



C.M.A. No.1718/2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
19.12.2024	07.01.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO.1718 OF 2015

P.Sumathi

.. Appellant

- Vs -

1. K.Krishna Gounder

2. Primary Agricultural Co-op Bank
Varathampalayam

Kattampatty Post, S.S.Kulam Via

Coimbatore 641 107.

3. M.Prabhakaran

.. Respondents

Civil Miscellaneous Appeal filed under Order 43 Rule 1 of the Code of Civil Procedure to set aside the order passed in E.A. No.221 of 2013 dated 5.3.2015 in E.A. No.61 of 2006 on the file of the Principal District Judge, Coimbatore, in E.P. No.2 of 2004, on the file of the Deputy Registrar of Co-operative Societies.

For Appellant : Mrs. Chitra Sampath, SC, for



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M/s. V.Sivakumar

For Respondents : Mr. R.Murali for R-1
Mr. L.P.Shanmuga Sundaram
for R-2
Mr. G.Ponnambala Thiagarajan
For R-3

JUDGMENT

Aggrieved by the dismissal of the execution applications in E.A. No.221/2013 and E.A. No.223/2013, filed by the appellant, who is a third party, under Order XXI Rule 97 and 98 and Order XXI Rule 26 (2) of the Code of Civil Procedure, to record her obstruction and to restore her right in the property and also for setting aside the sale in respect of the petition mentioned property and discharging the appellant from the sale proceedings, the present appeal has been filed before this Court assailing the said orders.

2. The brief facts, which are necessary for the disposal of this appeal are as under :-

The appellant is the wife of the 3rd respondent, who was working as Clerk in the 2nd respondent/Co-operative Bank. The 3rd respondent, in connivance with two other staff of the 2nd respondent bank had defalcated the funds of the bank,



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which resulted in a dispute arising between the said individuals and the bank, which was referred to by the Registrar for arbitration u/s 90 of the Tamil Nadu Co-operative Societies Act (for short 'the Act') in ARC No.83/2004.

3. In addition to the above, two notices u/s 167 of the Act was issued against the 3rd respondent calling upon him to furnish security to the tune of Rs.13.30 Lakhs and Rs.20 Lakhs respectively and it was further notified that failing to offer security, the properties, which were scheduled in the notices would be attached conditionally. As no security was offered, conditional attachment of the immovable properties was made vide orders dated 12.1.2004 and 16.4.2004.

4. Thereafter, the arbitration proceedings in ARC No.83/2004 was withdrawn and enquiry u/s 81 of the Act was ordered vide order dated 22.12.2004 and an order u/s 87 of the Act came to be passed on 11.5.2005 directing the 3rd respondent and another to pay a sum of Rs.38,20,388/- jointly and severally with interest at 18% p.a. till realisation of the funds by the bank. Thereafter, the said order was put to execution in E.P. No.2/2004 and the



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properties attached u/s 167 of the Act was brought to sale for realising the amount payable by the judgment debtors.

5. In the said backdrop, the District Registrar issued a demand notice dated 15.6.2005 u/s 143 r/w Rule 126 of the Act to the appellant herein, viz., the wife of the 3rd respondent, which was acknowledged and received by the appellant on 17.6.2005 and the sale notice was acknowledged and received on 12.7.2005. On 22.7.2005, the properties were sold through public auction in which the 1st respondent purchased the property.

6. After auction sale of the property, the appellant herein preferred an appeal in C.M.A. No.102/2005 to set aside the aforesaid sale dated 22.7.2005, which was dismissed vide order dated 21.8.2012, which was, thereafter, challenged by filing CRP (NPD) No.759/2013, which was dismissed by this Court vide order dated 22.11.2013. Aggrieved by the same, SLP No.8546/2014 was preferred, which was also dismissed on 11.4.2014.



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7. In the interregnum, the auction purchaser, viz., the 1st respondent herein, filed application for delivery of the properties, which was initially returned, but on the orders of this Court in CRP (NPD) No.3900/2008, the said application for delivery of possession was numbered as E.A. No.61/2006 aggrieved by which the appellant filed E.A. Nos.221 and 223 of 2013 under Order XXI Rule 97 and 98 CPC and Order XXI Rule 26 (2) CPC, as aforesaid, which came to be dismissed by the court below, prompting the filing of the present appeal.

