



S.A.No.797 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                                    |                                      |
|------------------------------------|--------------------------------------|
| Judgment Reserved on<br>05.02.2024 | Judgment Pronounced on<br>08.03.2024 |
|------------------------------------|--------------------------------------|

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

**S.A.No.797 of 2017**  
**and C.M.P.No.20013 of 2017**

R.Karuppannan

.. Appellant

Vs.

Natarajan (Deceased)

1.Manikandan

2.Saroja

3.Gunasekaran

5.K.R.Jagadeesan (Deceased)

..Respondents

**PRAYER:** The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 17.07.2017 passed in A.S.No.24 of 2015 on the file of the Principal Sub-Court, Salem, confirming the judgment and decree dated 27.10.2014 made in R.E.A.No.137 of 2004 in R.E.P.No.126 of 2002 in O.S.No.193 of 2002 on the file of the Principal District Munsif Court, Salem.



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S.A.No.797 of 2017

For Appellant : Mr.N.Manokaran  
for Mr.N.Sreenivasalu

For Respondents  
For RR1 & 2 : Mr.S.Mukund  
Senior Counsel  
for Mr.T.S.Vijayaraghavan

For R3 : Exparte

### **JUDGMENT**

This Second Appeal has been filed against the judgment and decree dated 17.07.2017 passed in A.S.No.24 of 2015 on the file of the Principal Sub-Court, Salem, confirming the judgment and decree dated 27.10.2014 made in R.E.A.No.137 of 2004 in R.E.P.No.126 of 2002 in O.S.No.193 of 2002 on the file of the Principal District Munsif Court, Salem.

2.The Second Appeal proceedings arise from a suit for recovery of money filed by one N.Gunasekaran, as plaintiff, in O.S.No.193 of 2002 against one K.R.Jagadeesan, on the file of the Principal District Munsif, Salem. The suit was filed for recovery of a sum of Rs.29,025/- based on a promissory note executed by the defendant in the said suit, namely K.R.Jagadeesan. The suit came to be decreed on 26.04.2002. The defendant



S.A.No.797 of 2017

remained exparte and the District Munsif, Salem, proceeded to pass an exparte decree. The property was sold by the Executing Court and one R.Karuppannan was its successful auction purchaser. The decree holder initiated execution proceedings in R.E.P.No.126 of 2002. In the said execution proceedings, the third party, namely the respondents herein filed miscellaneous application in R.E.A.No.137 of 2004, arraying the decree holder as judgment debtor and the auction purchaser as respondents.

3.It is the case of the said applicants in R.E.A.No.137 of 2004 that they have purchased the property belonging to the judgment-debtor on 13.12.2002, for a valuable sale consideration of Rs.14,13,500/- and they have also taken possession of the property. According to the petitioners, they came to know that the decree holder had filed I.A.No.290 of 2002 under Order 38 Rule 5 of CPC, seeking attachment of the suit property before judgment. The suit was decreed exparte as already noted on 26.04.2002 and the attachment order in I.A.No.290 of 2002, which had been passed earlier also became absolute on the date of decree (i.e.,) 26.04.2002. According to the petitioners, the decree holder initiated execution proceedings on 23.07.2002 and sought for bringing the suit property for sale. Even in the



S.A.No.797 of 2017

said execution proceedings, the defendant remained exparte and on 02.09.2002, an order came to be passed.

4.It is the specific case of the petitioner's that the defendant was fully aware of the proceedings and despite the same, he has sold the property to the petitioners, after receiving the entire sale consideration on 13.12.2002. According to the petitioners, they are bonafide purchasers having no notice about the suit or the execution proceedings, much less the attachment proceedings. According to the petitioners, the 2<sup>nd</sup> respondent has also handed over the possession of the suit property to them and the petitioners have also effected mutation of revenue records in their names. Thereafter, they have also put up additional constructions in the suit property and they have been in absolute possession and enjoyment of the same. While so, on 29.03.2004, the Court Bailiff along with police personnel came to the suit property and informed the petitioners about the purchase of the suit property by the auction purchaser, the 3<sup>rd</sup> respondent and the petitioners were threatened with dispossession. As the Court Bailiff did not give any time to the petitioners, they had no other option, but to remove the belongings and deliver possession. Thereafter, with the assistance of their Advocate, they verified



S.A.No.797 of 2017

the Court papers and came to know about the auction sale in favour of the 3<sup>rd</sup> respondent from 24.10.2002 for a sale consideration of Rs.6,53,000/- and that the sale was also confirmed on 07.01.2003. The petitioners also noted irregularities in the legal process adopted by the decree holder and therefore, moved the Executing Court for conducting enquiry and to put the petitioners in possession of the suit property.

