



C.M.S.A.No.33 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.S.A.No.33 of 2024

Sengodaguonder (died)

1.Palaniyammal

2.S.Palanisamy

.. Appellants

Vs.

1.Indian Overseas Bank,
Padaveedu Banch,
Rep by it's Manager (D.H),
Having it's office at Padaiveedu,
Elandaikuttai Post,
Tiruchengode Taluk,
(Now Komarapalayam Taluk),
Namakkal District.

2.A.Sakthivel

3.S.Shanmugasundaram

.. Respondents

Prayer: Civil Miscellaneous Second Appeal filed under Section 100 read with Order XLIII Rule 1(i) of CPC, to allow this appeal by setting aside the Judgment and Decree in C.M.A.No.12 of 2018 passed by the Principal District Judge, Namakkal, dated 08.06.2020 as well as the order



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and decree in R.E.A.No.10 of 2010 in R.E.P.No.17 of 2008 in O.S.No.123 of 1992 on the file of the Sub Court, Tiruchengode, dated 15.03.2017.

For Appellants : Mr.A.Sivaji

J U D G M E N T

This Civil Miscellaneous Second Appeal has been filed challenging the judgment and decree passed in C.M.A.No.12 of 2018 dated 08.06.2020 on the file of the Principal District Court, Namakkal, confirming the decree passed in R.E.A.No.10 of 2010 in R.E.P.No.17 of 2008 in O.S.No.123 of 1992 on the file of the Sub Court, Tiruchengode, dated 15.03.2017.

2.The judgment debtors are the appellants in this appeal. One Sengodagounder had borrowed money from the Bank and had mortgaged the property. Since, the money that was borrowed was not repaid back, the Bank filed a suit in O.S.No.123 of 1992 and a preliminary decree came to be passed and thereafter, a final decree was also passed on 27.01.2010. The property that was mortgaged was brought for sale to realize the decree amount. This process was going on for nearly 16 years



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and the borrower was able to settle only a sum of Rs.2,25,000/-.

3.The decree holder left with no other option took steps for bringing the property for sale.

4.The auction was held atleast on four occasions. There were no takers and ultimately only after the upset price was reduced, the property was taken on auction.

5.The judgment debtor questioned the auction mainly on the ground that the auction was not conducted in a fair manner and that the property which is worth atleast Rs.15 lakhs was sold for a song. Thus, the application was filed under Order XXI Rule 90 of CPC to set aside the sale conducted on 27.01.2010.

6.Both the Courts below have dealt with the issue and came to a conclusion that no ground has been made out to set aside the sale. Aggrieved by the same, the present Civil Miscellaneous Second Appeal has been filed before this Court.



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7. Heard the learned counsel for the appellants and carefully perused the materials available on record.

8. The Courts below have taken into consideration the fact that the appellants have neither furnished the security to the satisfaction of the Court for an amount equal to that of the sale warrant, nor the amount that was realized through the sale. That apart, the decree that was passed in the suit has also become final and the appellants were not able to establish that the auction sale suffers from any fraud. The Courts below also found that the appellants were not able to establish the fact that the property is worth more than Rs.15 lakhs and in fact the Courts below took into consideration the fact that atleast on four occasions there were no takers and the upset price had to be reduced. Therefore, the value as was tried to be established by the appellants was found to be unsustainable.

9. The findings of the Courts below is purely based on facts and the present appeal does not involve any substantial question of law. In view



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of the same, this Court is not inclined to interfere with the judgment and decree passed by the Courts below.

10. Accordingly, the present Civil Miscellaneous Second Appeal stands dismissed and the judgment and Decree in C.M.A.No.12 of 2018 passed by the Principal District Judge, Namakkal, dated 08.06.2020 as well as the order and decree in R.E.A.No.10 of 2010 in R.E.P.No.17 of 2008 in O.S.No.123 of 1992 on the file of the Sub Court, Tiruchengode, dated 15.03.2017 are confirmed. No costs.

04.06.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1. The Principal District Judge,
Principal District Court,
Namakkal.

2. The Subordinate Judge,
Sub Court, Tiruchengode



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N.ANAND VENKATESH, J.

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3.The Section Officer,
VR Section, Madras High Court,
Chennai.

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