



C.R.P.(MD)No.2141 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Dated : 20.09.2024**

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**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**C.R.P.(MD)No.2141 of 2024**

**and**

**C.M.P.(MD)No.12192 of 2024**

1.M.Thameem Nisha

2.Kathijabeevi

3.M.Meharnisha

... Petitioners /  
Petitioners /  
Defendants 6 to 8

**Vs.**

Kadarkarai Selvam (Died)

... 1<sup>st</sup> Plaintiff (died)

1.Lalitha

2.Rajendran

3.Senthamarai Rani

4.K.Selva Prasath

... Respondents 1 to 4 /  
Respondents 2 to 5 /  
Plaintiffs 2 to 5

5.Rathanaraj

6.Ravichandran

7.Vijayakumar

8.Sumathi



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9.Official Receiver,  
Having office at District Court Buildings  
Srivilliputhur,  
Virudhunagar District.

... Respondents 5 to 9 /  
Respondents 6 to 10/

Defendants 1 to 5

10.Rubavathy

... Respondent 10 /  
Respondent 11/  
6<sup>th</sup> Plaintiff

***(Cause title is accepted vide order of this Court dated 23.08.2024 made in C.R.P(MD)SR.No.57608 of 2024)***

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10-06-2024 made in I.A.No.63 of 2022 in O.S.No.18 of 2018 on the file of the Additional District Court, Virudhunagar by allowing this civil revision petition before this Court.

For Petitioners : Mr.J.Balagopal

For Respondents : Mr.D.Selvanayagam

### **ORDER**

The contesting defendants in O.S.No.18 of 2018 on the file of Additional District Judge, Virudhunagar are the revision petitioners herein. The suit was filed by one Kadarkarai Selvam, respondents 1 to 4 and 10. The suit was for partition of the plaintiffs' 3/4<sup>th</sup> share in the suit property and for declaration that the auction sale conducted by the official receiver, Virudhunagar District on



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22.11.2011 in respect of the suit property will not bind the plaintiffs and D.1 to D.4 and for permanent injunction against the revision petitioners herein. The revision petitioners herein filed written statement controverting the plaint averments. They also filed I.A.No.63 of 2022 for rejection of plaint. IA was dismissed on 10.06.2024. Questioning the same, this Civil Revision Petition came to be filed.

2.The learned counsel appearing for the revision petitioners reiterated all the contentions set out in the memorandum of grounds of revision. The learned counsel submitted that the suit is clearly not maintainable in law. The insolvency petition was filed by the creditor against his debtor R.Santhachalapathy before the Sub Court, Sivagangai as per the provisions of Provincial Insolvency Act, 1920. It was numbered as IP.No.1 of 1970. On 02.04.1971, R.Santhachalapathy was adjudicated as insolvent. The suit property belonged to R.Santhachalapathy. Consequent to his adjudication as an insolvent, his estate came to be vested in the official receiver. The official receiver brought the property to sale on 29.09.2011. The revision petitioners brought the suit property in the said public auction sale for a sum of Rs.30,25,000/-.



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3.It is seen from the plaint averments that R.Santhachalapathy along with his three sons sold the suit schedule property in favour of one Gnanaiah vide sale deeds dated 27.02.1984, 23.01.1985, 23.03.1985 and 23.05.1985. The said Gnanaiah in turn sold the property in favour of Gandhimathi and her husband. the said purchaser subsequently sold the property to the plaintiffs on 14.01.1988.

4.The case of the revision petitioners is that these transactions are clearly illegal and would not bind the official receiver. If at all the subsequent purchasers have any claim, they should have moved the insolvency Court under Section 68 of the Provincial Insolvency Act, 1920. It is not open to the plaintiffs herein to maintain O.S.No.18 of 2018. The learned counsel for the revision petitioners would contend that the present proceedings stand barred by the relevant provisions of the Provincial Insolvency Act, 1920. According to the revision petitioners, there is no cause of action for filing the suit and that the Additional District Judge, Virudhunagar lacks jurisdiction to try O.S.No.18 of 2018. He called upon this Court to set aside the impugned order and allow the Civil Revision Petition as prayed for.



