prayed for impleading the auction purchaser in these cases.

13. By way of re-joinder, the learned Counsel for the Revision Petitioner pointed out that the Plaintiff in O.S.No.592 of 2007 had knocked off part of the property through his relative for a meagre amount of Rs. 3 lakhs and odd. The Revision Petitioner fully believed on the assurance given by his



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earlier Counsel, however, his Counsel kept him in dark without disclosing the progress of the case. Even the application filed to set aside the *ex parte* decree at the earliest point of time was not re-presented which led to the enormous delay. In other words, an application for setting aside the *ex parte* decree was filed well within time and therefore, the delay cannot be wholly attributable against the Revision Petitioner. The Counsel engaged by the Revision Petitioner did not take care of the suit or the applications to set aside the *ex parte* decree. The Counsel wantonly and deliberately filed the petition to set aside the *ex parte* decree, defectively and not complied with the returns. In the meantime, the execution petitions were proceeded with and the property itself was brought to auction sale. In those circumstances, the Revision Petitioner had engaged a new Counsel and through him, he came to know as to what went wrong in defending the suits instituted against him. The present Counsel engaged by the Revision Petitioner had gone through the records in O.S.No.592 of 2007 as well as in E.P.No.119 of 2011 and informed him about the auction sale.

14. The learned Counsel for the Revision Petitioner also submitted that the learned District Munsif, Pollachi, had not considered those points raised by the Revision Petitioner. The learned District Munsif, Pollachi, could



have very well referred the records in O.S.No. 597 of 2007 as well as in E.P.No. 119 of 2011 to consider whether the reasons stated in the affidavit of the Petitioner are true and *bona fide*. The learned District Munsif, Pollachi, was carried away by the vehement objection of the Plaintiff in the suit in O.S.No. 592 of 2007 by stating that the Petitioner had filed the application after 7 years to protract the proceedings. The learned District Munsif did not verify the court records to ensure that an application was filed at the earliest point of time through the erstwhile Counsel and it was also returned for certain compliances. While so, the learned District Munsif, Pollachi ought to have allowed the applications to condone the delay and thereby saved the only agricultural property in possession of the Revision Petitioner. On the other hand, the property was brought to auction sale for a paltry sum of Rs.3,10,000/- It is also reiterated that now the Revision Petitioner is ready to pay the decretal amount and prayed this Court to consider the same.

15. Heard the learned Counsel for the Revision Petitioner, the Counsel for respective Respondents as also the Counsel for auction purchaser.

Point for consideration:-

Whether the order passed by the learned District Munsif,



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Pollachi, dismissing the I.A.No.1059 of 2017 in O.S.No.592 of 2007 dated 18.09.2020 and I.A.No.1060 of 2017 in O.S.No.2 of 2008 dated 31.07.2020 are to be set aside?

16. As against the Revision Petitioner, two suits have been filed. Both the suits were filed for recovery of a sum of Rs.50,000/- being the principal sum together with accrued interest. Both the suits were filed on the strength of promissory notes allegedly executed by the Revision Petitioner-Defendant. In both the suits, the Revision Petitioner-Defendant has filed his written statement by contending that he had never received the sum of Rs.50,000/- from the Plaintiff or signed the promissory notes in favour of the respective Plaintiff.

17. After filing the written statement, it appears that his Counsel reported “no instruction” based on which both the suits were decreed *ex parte*. In order to execute the *ex parte* decree, Execution Petitions were also filed. Immediately upon coming to know about the *ex parte* decree, admittedly, the Revision Petitioner-Defendant had filed applications to set aside the *ex parte* decree in both the suits. It was stated that those applications have been returned for certain compliance, but the erstwhile Counsel did not re-present, either wantonly or due to negligence or omission. The fact remains that an



application to set aside the *ex parte* decree was filed at the earliest point of time, but it was returned for some defects. When this was pleaded by the Revision Petitioner-Defendant in the instant applications seeking to set aside the *ex parte* decree, the Court below ought to have verified the suit Register or other connected records to ensure that such applications were filed on behalf of the petitioner by the erstwhile Counsel and the submissions of the Revision Petitioner is bona fide. However, the trial court harped upon by contending that the petitioner had taken 7 years to file the applications to set aside the *ex parte* decree and dismissed the applications. If the trial court verified the suit records or the registers maintained in the Court, the applications for condonation of delay ought to have been allowed instead of dismissing them.

18. It is also to be stated that even if the Counsel reported 'No instructions' as per the Civil Rules of Practice, notice must be sent to the litigant to enable him to either engage a new Counsel or to appear before the Court. In the case of ***Malkiat Singh and Another Vs. Joginder Singh and Others, 1997 (3) CTC 619*** the Hon'ble Supreme Court of India held that after the Counsel reported "no instructions", the Court ought to have sent notice of next hearing to the party concerned. In the absence of such notice, the parties were not at fault and should not be made to suffer. This was not done in the



present case by the trial court. In the case of ***Rafiq and Another Vs. Munshilal and Another, AIR 1981 SCC 1400*** the Hon'ble Supreme Court held that the parties should not suffer for the inaction, deliberate omission or misdemeanour of his agent.