8. Initially, a learned single Judge of this Court, vide order dated 15.12.2015, had allowed the appeal by setting aside the order passed in E.A. Nos.221 and 223 of 2013 aggrieved by which, SLP No.7438/2016 came to be filed before the Apex Court, and by order dated 20.04.2018, the said special leave petition was allowed by setting aside the order dated 15.12.2015 in the present appeal and remanding the appeal for fresh consideration and on the basis of the said order, the present appeal is listed before this Court, which is taken on file and heard.



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9. The main bone of contention advanced by the learned senior counsel for the appellant is on the legality of the sale certificate issued by the 2nd respondent in favour of the 1st respondent, when the sale itself is a nullity in the eye of law and, therefore, the question of delivery of possession does not arise.

10. It is the submission of the learned senior counsel that Rule 126 (2) of the Tamil Nadu Co-operative Societies rules, 1988 (for short 'the Rules') mandate that the reminder of the purchase money and the amount required for general stamp for a certificate u/r 3 of Rule 29 ought to be paid within 15 days from the date of sale. However, it is alleged that the stamp duty was not paid by the 1st respondent/auction purchaser within 15 days and, therefore, there is no sale in the eye of law. To impress upon the aforesaid submission, learned senior counsel placed reliance upon the decision of a learned single Judge of this Court in **Valayutha Pandian – Vs – Vallisundari & Ors. (2019 (1) MWN (Civil) 278).**

11. It is the further submission of the learned senior counsel that extension of the period from 15 days to 30 days is provided for submitting the stamp duty beyond which power has not been granted for further extension.



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However, the 1st respondent has not complied with the payment of stamp duty and inability to issue sale certificate as is evidenced by the exhibits and, therefore, there is no sale in the eye of law and the sale has to be set aside. Therefore, it is submitted that the alleged payment of stamp duty by the 1st respondent on 29.8.2005 beyond the period of 30 days renders the sale a nullity.

12. It is the further submission of the learned senior counsel that there is no attachment of the property insofar as the present surcharge proceedings are concerned, as ARC No.83/2004 stood withdrawn and such being the case, there being no decree to attach the property, the issuance of sale certificate is irregular and is nothing but a perpetration of fraud against the appellant.

13. It is the further submission of the learned senior counsel that the procedure contemplated under clauses (k), (l), (m) and (n) of Rule 126 of the Rules have not been followed, which renders the auction bad and the subsequent sale void and the appellant, as obstructionist is entitled to file a petition under Order XXI Rule 97 and 98 of CPC.



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14. It is the further submission of the learned senior counsel that the property is the self acquired property of the appellant, which stands proved through the evidence of P.W.2. It is further submitted that the proviso to Section 144 of the Act provides that the property belonging to the member or past member or nominee, heir or legal representatives of the deceased member alone could be dealt with and in the present case, the appellant is not a member, but only the 3rd respondent was the member of the society and, therefore, the question of heirs or legal representatives does not arise. Therefore, the property, being the individual property belonging to the appellant, being a member of the family could not be dealt with by the 2nd respondent.

15. It is the further submission of the learned senior counsel that merely because in the previous round of litigation, the Court had passed an erroneous order, the same shall not be blindly followed by the courts in the subsequent litigations as the illegality perpetrated earlier need not be allowed to crystallise in the present round of litigation. Therefore, the non-appreciation with regard to Rule 16 of the Rules as also Section 144 of the Act having not properly



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deliberated in the earlier round of litigation cannot be a bar for this Court to appreciate the same in the present appeal.

16. It is the further submission of the learned senior counsel that the question of *res judicata* does not arise as in the present appeal, the legality of the sale is put in issue, which was not deliberated in the earlier round of litigation and the present case would attract the exceptions carved out under *res judicata*.

17. It is the further submission of the learned senior counsel that though the appellant is a third party, however, as the auction purchaser, viz., the 1st respondent had invoked the jurisdiction of the civil court seeking delivery of possession, the appellant has got right to protect her property by invoking Order XXI Rule 99, since the property involved in the auction sale is the absolute and individual property of the appellant, which stands protected under the Constitution and any dispossession from the property should be in accordance with law, as it would otherwise affect the right and livelihood of the appellant. The 1st respondent, viz., the auction purchaser, not having paid the requisite stamp duty upon the issuance of sale certificate, the right of the appellant to



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question the veracity of the sale stands protected and the appellant could very well question the legality of the sale. Therefore, the sale itself is illegal and, therefore, the same requires to be set aside by allowing the appeal.