5.The auction purchaser filed a counter affidavit stating that he is a bonafide purchaser who has purchased the property in Court auction and it is the Court which executed the Sale Deed in his favour and therefore, following the due process of law, the auction purchaser has taken delivery of the suit property and on these grounds resisted the applications filed by the petitioners. The Executing Court, after discussing the rival contentions of the parties, found that the respondents had colluded to defraud the petitioners and therefore, the petitioners are entitled to redelivery of the property along with compensatory cost of Rs.3,500/-.

6.The auction purchaser preferred an appeal in A.S.No.24 of 2015. The First Appellate Court concurred with the findings of the Executing Court and dismissed the appeal.



S.A.No.797 of 2017

WEB COPY

7.The auction purchaser, aggrieved by the concurrent findings of the Courts below, has preferred the above Second Appeal. The Second Appeal has been admitted by this Court on 17.11.2023, on the following substantial question of law:

Whether the Courts below are right in allowing the applications filed by the respondents 1 and 2 overlooking the material fact that they had purchased the suit property pending execution proceedings, that too after Court Auction Sale.

8.I have heard Mr.N.Manokaran, learned counsel for Mr.N.Sreenivasalu, learned counsel for the appellant and Mr.S.Mukund, learned Senior Counsel for Mr.T.S.Vijayaraghavan, learned counsel counsel for the respondents 1 and 2. The 3<sup>rd</sup> respondent, who is a decree holder, plaintiff in the original suit proceedings remained exparte even in the Second Appeal.

9.Mr.N.Manokaran, learned counsel for the appellant would attack the concurrent findings of the Court below on the ground that the respondents



S.A.No.797 of 2017

are purchasers pending the execution proceedings before the Court and therefore, they cannot claim to be bonafide purchasers. Further, the learned counsel for the appellant would also state that the appellant has purchased the property in a Court auction and the Court has executed a Sale Deed in his favour and therefore, such a sale cannot be set aside casually, that too at the instance of purchasers who have taken the risk of purchasing the suit property pending execution proceedings before a competent Court of law.

10.The learned counsel for the appellant would place reliance on the following decisions:

1. ***(2008) 7 SCC 144 (Usha Sinha Vs. Dina Ram & Others)***

2. ***2003 1 L.W. 772 (Vijayalakshmi Leather Industries (P) Ltd., Chennai-3 Vs. K.Narayanan & Others)***

3. ***2021 (2) MWN (Civil) 506 (Annakkili Vs. Murugan & Others)***

4. ***Manu/SC/0819/2022 (Sriram Housing Finance & Investment India Ltd. Vs. Omesh Mishra Memorial Charitable Trust.***

11. In *Usha Sinha'* case, the Hon'ble Supreme Court discussed the



S.A.No.797 of 2017

object and scope of Order 21 Rules 97, 98, 100 and 102 and finding it to be based on justice, equity and good conscience, held that a transferee from the judgment-debtor is presumed to be aware of the proceedings before a Court of law. The doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882 was also discussed.

12.The Division Bench of this Court in ***Vijayalakshmi Leather Industries'*** case, elaborately dealt with the Rules 98 and 100 as well as 102 of Order 21 of CPC and held that when Section 52 of the Transfer of Property Act makes it clear that no party to the proceeding can transfer any property which is the subject matter of the litigation, the transferee from the party to the proceeding or the judgment-debtor cannot have any valid title.

13.In ***Annakkili's*** case, the learned Single Judge of this Court held that Section 52 of the Transfer of Property Act namely the doctrine of *lis pendens* would also apply to money suits.