19. The specific contention of the Revision Petitioner is that originally he had filed a petition to set aside the *ex parte* decree dated 11.12.2008 on time vide CFR.No.293 of 2009, which was marked as EX.P.1 dated 07.01.2009 in I.A.No.1059 of 2017 in O.S.No.592 of 2007. Similarly, in O.S. No. 2 of 2008, the petition to set aside the *ex parte* decree dated 08.02.2010 was filed on 05.03.2010 vide CFR register No.2228 of 2010 dated 05.03.2010 which was marked as E.X.P1 in I.A.No.1060 of 2017 in O.S.No.2 of 2008. These evidence placed before the trial court were grossly omitted to be considered while dismissing the applications for condonation of delay.

20. The contention of the Revision Petitioner is that his previous Counsel had deliberately not numbered the petitions on time or had kept the petitions pending. This is disturbing the conscience of this Court. The Petitioner is a semi-literate and aged person. He was kept in the dark by his own Counsel, with whom he had reposed utmost faith and confidence. This



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amounts to unethical practice by the Counsel. Here, this Court can draw adverse inference about the Counsel that he had, by his conduct, failed to protect his client to the best of his ability. The litigants approach the Counsel for prosecuting or defending the cases. The Counsel, as a beacon of light, must guide his or her clients to the best of their legal acumen, knowledge and ability. As per the Law of Contract, when a Counsel files vakalat for and on behalf of his client, such vakalat will be treated as Power of Attorney. By such contract, an advocate promises to utilise his prowess and legal acumen to do the best for and on behalf of his client. When once Vakalath is taken, the Counsel has to discharge his duties to the best of his ability to protect his client in the on-going legal tussle. This is more so that the litigant may not be aware of the nuances of law and it is for the Counsel to properly guide his or her clients. This Court does not want to say anything more in this case about the conduct of the erstwhile Counsel. However, it must be stated that because of such conduct of the erstwhile Counsel, a valuable property of the Revision Petitioner was brought to public auction and purchased by an auction purchaser for a paltry sum.

21. The learned District Munsif, Pollachi, is the Trial Court as well as the Executing Court. The trial court ought to have perused the entire records



before dismissing the petition of this nature. What had been stated by the learned Counsel for the Revision Petitioner cannot be rejected out right or ignored by this Court when there is blatant violations of the right of the semi-literate or illiterate farmer, whose only means of livelihood was brought to sale by public auction for a meagre amount of Rs. 3,10,000/- by the auction purchaser, to satisfy the principal sum of Rs.50,000/- with interest and another Rs.50,000/- with interest.

22. On coming to know about all these developments, the Petitioner had changed the Counsel and filed a petition to condone the delay of 7 ½ years in I.A.No.1060 of 2017 in O.S.No.2 of 2008 the delay of 8 years in I.A.No.1059 of 2017 in O.S.No.592 of 2007. The learned District Munsif, Pollachi without considering the reasons assigned for the delay in the proper perspective, dismissed the applications, which requires interference by this Court.

23. In the orders, which are impugned in these Civil Revision Petitions, the trial court has concluded that the Revision Petitioner had not contacted his Counsel for more than seven years. If it is so, how his Counsel could have filed counter in E.A. No. 152 of 2014 with the Revision Petitioner's



signature in the year 2014. Therefore, it can be safely concluded that the Revision Petitioner is not negligent whereas his previous Counsel had been negligent, careless and also deliberate in not pursuing the applications filed to set aside the *ex parte* decree. For the deliberate omission of his earlier Counsel the Revision Petitioner-Defendant should not be held responsible or made to suffer. Therefore, in the interest of justice, under the principles of fairness, equity and good conscience which governs this Court, the order passed by the District Munsif, Pollachi, dismissing the petition seeking to condone the delay of 3123 days in I.A.No.1059 of 2017 in O.S.No.592 of 2007 (CRP.No.244 of 2021) and 2709 days in I.A.No.1060 of 2017 in O.S.No.2 of 2008 (CRP.No.227 of 2021) are found not acceptable.