18. In support of the aforesaid submissions, learned senior counsel placed reliance on the following decisions :-

- i) *Velayutha Pandian – Vs – Vallisundari & Ors. (2019 (1) MWN (Civil) 278);*
- ii) *Annamalai – Vs – Nagoorgani & Anr. (2006 (5) CTC 649); and*
- iii) *Manilal Mohanlal Shah & Ors. -, Vs – Sardar Sayed Ahmed Sayed Mahmad & Anr. (AIR 1954 SC 349); and*
- iv) *K.N.Balan – Vs – A.Chandran & Ors. (MANU/TN/5580/2023)*

19. Per contra, learned counsel appearing for the 1st respondent, viz., the auction purchaser submitted that the petition under Order XXI Rule 97 and 98 itself is not maintainable for the reason that resistance from obstruction to possession of immovable property could be sought for only by the holder of a decree or by the person, who has purchased the property in sold in execution of a



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decree and not by any person, who could otherwise be termed to be only third parties and the court could adjudicate the petitions only if filed by such persons. In the present case, it is the submission of the learned counsel that even according to the appellant, she is a third party, though the wife of the 3rd respondent and she is not a decree holder nor she is the auction purchaser and, therefore, she has no locus to file the application under Order XXI Rule 97 CPC. Appreciating the above provision of law in proper perspective, the court below had dismissed the petition filed by the appellant, which does not warrant any interference.

20. Insofar as the petition under Order XXI Rule 26 (2) of CPC is concerned, it is the submission of the learned counsel that the court may stay execution of a decree, which has been passed, only to enable the judgment debtor to obtain such stay and it cannot be at the instance of any other person, be it a third party, even related to the judgment debtor. In the present case, the appellant is admittedly the spouse of the judgment debtor and, therefore, she not being a judgment debtor, the petition at the instance of the appellant under Order XXI Rule 26 CPC is wholly not maintainable.



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21. It is the further submission of the learned counsel that the resort taken by the appellant to Rule 126 of the Tamil Nadu Co-operative Societies Act and the Rules should be read in consonance with Order XXI Rule 26 and 97 CPC and it cannot be read in isolation, thereby, it is only the judgment debtor, who would be the property party to knock the doors of the court by invoking the provisions of the Code of Civil Procedure and it would not be available to the appellant, who is a third party. It is therefore the submission of the learned counsel that so long as the judgment debtor has not assailed the sale, the rigours of Section 144 of the Act would stand attracted as the appellant had failed to take any action on the notice issued to her, as the nominee of the judgment debtor and such being the case, the appellant cannot seek refuge under Section 144 of the Act, moreso, when the amount, which is sought to be recovered is not a debt at the hands of the judgment debtor and Section 143 r/w Rule 126 of the Rules would stand squarely attracted to the case of the appellant.

22. It is the further submission of the learned counsel that the plea of infraction of Rule 126 by the 1st respondent in not paying the stamp duty within



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the time stipulated under law renders the sale void is grossly impermissible for the reason that in line with Article 127 of the Limitation Act, the appellant should have filed the petition against the execution of the decree within a period of 60 days from the date of execution of the sale certificate. However, the appellant has not resorted to such a procedure, thereby, the period of limitation stood lapsed and, therefore, the appellant cannot invoke the provisions of the Code of Civil Procedure to challenge the sale certificate issued to the 1st respondent.

23. It is the further submission of the learned counsel that without admitting for the sake of argument, if the appellant is a third party and not a judgment debtor, but could invoke Order XXI Rule 99 of CPC, the same could be done only after the appellant is dispossessed from the property and not prior to dispossession and, therefore, the application of the appellant is not maintainable and is premature.

24. It is the further submission of the learned counsel that for the appellant to file an application under Order XXI Rule 99 of CPC as an obstructionist to protect her possession, a legitimate, legal and better right to



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possession than the decree holder/auction purchaser should be made out and the appellant cannot question the legality of the auction and issuance of sale certificate, as allowing the same would amount to permitting the 3rd respondent, who is the judgment debtor to contest the entire issues once again, thereby, frustrating the interests of the 1st respondent/auction purchaser.