14.In ***Sriram Housing Finance'*** case, the Hon'ble Supreme Court held that under Order 21 Rule 97 dealing with the resistance or obstruction to



S.A.No.797 of 2017

possession of immovable property by 'any person' obtaining possession of the property against the decree holder, empowers the decree holder to make an application complaining of such resistance or obstruction. Rule 99 of Order 21 also deals with the right of 'any person' other than the judgment-debtor who is dispossessed by the decree holder. The Hon'ble Supreme Court further held that the provision vests 'any person' with a right to make an application complaining about such dispossession of immovable property. Rule 98 and 100 deal with the power of the Execution Court to pass orders on applications under Rule 97 and 99. Rule 101 confers with jurisdiction on the Court as well as an obligation to determine the questions relating to right, title or interest in the property arising between the parties on an application made by the aggrieved person. Rules 97 and 99 contemplate adjudication in the same proceedings and not by a separate suit. Rule 102 clarifies that Rules 98 and 100 shall not apply in a case where resistance or obstruction is offered by 'transferee *pendente-lite*' i.e., a person to whom the property is transferred by the judgment-debtor after institution of the suit in which the decree is sought to be executed was passed.

5.Per contra, Mr.S.Mukund, learned Senior Counsel for the



S.A.No.797 of 2017

respondents 1 and 2 would state first and foremost that the suit was one simpliciter for recovery of money that too based on a promissory note.

Therefore the judgments on which reliances is placed on by the learned counsel for the appellant according to the Senior Counsel would have no bearing on the facts of the present case. He would further contend that Section 52 of the Transfer of Property Act cannot be pressed into service in the present case as the execution proceedings admittedly, arose only under a suit for recovery of money as from the judgment-debtor who suffered a decree in a money suit, based on promissory note.

16.The learned Senior Counsel would also state that the auction purchaser himself stood as a witness when the property was attached and this only strengthens the collusion between the judgment-debtor as well as the auction purchaser. He would further contend that the mandatory procedure under Order 38 Rule 11(b) has not been complied with and therefore, the reliance place on by the learned counsel for the appellant on the decision of this Court in *Annakkili's* case would not apply to the facts of the present case.



S.A.No.797 of 2017

17.The learned Senior Counsel would also state that the possession was taken only from the respondents/purchasers as if the judgment-debtor was in possession and this also amounted to a fraud and also irregular procedure before the Executing Court. Finally, he would also place reliance on Ex.P38, Encumbrance Certificate for period 1987 to 2002 which does not reflect the order of attachment.

18.The learned Senior Counsel for the respondents would also place reliance on the following decisions:

***1.2000 (2) CTC 524 (Mad.) ( Sri Krishna Chit Funds (Sattur Private Limited, Sattur, Having its Office at Door No.17, Pillaiyar Koill Street, Sattur Town and Taluk through its Managing Director Tmt.R.Umayal Vs. R.S.Pillai and Another).***

***2.2012 (1) CTC 407 (Mad.) (Sri Humbi Hema Gooda; Sri Gayathri Peda; Sri Devanga Jagathguru, Charitable Trust, Santhama Naicekenpalayam, Palladam Taluk, Coimbatore District rep. by its Power Agent, R.Krishnasamy @ Girikannan Vs. Tamil Nadu State Transport Corporation (Cbe) Ltd., Coimbatore Public Limited Company, having its***



S.A.No.797 of 2017

WEB COPY

*registered office at No.37, Mettupalayam Road, Coimbatore, rep by its Managing Director; P.Kothandapani; M.Ramachandran; S.Nagarajan).*

*3.2017 SCC OnLine Mad 37597 (Ammavasai Vs. Tulasikannu and Another).*

*4.2017 SCC OnLine Mad 20182 ( Vellapandi Vs. K.S.Maheswari).*

*5.2019 (6) CTC 55 ( Nataraja Naidu (Died) and Others Vs. Soundarajan and Others).*

19.In *Ammavasai's* case, the learned Single Judge of this Court held that Section 52 of Transfer of Property Act would be attracted only when a right to immovable property is directly and specifically in question and that in a money suit, no such right can be said to be directly or specifically or even remotely be in question.

20.In *Ashan Devi's* case, the Hon'ble Supreme Court, while interpreting Order 21 Rule 97 held that the objects of introducing amendments to the CPC could not be lost sight of and third parties who are



S.A.No.797 of 2017

adversely affected or dispossessed from property involved, who were originally required to file independent suits claiming title and possession were also brought within the ambit of Order 21 so that prolonged litigation can be avoided. The Hon'ble Supreme Court also held that the word “dispossess” under Rule 99 Order 21 cannot be restricted to actual and physical possession alone and held that the Execution Court was well within the law to adjudicate the claim of a third party under Order 21 Rule 99 of CPC.