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5.Per contra, the learned counsel for the plaintiffs / contesting respondents submitted that the impugned order is well reasoned and that interference is not warranted.

6.I carefully considered the rival contentions and went through the materials on record.

7.The plaintiffs are the purchasers of the suit property vide registered sale deed dated 14.10.1988. Obviously, their rights are hit by the suit auction sale. Hence is cannot be stated that there is no cause of action for maintaining the suit. The only question that has to be considered is whether filing of the suit is barred by Section 68 of the Provincial Insolvency Act, 1920 and whether this can be considered in a petition filed under Order 7 Rule 11 of CPC.

8.It is well settled that at the stage of considering an application of Order 7 Rule 11, the Court has to go only by the plaint averments and documents. Defence of the defendant, however good, may cannot be gone in to at this stage. According to the plaint averments, the suit property is an ancestral property of R.Santhachalapathy. There was a partition involving Rathnasababathy Chettiyar and children born through his three wives on



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07.08.1952. The suit property was allotted in favour of R.Santhachalapathy in the said partition. R.Santhachalapathy had three sons, namely, Rathnaraj, Ravichandran and Vijay Kumar and one daughter, namely, Sumathi. They are the defendants 1 to 4 in the suit. R.Santhachalapathy was declared as insolvent by exparte order on 02.04.1971.

9.If the adjudication order had been entered in the encumbrance register in respect of the suit property, certainly it would have been notice to the public at large. In this case, it had been pleaded that the purchasers did not have the knowledge about the adjudication of R.Santhachalapathy as insolvent and that plaintiffs are bona fide purchasers for valuable consideration. It had further been pleaded that on 28.12.1972, preliminary decree was passed recognising 3/4<sup>th</sup> share of the minor sons of R.Santhachalapathy in the suit property.

10.Section 28(2) of the Act states that on the making of the order of adjudication whole of the property of the insolvent shall vest in the Court or in the official receiver and shall become divisible among creditors. The stand of the plaintiffs herein is that in the suit property, insolvent / R.Santhachalapathy had only 1/4<sup>th</sup> share and that the remaining 3/4<sup>th</sup> share belonged to his 3 minor sons. But the official receiver had sold the entire suit property in favour of the



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revision petitioners herein in the public auction sale held in the year 2011.

Interestingly, the official receiver was one of the defendants in O.S.No.14 of 1972 filed by Sulochana, W/o. R.Santhachalapathy on behalf of her three minor children. The suit was decreed and preliminary decree was passed for 3/4<sup>th</sup> share of the plaintiffs. When the official receiver was party to the decree, so long as it is holding good, he could not have sold the entire property. on the very face of it, the sale is against the decree in O.S.No.14 of 1972 dated 28.12.1972. Section 68 of the Act is as follows:

*“68.Appeal to Court against receiver.—If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just: Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the act or decision complained of.”*

The plaintiffs are obviously aggrieved by the act of the official receiver in selling the entire property. But they do have a remedy under Section 68 of the Act. The remedy provided in the said provision is rather summary in nature. It is clear from the expression “Application under Section”. The remedy cannot be compared to substantive civil suit. That apart, there is also the bar of limitation. The said summary remedy cannot be availed after the expiry of 21



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days from the day of the act or decision complied of. In this case, the plaintiffs state that they became aware of the sale only much later. Therefore, there was no scope for them to invoke Section 68 of the Act. The availability of summary remedy under Section 68 of the Act can never bar the substantive common law remedy under Section 9 of CPC. The core contention of the plaintiffs is that the official receiver who was bound by the partition decree dated 28.12.1972 in O.S.No.14 of 1972 had acted contrary to its terms. This grievance can very well be ventilated by them by filing the present suit. It is for this reason, the Court below came to the conclusion that not only the cause of action has been disclosed but there is no express bar in Section 68 of the Act to file a suit. The view taken by the Court below is eminently sound.

11.This Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**20.09.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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**To:**

The Additional District Court,  
Virudhunagar.



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G.R.SWAMINATHAN, J.

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