25. In fine, it is the submission of the learned counsel that the appellant having kept silent without challenging the demand notice and also the auction sale and after conclusion of auction and the issuance of sale certificate, cannot seek to deprive the 1st respondent of his rightful purchase as the grievance espoused at the instance of the appellant could be advanced only by the judgment debtor and not by the appellant, who is only the spouse of the judgment debtor and cannot step into the shoes of the judgment debtor to claim the benefit of the aforesaid legal provisions. Accordingly, he prays for dismissal of the present appeal.

26. In support of the aforesaid submissions, learned counsel appearing for the 1st respondent placed reliance on the following decisions :-



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- i) *Sriram Housing Finance & Investment India Ltd. – Vs – Omesh Mishra Memorial Charitable Trust (2022 (15) SCC 176);*
- ii) *Shamsher Singh & Anr. – Vs – Lieutenant Colonel Nahar Singh (Dead) Thru LRs & Ors. (2019 (17) SCC 279); and*
- iii) *G.G.Bharathidasan – Vs – Malini Mai & Ors. (2014 (4) LW 504)*

27. Learned counsel appearing for the 2nd respondent/co-operative society, endorsed and supported the contentions put forth on behalf of the 1st respondent while the learned counsel appearing for the 3rd respondent/judgment debtor endorsed the submissions made on behalf of the appellant.

28. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record, more particularly, the legal provisions, on which much emphasis has been laid by the learned counsel appearing for the parties and also perused the judgments pressed into service by the learned counsel for the appellant.



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29. There is no quarrel with the fact that the 3rd respondent is the judgment debtor and the appellant is the spouse of the 3rd respondent. It should also not be lost sight of that the appellant cannot step into the shoes of the 3rd respondent and claim herself to be the judgment debtor, which, admittedly, the appellant is not claiming. The appellant merely claims herself to be an obstructionist and by invoking Order XXI Rule 97 and 98 and also Order XXI Rule 26 (2) of the CPC, seeks to set aside the sale certificate as a nullity.

30. Therefore, it becomes imperative for this Court to find out the tenor of Order XXI Rule 97 and 99 and also Order XXI Rule 26 (2) of the CPC to find out whether the appellant could seek the aid of the aforesaid provisions of the Code to set aside the sale.

31. Order XXI Rule 97 and 99 and also Order XXI Rule 26 (2) of the CPC, which are called into play, for better appreciation, are quoted hereunder :-

Order XXI Rule 97 & 99 CPC

97 . Resistance or obstruction to possession of immovable property — (1) Where the holder of a decree for



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the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

[(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

.....

99 . Dispossession by decree-holder or purchaser— (1)

Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Order XXI Rule 26 (2) CPC

26 . When Court may stay execution— (1) *the Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree*



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or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.”

32. Order XXI Rule 97 CPC, in clear and unambiguous term spells out that it is only a decree holder, who could move an application for removing an obstructionist from the property which has been purchased in an auction sale, which such possession is obstructed by any party and it nowhere permits any third party from claiming themselves to be obstructionist and seek for possession of the immovable property.

33. Likewise, Order XXI Rule 99 clearly spells out that any other person other than the judgment debtor if sought to be dispossessed from the immovable property by the holder of a decree for possession of such property which has



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been purchased in an auction, an application could be made by the said person before the Court complaining of such dispossession and the court is bound to adjudicate the same.

34. Reading Rule 97 and 99 in tandem, it is clear that both are mutually obstructive. If the aid of Rule 97 is sought, then Rule 99 would not be available and where Rule 99 is sought, Rule 97 would not come into play, as both stand on different footing. However, by filing the present petitions before the court below, the appellant has questioned the legality of the sale certificate issued to the 1st respondent and has not shown any legitimate right or better right than the auction purchaser to protect such right.

35. Even at first blush, it could safely be conclude that Rule 97 would not be available to the appellant, as it would be enforced only by the judgment debtor and the appellant being a third party could not seek refugee under Rule 97. However, Rule 99 could be pressed into service by the appellant, if any legitimate right from dispossession through the auction purchaser is shown by the appellant. However, by taking umbrage under Rule 97, the appellant seeks to



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question the legality and validity of the sale and not establishing her legitimate right and interest over the property, which, according to her, is superior than that of the auction purchaser.