21. In *Shamsheer Singh's* case, the Hon'ble Supreme Court held that the purpose of amendment to Rule 103 was that any adjudication made under Rule 101 shall have the same force and be subject to the same conditions as to an appeal or otherwise, as if it was a decree and Rule 101 affords an opportunity to get all issues relating to right, title or interest in the property to be determined. The Hon'ble Supreme Court further held that when an application had been filed to redelivery of possession, it was obligatory for the person approaching the Court to establish his right, title or interest in the property, before becoming entitled to an order for redelivery.



S.A.No.797 of 2017

22.In *Mari's* case, the Hon'ble Supreme Court held that all questions relating to right, title and interest arising between the parties to proceedings namely applications under Order 21 Rules 97 to 99 shall be determined by the Court dealing with such application 'not by way of a separate suit' and that the remedy open to the person, who is sought to be dispossessed in execution of a decree even though not being the party to the decree, has to move only the Executing Court and establish his independent right and it is not open to him to file a separate suit for the said purpose.

23.The following decisions have also been relied on by Mr.S.Mukund, learned Senior Counsel for the respondents 1 and 2, with regard to the mandatory procedure to be followed under Order 38 Rule 11(b) of CPC.

**1.2000 (II) CTC 524 (Sri Krishna Chit Funds  
(Sattur Private Limited) rep. by its Managing Director  
Tmt.R.Umayal Vs. R.S.Pillai and Another).**

**2.2012 (1) CTC 407 (Sri Humbi Hema Gooda and  
Others Vs. Tamil Nadu State Transport Corporation  
(CBE) Ltd., Coimbatore and Others).**



S.A.No.797 of 2017

24.In the above decisions, this Court has categorically held that in terms of Rule 11(b), the order of attachment has to be communicated to the Registration Officer within whose jurisdiction the immovable property sought to be attached is situated. This Court has consistently held that the procedural compliances under the said Rule 11(b) is mandatory and any default in compliance would save alienations made by the defendant/judgment-debtor.

25.Keeping the above principles enunciated by the Hon'ble Supreme Court as well as this Court in mind, I proceed to adjudicate upon the contentious issue, namely, whether the order of attachment in favour of the decree holder and consequent purchase of the suit property by the auction purchaser would bind the respondents herein, who are the purchasers from the defendant/judgment-debtor.

26.In order to appreciate the rival submissions advanced by the learned counsel on either side, it would be appropriate to extract Order 38 in entirety:

***Order 38, C.P.C. Arrest and attachment before judgment:***

***1. Where defendant may be called upon to furnish***



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S.A.No.797 of 2017

***security for appearance—***

*Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—*

*(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him—*

*(i) has absconded or left the local limits of the jurisdiction of the Court, or*

*(ii) is about to abscond or leave the local limits of the jurisdiction of the Court his property or any part thereof, or*

*(b) that the defendant is about to leave India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security, for his appearance:*

*Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim; and such sum shall be*



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*held in deposit by the Court until the suit is disposed of or until the further order of the Court.*

## **2. Security**

*(1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have paid by the defendant under the proviso to the last preceding rule.*

*(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.*

## **3. Procedure on application by surety to be discharged**

*(1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.*

*(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit may issue a warrant for his arrest in the first instance.*



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S.A.No.797 of 2017

*(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.*

***4. Procedure where defendant fails to furnish security or find fresh security***

*Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied:*

*Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:*

*Provided also that no person shall be detained in prison under this rule after he has complied with such order.*

***Attachment before judgment***

***5. Where defendant may be called upon to furnish security for production of property***

*(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent*



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S.A.No.797 of 2017

*to obstruct or delay the execution of any decree that may be passed against him,—*

*(a) is about to dispose of the whole or any part of his property, or*

*(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,*

*the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.*

*(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.*

*(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.*

*[(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule such attachment shall be void.]*



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***6. Attachment where cause not shown or security not furnished***

*(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.*

*(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.*

***7. Mode of making attachment***

*Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.*

***8. Adjudication of claim to property attached before judgment***

*Where any claim is preferred to property attached before judgment, such claim shall be adjudicated upon in the manner hereinbefore provided for the adjudication of claims to property attached in execution of a decree for the payment of money.]*



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S.A.No.797 of 2017

***9. Removal of attachment when security furnished or suit dismissed***

*Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the cost of the attachment, or when the suit is dismissed.*

***10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale***

*Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.*

***11. Property attached before judgment not to be re-attached in execution of decree***

*Where property is under attachment by virtue of the provisions of this order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.*