24. During the pendency of the above civil revision petition, the auction purchaser chose to file C.M.P.No.7233 of 2021 seeking permission of this Court to implead him as 2nd Respondent in C.R.P.No.244 of 2021. The contention of the impleading Petitioner is that he purchased the property in auction held on 27.03.2017 for a valuable consideration and that he had received the sale certificate in his favour. Initially the said subject property was brought for auction on 21.03.2014 and the value of the property was fixed at Rs.5 lakhs. However, when the suit property was brought to sale by public



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auction there were no bidders therefore, gradually, stage by stage, it was brought down from Rs.5 lakhs to Rs.4 lakhs. Still there were no bidders. Again it was brought down from Rs.4 lakhs to Rs.3.50 lakhs. Thereafter, in E.A.No.26 of 2016 orders was passed reducing the upset price Rs.3,25,000/- to Rs.3,00,000/- on 06.04.2016. On 27.03.2017, through Court auction the property was successfully bid for a consideration of Rs.3,10,000/-. After lapse of more than three years, the impleading Petitioner / intervenor who is an auction purchaser had purchased the said property for Rs.3,10,000/-. The impleading Petitioner had now filed E.A.No.122 of 2017 in E.A.No.119 of 2017 in O.S.No.592 of 2007 for delivery of possession. In the meanwhile, the Revision Petitioner-Defendant filed I.A.No.1059 of 2017 in O.S.No.592 of 2007 and I.A.No.1060 of 2017 in O.S.No.2 of 2008 and the same were dismissed against which the present Civil Revision Petitions are filed. Therefore, the impleading Petitioner had sought permission of this Court to implead himself as second Respondent in C.R.P.No.244 of 2021.

25. As regards the right of the auction petitioner, he derived an accrued right only upon participating in the court auction. Even if the auction sale is set aside, he will get back his money and the prejudice that may be caused to the auction purchaser may be lesser than the Revision Petitioner-



Defendant, who stands to loose his agricultural property and his only means of livelihood. In fact, the Revision Petitioner also filed a petition praying to permit him to deposit Rs.2,21,529.75 before the trial Court and prayed to set aside the sale conducted on 27.03.2017. This application ought to have been considered by the trial court at the earliest point of time and provided an opportunity to the Revision Petitioner-Defendant to exercise his right to deposit the decretal amount instead of conducting a Court auction based on the *ex parte* decrees. By virtue of the refusal to set aside the *ex parte* decree, it resulted in multiplicity of proceedings through purchase of the land by the auction purchaser. It is needless to mention that if the Revision Petitioner-Defendant deposits the decretal amount, the trial court shall resort to proceed further to release the orders of attachment in exercise of power conferred under Order XXI Rules 55 and 89 of the Code of Civil Procedure.

26. In the light of the above discussion, this Court is not inclined to implead the auction purchaser as one of the parties to these Civil Revision Petitions by holding that he is not a proper and necessary party to these Civil Revision Petitions for adjudication. Accordingly, **C.M.P.No.7233 of 2023 in C.R.P. No.244 of 2021 is dismissed.**



27. In the light of the above discussion, the point for consideration is answered in favour of the Petitioner and against the Respondents. The order passed by the learned District Munsif, Pollachi, dismissing the I.A.No.1059 of 2017 in O.S.No.592 of 2007 dated 18.09.2020 and I.A.No.1060 of 2017 in O.S.No.2 of 2008 dated 31.07.2020 are found perverse and the same are to be set aside.

In the result,

(i) **CRP No. 227 of 2021 is allowed** and the order dated 31.07.2020 passed in I.A. No. 1060 of 2017 in O.S. No. 2 of 2008 on the file of learned District Munsif, Pollachi is set aside

(ii) **CRP No. 244 of 2021 is allowed** by setting aside the order dated 18.09.2020 passed in I.A. No. 1059 of 2017 in O.S. No. 592 of 2007 on the file of the learned District Munsif, Pollachi.

(iii) The District Munsif, Pollachi is directed to consider the request of the Defendant in both the suits in O.S.No. 592 of 2007 as well as O.S.No.2 of 2008 as he undertook to deposit the amount to protect his property in addition to the amount spent on the proceedings by the decree-holders in both the suits by granting reasonable and sufficient time. This order is passed only to protect the livelihood of the Defendant, a senior citizen, who had claimed that the property is the only property for his livelihood which was brought to sale by



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public auction. The auction purchaser does not suffer greater damage than the loss of livelihood of the Defendant. The auction purchaser's amount has to be refunded in the light of the settlement that may be arrived by the undertaking given by the Revision Petitioner before this Court. The discretion rests with the learned District Munsif, Pollachi.

(iv) If as per the undertaking given before this Court by the Revision Petitioner/the Defendant in both the suits is not possible even after sufficient time granted by the learned District Munsif, Pollachi, the learned District Munsif, Pollachi is within his/her discretion to pass appropriate orders.

(v) There shall be no order as to costs.

21.12.2024

ata/srm

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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C.R.P.Nos.227 & 244 of 2021

To

1. The District Munsif Judge,
Pollachi.
2. The Section Officer,
V.R.Records,
High Court of Madras.



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C.R.P.Nos.227 & 244 of 2021

SATHI KUMAR SUKUMARA KURUP, J

ata/srm

Common Order made in
C.R.P.Nos.227 & 244 of 2021

21.12.2024