36. In this regard, useful reference can be had to the decision of the Apex Court in *Omesh Mishra case (supra)*, wherein, the applicability of Rule 97 and 99 has been succinctly dealt with and the persons, who could enforce the same has been codified and for better appreciation the same is quoted hereunder :-

“22. From bare reading of the aforesaid provisions, it is clear that Order XXI Rule 97 deals with the resistance or obstruction to possession of immovable property by 'any person' obtaining possession of the property against the decree holder. It empowers the 'decree holder' to make an application complaining about such resistance or obstruction. On the other hand, Rule 99 of Order XXI deals with the right of 'any person' other than the judgment debtor who is dispossessed by holder of a decree for possession of such property or in case where such property is sold in furtherance of execution of a decree. The said provision vests 'any person' with a right to make an application complaining about such dispossession of immovable property in the manner prescribed above. Rule 98 and Rule 100 deal with the power of the Court



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to pass appropriate orders upon an application preferred Under Rule 97 and Rule 99 respectively.

23. In so far as Rule 101 is concerned, it confers jurisdiction on the Court as well as casts an obligation to determine the questions relating to right, title or interest in the property, if any, arising between parties on an application made by the concerned person Under Rule 97 or Rule 99 in the same proceedings for adjudication and not in a separate suit. Lastly, Rule 102 clarifies that Rule 98 and Rule 100 shall not apply in a case where resistance or obstruction in execution of a decree for the possession of immovable property is offered by 'transferee pendente-lite' i.e., the 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.

24. On conjoint reading of the aforesaid provisions, it can be observed that Under Rule 97, it is only the 'decree holder' who is entitled to make an application in case where he is offered resistance or obstruction by 'any person'. In the present case, as admitted by the Appellant itself, it is a bona-fide purchaser of the property and not the 'decree holder'. As available from the material placed on record, it is the Respondent trust alongwith legal heirs of late N.D. Mishra who are the decree holders and not the Appellant. Therefore, it is obvious that Appellant cannot take shelter of Rule 97 as stated above to raise objections against execution of decree



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passed in favour of Respondent. Further, Rule 99 pertains to making a complaint to the Court against 'dispossession' of the immovable property by the person in 'possession' of the property by the holder of a decree or purchaser thereof.

25. It is factually not in dispute that Appellant purchased the said property from Mr. Yogesh Mishra vide sale deed dated 12.04.2004 and has been in vacant and physical possession of the property since then. Had it been the case that the Appellant was dispossessed by the Respondent trust in execution of decree dated 02.09.2003, the Appellant would have been well within the ambit of Rule 99 to make an application seeking appropriate relief to be put back in possession. On the contrary, the Appellant in the instant case was never dispossessed from the property in question and till date, as contended and unrefuted, the possession of same rests with the Appellant. Considering the aforesaid, the Appellant cannot be said to be entitled to make an application Under Rule 99 raising objections in execution proceedings since he has never been dispossessed as required Under Rule 99."

37. From the ratio laid down above, it clearly transpires that while Rule 97 deals with the resistance or obstruction to possession of immovable property by "any person" obtaining possession of the property against the decree holder, it



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empowers the decree holder to make an application complaining against such resistance, whereas Rule 99 deals with the right of “any person” other than the judgment debtor, who is sought to be dispossessed by the decree holder for possession to make an application making a complaint.

38. However, in the same stretch, the Apex Court has held that for invoking Rule 99 the person, who seeks to make the complaint should be dispossessed, who alone would then resort to invocation of Rule 99.

39. In the present case, as aforesaid the appellant is not the judgment debtor and, therefore, could not seek the aid of Rule 97. Though the appellant could seek the aid of Rule 99, however, as the case presently stands, the appellant was never dispossessed from the property in question and that the property till date is in possession of the property and, therefore, the appellant is not entitled to make an application under Order XXI Rule 99 raising objections in the execution proceedings, as she has never been dispossessed as required under Order XXI Rule 99 CPC.



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40. Appreciating the aforesaid provisions in proper perspective, the court below has rightly rejected the application filed under Order XXI Rule 97 and 99 CPC and, therefore, the said finding does not warrant any interference.

41. Turning back to the contention relating to Order XXI Rule 26 (2) CPC, as has been extracted supra, the said provision, in clear terms specifies that where the execution relates to the property or person of the judgment-debtor, which is seized under an execution, resort to this provision may be made by the judgment-debtor seeking stay on the execution of the same. However, in the case on hand, the appellant is not the judgment-debtor and, therefore, the appellant cannot take recourse to the aforesaid provision and rightly the court below has appreciated the same and has negated the claim of the appellant, which also does not warrant any interference.