***11A. Provisions applicable to attachment***

*(1) The provisions of this Code applicable to an attachment made in execution of a decree shall so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of rule 11.*

*(2) An attachment made before judgment in a suit*



WEB COPY



S.A.No.797 of 2017

*which is dismissed for default shall not become revived merely by reason of the fact that the order for the dismissal of the suit for default has been set aside and the suit has been restored.]*

In fact, the Madras High Court, in and by an amendment, has introduced Rule 11-B. For better appreciation, the said Rule 11-B of Order 38 of CPC is extracted hereunder:

*11-B. Order of attachment to be communicated to the Registering Officer - Any order of attachment passed under Rule 5 or 6 of this Order and any order raising the attachment passed under Rule 9 of this order shall be communicated to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the immovable property completed in such order, is situate.*

***12. Agricultural produce not attachable before judgment***

*Nothing in this Order shall be deemed to authorize the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.*

***13. Small Cause Court not to attach immovable property***

*Nothing in this Order shall be deemed to empower any Court of Small Causes to make order for the*



S.A.No.797 of 2017

*attachment of immovable property.*

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27.It is pertinent to note that the Code of Civil Procedure does not provide for any such requirement as contemplate under Rule 11-B. Rule 11-B has been introduced by way of an amendment by the High Court of Madras. It is clear from the language employed under Rule 11-B that any order of attachment that is passed either Rule 5 or Rule 6 of Order 38 or any order raising attachment passed under Rule 9 of Order 38 shall be communicated to the Registering Officer within the local limits of whose jurisdiction, the whole or any immovable property comprised in such order, is situate.

28.I have already discussed the consistent line of decisions of this Court wherein it has been unequivocally held that non compliance of Rule 11-B would be fatal and when there is a failure to communicate the order of attachment as contemplated under the above Rule, the order of attachment itself would have no effect or force.



S.A.No.797 of 2017

29.The very object of this amendment itself is very laudable, for instance taking the case on hand itself, the litigation arose out a simple suit for recovery of money based on a promissory note executed by the defendant in the original suit in favour of the plaintiff, that too for a partly sum of Rs.20,000/-. In the said suit, the plaintiff had also taken out an application seeking the defendant to furnish security and on such failure to furnish security, sought for passing of an order of attachment before judgment. Admittedly, the defendant remained exparte and the order of attachment came to be passed. It is the duty of the decree holder to have communicated the order of attachment to the Sub Registrar concerned in whose jurisdiction or locality the immovable property was situated. Only if this mandatory procedure had been followed or complied with, the attachment order would have been reflected in the encumbrance records. When a property is sold by a willing seller to a willing purchaser, one of the relevant documents that assumes much significance is the encumbrance certificate because, it is the document which shows the entries that are relating to the subject property which is sought to be sold/purchased.

30.Taking the case of the respondents 1 and 2 herein who claimed to



S.A.No.797 of 2017

be bonafide purchasers for value from the 2<sup>nd</sup> respondent, it is impossible for them to have known about the order of attachment passed by the Civil Court, unless and until their vendor namely the defendant/judgment-debtor had been fair and bonafide in disclosing the said factum the purchasers. Only in order to protect innocent purchasers from dealing with the properties that are subject matters of attachment, the Madras High Court has introduced Rule 11-B, which is not available even in the main Code itself. This being the position, the mandate of Rule 11-B cannot be whittled down by stating that the auction purchaser under a Court auction of immovable property, arising out the attachment before judgment proceedings/execution proceedings in a suit for recovery of money would have to be protected, despite failure to comply with mandate of Rule 11-B. Once the order of attachment is not duly and properly communicated to the Registering Officer, as discussed herein above, the order of attachment itself loses its value/effect. Thus, no legal rights can flow therefrom. In such circumstances, despite the fact that the appellant has purchased the property, only through a Court auction, he cannot claim to any preferential right or protection under the law.



S.A.No.797 of 2017

31.Further, admittedly, the possession was taken only from the contesting respondents herein subsequent to their purchase from the judgment-debtor and not from the judgment-debtor himself. This procedure again appears to be highly irregular and without following the procedure as contemplated under Order 21 to take possession from the third parties who are in possession of the suit property in question. The decree holder cannot claim to have validly taken possession, at the time of executing the decree. The averments in REA.No.137 of 2004 is that without any notice and personal visit by the Court Bailiff to the suit property, orders of Police aid and break open have been ordered and possession was taken from the contesting respondents herein cannot be brushed aside rightly.