42. The whole claim of the appellant is prefaced on Rule 126 (2) of the Cooperative Societies Rules, 1988, more specifically on clauses (k), (l), (m) and (n) of sub-rule (2) of Rule 126 and it is the vehement contention that the 1st respondent herein has not fulfilled the same and, therefore, the sale is void and it



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is therefore submitted that the appellant, being an obstructionist is entitled to file a petition to protect his possession of the property.

43. Rule 126 relates to the procedure to be followed in attachment and sale of immovable property. Sub-rule (2) thereof provides the manner in which such sale is to be taken up and the manner in which the proceeds are to be realised. Clauses (k), (l), (m) and (n), which are pressed into service to declare the sale as void, reads as under :-

“126. Procedure in attachment and sale of immovable property :- (1) Immovable property shall not be sold in execution of a decree unless such property has been previously attached :

Provided that where the decree has been obtained on the basis of a mortgage of such property, it shall not be necessary to attach it. (2) In the attachment and sale or sale without attachment of immovable property, the following rules shall be observed:-

* * * * *

(k) A sum of money equal to fifteen per cent of the price of the immovable property shall be deposited by the purchaser in the hands of the sale officer at the time of the purchase, and in default of such deposit, the property shall, forthwith be



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resold and the earnest money deposit of the defaulting purchaser shall be forfeited to Government after defraying therefrom the expenses of the resale : Provided that, where the decree-holder is the purchaser and is entitled to set off the purchase money under clause (o), the sale officer shall dispense with the requirements of this clause.

(l) The remainder of the purchase money and the amount required for the general stamp for the certificate under sub-rule (3) of rule 129 shall be paid within fifteen days from the date of sale: Provided that the time for payment of the cost of the stamp may for good and sufficient reasons, be extended at the discretion of the Registrar up to thirty days from the date of sale: Provided further that in calculating the amount to be paid under this clause, the purchaser shall have the advantage of any set off to which he may be entitled under clause (o).

(m) In default of payment within the period mentioned in clause (k), the deposit may, if the Registrar thinks fit, after defraying the expenses of the sale, be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may, subsequently be sold.

(n) Every resale of immovable property, in default of payment of the amounts mentioned in clause (l) within the period allowed for such payment, shall be made after the issue of fresh proclamation in the manner and for the period herein before specified for the sale. “



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44. This Court has already held that the appellant cannot invoke Order XXI Rule 97 claiming herself to be an obstructionist as it could only be the decree-holder or the purchaser of the property, who could invoke the said provision to claim the possession of the property from the person, who is causing obstruction. In such a backdrop, when the appellant is not clothed with any right to take advantage of Order XXI Rule 97 by claiming herself as obstructionist and filing the petition under the said provision of law, equally, resort to clauses (k), (l), (m) and (n) of Rule 126 (2) of the Rules cannot be invoked by the appellant to claim that non-payment of the purchase money would render the sale void as at best the said claim could be made only by the judgment-debtor and not by any other person.

45. In the case on hand, the appellant is not the judgment-debtor and, therefore, she could take recourse u/r 126 (2) to claim that the non-deposit of the purchase amount within the time prescribed would render the sale void. Further, it is also to be pointed out that such a contention would not be available to the appellant at this distant point of time, as the sale had taken place



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22.7.2005 in which the 1st respondent had participated and come out successful in the auction sale. The period of payment of the sale amount and also the cost of stamp is fifteen days from the date of sale, as provided under clause (I) of sub-rule (2) of Rule 126. However, under the proviso to clause (I), the Registrar is vested with discretion to extend the time upto thirty days from the date of sale for the auction purchaser to pay the cost of stamp.

46. The appellant claims that there is no material to show that the 1st respondent, who is the auction purchaser, has paid the cost of stamp within the period of thirty days from the date of sale. However, as stated above, the appellant has no *locus* to make such a claim as it is only the judgment-debtor, who could make a claim and the appellant, not being the judgment-debtor could not make such a claim.

47. Even otherwise, the sale stood concluded on 22.7.2005 and the sale certificate was executed in favour of the 1st respondent by the District Registrar, Coimbatore under Rule 129 (3) of the Rules on 2.9.2005. Even if the stand of the appellant is to be accepted, that the cost of stamp was not paid within the period



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prescribed, even then, the appellant ought to have filed a petition under Article 127 of the Limitation Act to set aside the sale in the execution of the decree within a period of 60 days from the date of execution of the sale certificate. However, no such application was filed by the appellant.

48. Further, it is to be pointed out that the appeal filed seeking to set aside the order of sale dated 22.7.2005 was filed before the Principal District Judge, Coimbatore, in Co-Op. CMA No.102/2005, which was dismissed by the court below by holding that though appellant had received the demand notice on 17.6.2005 and also the sale notice on 12.7.2005, yet she has not taken any steps to file an application under Rule 135 of the Rules to raise the attachment. Further the court below has recorded a finding that the appellant has not established her right and title to the property in the manner known to law and also found that the appellant has not established that the property was not liable for attachment. Against the said finding, the appellant had preferred an appeal before this Court in CRP (NPD) No.759/2013, which was also dismissed confirming the order passed by the court below.



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49. Thus, the sale certificate issued to the 1st respondent has reached finality with the court below as also this Court affirming the validity of the said sale certificate. Such being the case, it would not be open to the appellant to once again raise the very same plea, but in a different form, as the same is hit by the principles of *res judicata* and the appellant cannot be allowed to canvass the very same plea once over. Therefore, even on the ground of limitation, the plea of the appellant invoking Rule 126 (2) of the Rules deserves to be rejected.

50. Though few decisions touching the necessity for complying with clause (I) of sub-rule (2) of Rule 126 has been relied on by the learned senior counsel for the appellant, however, the said decisions would not come in aid to the appellant to further her cause for the simple reason that in all the aforesaid decisions, the judgment debtor has moved the Court against the compliance of Rule 126 (2) and furthermore within the mandated period of limitation. However, in the present case, the appellant, admittedly, is not the judgment debtor and, therefore, the decisions relied on, on behalf of the appellant would in no way further the case of the appellant and, therefore, the same are not discussed by this Court.



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51. As held above, the provision of law under which the appellant has raised the plea is not available to the appellant, as it is available only to the decree-holder/auction purchaser of the property/judgment-debtor as the case may be and it is not available to any third party to claim themselves to be obstructionist and come before this Court under Order XXI Rule 97 CPC or under Order XXI Rule 26 (2) of CPC seeking stay of execution of the decree. The appellant having not been vigilant and challenged the demand notice and sale notice and had kept silent and knocked the doors of this Court belatedly, which plea has already been rejected, the plea, as advanced now, if accepted, it would open the flood gates for litigation as any third party could come and knock the doors of this Court at any point of time which would frustrate the provisions of the Act and the Rules, which have been pressed into service. Therefore, the plea of the appellant that the non-payment of cost of stamp within the period prescribed under clause (I) of sub-rule (2) of Rule 126 deserves to be rejected.

52. The attempt of the appellant in filing the present litigation clearly shows that it is targeted only to delay the execution of the decree to the detriment of the auction purchaser, which cannot be allowed to continue. The



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act of the appellant clearly shows that it is only for defeating the rightful purchase of the auction purchaser by resorting to ingenious means, which cannot be permitted by this Court. The impugned order is a well merited order and the same does not suffer the vice of any illegality or perversity and the findings recorded therein are just and reasonable, which has taken into consideration all the materials, factual and legal and a comprehensive decision has been given by the court below, which does not deserve any interference at the hands of this Court.

53. For the reasons aforesaid, this appeal fails and the same is dismissed confirming the order passed in E.A. No.221 of 2013 in E.A. No.61/2006 in E.P. No.2/2004. However, in the circumstances of the case, there shall be no order as to costs.

07.01.2025

Index : Yes / No

GLN

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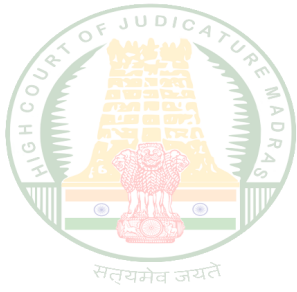
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The Principal District Judge
Coimbatore.



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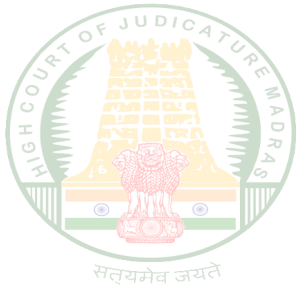
C.M.A. No.1718/2015

M.DHANDAPANI, J.

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**PRE-DELIVERY JUDGMENT IN
C.M.A. NO. 1718 OF 2015**

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