32.In the counter filed by the auction purchaser, he has stated that he has taken possession only from the judgment debtor and there is no obstruction for the execution being proceeded with. However, on the date of taking delivery namely on 29.03.2004, the contesting respondents had already purchased the property under a registered Sale Deed dated 13.12.2002, in pursuance of which, they have been in possession and to evidence the same, they have also filed several documents in the nature of House Tax receipts, Demand Registers, Water and Telephone Bills, LIC



S.A.No.797 of 2017

receipts as well as communication form the Electricity Board and Water Tax card. Therefore, it is clear that the possession has been taken only from the contesting respondents herein and not from the judgment-debtor.

33.Surprisingly, I do not find the signature of the judgment debtor in Ex.P30. It is a receipt which has been signed only by the auction purchaser which is nothing but a self serving document. The proper procedure to be adopted by the Court Bailiff was to obtain signature of the judgment-debtor to confirm the fact that he has vacated and delivered the possession of the suit property in compliance with the decree.

34.In the present case, though it is the specific contention of the appellant that he has taken possession only from the judgment-debtor who was present on the relevant date when the Bailiff went there to take forcible possession, the Bailiff ought to have obtained the signature of the judgment-debtor instead of producing a self serving receipt from the auction purchaser that he has taken possession.

35.Apart from the above submissions, the learned Senior Counsel



S.A.No.797 of 2017

would also point out that at the time of effecting tom tom, the auction purchaser stood as a witness and therefore, the learned Senior Counsel would contend that he was very much in the know of the entire proceedings and it established a clear case of collusion between the judgment-debtor and the auction purchaser. However, despite these irregularities and shortcomings in following the due process of law while executing the decree for recovery of possession, in view of the fact that the non communication of the order of attachment to the jurisdictional Sub Registrar, the very foundation itself gets rocked and no amount of further proceedings arising out of the said attachment order can have any legal validity or effect. Therefore, the very sale, though by the Court, in auction proceedings, in favour of the appellant itself is not valid and is illegal in the eye of law. Consequently, the recovery of possession of the property purchased by the appellant in auction also automatically goes and the respondents are entitled to redelivery of possession.

36.Though the Hon'ble Supreme Court in ***Sri Humbi Hema Gooda and Others Vs. Tamil Nadu State Transport Corporation (CBE) Ltd., Coimbatore and Others***, held that Rules 98 and 100 shall not apply to the



S.A.No.797 of 2017

cases where resistance or obstruction in execution of decree is offered by a transferee *pendente lite*, that is a person to whom the property is transferred by the judgment-debtor, after institution of the suit, in which the decree sought to be executed was passed, here, in the present case, the facts are slightly different. It is not a case of a resistance or obstruction by a transferee *pendente lite*. It is an application for redelivery of the property by a bonafide purchaser for a valuable consideration. Admittedly, when the attachment order was not communicated to the Sub Registrar, the attachment would have effect and therefore, the question of transferee a *pendente lite* would never come into play in the first place. Therefore, the said decision would not come to the aid of the appellant.

37.For all the above reasons, I do not find any substantial questions of law to be answered in favour of the appellant herein. In fine, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

08.03.2024

Index : Yes/No  
Speaking Order/Non-Speaking Order



S.A.No.797 of 2017

WEB COPY

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**P.B.BALAJI., J.**

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To

- 1.The Principal Sub-Court, Salem
- 2.Principal District Munsif Court, Salem.
- 3.The Section Officer, VR Section, High Court, Madras.

Pre-delivery judgment made in

S.A.No.797 of 2017

08.03.2024



WEB COPY



S.A.No.797 of 2017

**S.A. No.797 of 2017**

**P.B.BALAJI, J.,**

Today, this matter is listed under the caption '*for being mentioned*'.

2. On going through the Judgment, dated 08.03.2024, it is seen that in the twelfth line of the paragraph No.36, by inadvertently typed as “would have effect”, it should be read as “would have **no** effect”. Hence, the Registry is directed to include the the said word **"no"** in the twelfth line of the paragraph No.36 and correct the error in the judgment dated 08.03.2024.

3. Except for the aforesaid modification, judgment dated 08.03.2024, remains unaltered in all other respects.