



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2025

PRONOUNCED ON : 25.10.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH  
and  
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

O.S.A.Nos.31 & 97 of 2025  
and  
C.M.P.Nos.10283, 2940, 5826, 5822 of 2025  
and  
O.S.A.SR.No.23741 of 2025

**O.S.A.No.31 of 2025**

K.Vijaya Sree

.. Appellant

VS

1.The Madras Purasawalkam Hindu  
Janopakara Saswatha Nidhi or  
The Permanent General Benefit Fund Ltd  
Registered Office at 167 & 168,  
Vellala Street, Purasawalkam  
Chennai 600 084, rep. by its Commissioner  
R.Manickavel

Yamuna Reddy (Died)

2.M.K.Meera Reddy  
3.Uday Reddy  
4.Usha Reddy



S.S.Sivaprakasa (Died)  
Gautham Menon (Decd.)

- 5.K.R.Gopalakrishnan
- 6.R.Sadasivam
- 7.J.C.Mohanasundaram
- 8.R.Nirmala Devi
- 9.K.Ranjan
- 10.Padmanabhan
- 11.K.Meerakumaraswamy
- 12.Indira Namalur
- 13.R.Lakshmipathy
- 14.G.Sampathlakshmi
- 15.R.Santha Kumari
- 16.R.Vasantha Kumari
- 17.T.K.Barathan
- 18.B.Jayalakshmi
- 19.P.K.Varadarajan
- 20.G.Govardhan
- 21.H.N.Markandan
- 22.P.Bhoopathi
- 23.S.Prem Anand
- 24.P.K.Masilamani
- 25.M.Ananda Sundari
- 26.P.Ravichandran
- 27.J.Ravindran
- 28.J.Vijayakumari
- 29.M.S.Karunakaran
- 30.M.K.Sekar
- 31.M.K.Kirubakaran
- 32.S.Hemalatha
- 33.K.Soundaravalli Ammal
- 34.D.Sesharatnam
- 35.M.Kuberan
- 36.J.Sivakumar
- 37.V.Rajakumar
- 38.R.Balasubramaniam
- 39.K.Ramachandran
- 40.P.N.Pradeep Raj



- 41.R.Ravi Kumar
- 42.N.Krishnamurthy
- 43.G.Kamala Kumar
- 44.M.A.Mohanakrishnan
- 45.G.Shayamala
- 46.N.M.Manivannan
- 47.G.Vijayaraghavan
- 48.A.Girish Kumar
- 49.P.B.Pandurangan
- 50.E.Pichumani
- 51.B.K.Jaganathan
- 52.V.Krishnaveni Ammal
- 53.M.Sugirtha
- 54.R.Rajendran
- 55.P.V.Thyagarajan
- 56.R.Maheswari
- 57.Anusaya Ammal
- 58.P.V.Gowri Ammal
- 59.Kalavathi T.
- 60.G.Sasikala
- 61.D.Kuppuswamy
- 62.D.Rajalakshmi
- 63.R.Srinivasan
- 64.S.Abithagujalambal
- 65.P.G.Mohan
- 66.K.Jayaraman
- 67.V.Natarajan
- 68.S.Chitra
- 69.A.N.Somasundaram
- 70.V.B.Rangamani
- 71.S.Ramasubramanian
- 72.N.S.Thyagamani
- 73.R.Govindaswamy
- 74.P.A.Krupakaran
- 75.G.Audinarayamma
- 76.V.Sundar Rajan
- 77.K.Venkatesh
- 78.M.R.Gnanamani
- 79.M.K.Sundaresan



- 80.S.Ramamurthi
- 81.S.Vinayagar
- 82.M.Elangovan
- 83.N.S.Manohar
- 84.V.Kumar
- 85.C.Vadivel
- 86.R.T.Ramesh
- 87.K.Lakshmi Narayanan
- 88.M.Manohar
- 89.K.Chengalvarayan
- 90.A.K.Ramachandran
- 91.J.Parthasarathi
- 92.N.S.Sivasubramaniyan
- 93.K.Mari
- 94.A.Srinivasan
- 95.S.Natarajan
- 96.S.Kalja Kumar
- 97.K.Kalaichelvi
- 98.K.Selvaraj
- 99.P.T.Santhabai
- 100.R.Jayanani
- 101.S.Muthunathan
- 102.B.Kandaswamy
- 103.V.Thirumagal
- 104.N.B.Kothandaraman
- 105.K.Jayamani
- 106.S.Suresh
- 107.M.Ghouse Mohideen
- 108.S.Ponnuvelu
- 109.D.Mohanarangam
- 110.M.Mohan
- 111.M.D.Maran
- 112.K.Sudhakar
- 113.M.Rajan
- 114.N.Murali Manoharan
- 115.V.Ramesh
- 116.K.Jayaprakash Narayanan
- 117.A.S.Rajasekarar
- 118.Boopathi



- 119.C.Nanda Kumar
- 120.S.Jagadisan
- 122.R.Mohan Rao
- 123.Malini Ravindran
- 124.J.Mythreyi
- 125.R.Ranganathan
- 126.L.Venkatesan
- 127.M.Radhakrishnan
- 128.S.V.Bharatha Devi
- 129.S.G.Rajendran
- 130.P.Surya Prakash
- 131.K.R.Swaminathan
- 132.N.Sankara Narayanan
- 133.S.Raghupathy
- 134.S.Jayamani
- 135.S.Lokabiram
- 136.S.Perumal
- 137.S.Lakshmi Kanthammal
- 138.B.Parandhammu
- 139.R.Kousalya
- 140.R.Shantha
- 141.R.Saroja
- 142.C.Surendra
- 143.K.Indira
- 144.Jaya B.Dolia
- 145.E.Chandrasekar Rao
- 146.S.Vairamani
- 147.S.Anand
- 148.C.B.Amarendra
- 149.Padmanabhan
- 150.G.Dharani
- 151.S.Jayaseelan
- 152.S.R.Chandrasekar
- 153.Areluthu Ammal
- 154.S.P.Kalaivani
- 155.M.Premalatha
- 156.M.Sujatha
- 157.T.Kumarivanaja
- 158.P.Sugumaram



159.N.Sudarsanam  
160.G.Bala Krishnan  
161.K.Ragunathan  
162.K.N.Balakrishnan  
(Respondents 5 to 162/Defendants 4 to 161  
Are represented by his/her Authorised Agent,  
K.R.Gopalakrishnan

163.The Madras Purasawalkam Hindu  
Janopakara Saswatha Nidhi Association  
Having registered office at New No.5/4,  
Old No.4, C.P.Road, Chidambaram Nagar,  
Old Washermanpet, Chennai 600 021.

164.G.Kumar  
165.R.Sheela  
166.R.Vijaya  
167.Jayaprakasam  
168.B.Baskaran  
169.Vijayalakshmi  
170.M.Subramanian  
171.Shantha Rajabather

.. Respondents

Prayer in OSA.No.31 of 2025: Appeal filed under Order XXXVI Rule 9 of the Madras High Court Original Side Rules read with Clause 15 of Letters Patent against the Fair and Decretal order dated 21.01.2025 passed by this Court in Application No.233 of 2025 in C.S.No.721 of 1998.

AND

**O.S.A.No.31 of 2025**

Shantha Rajabather

.. Appellant

VS

1.The Madras Purasawalkam Hindu  
Janopakara Saswatha Nidhi or



The Permanent General Benefit Fund Ltd  
Registered Office at 167 & 168,  
Vellala Street, Purasawalkam  
Chennai 600 084, rep. by its Commissioner  
R.Manickavel

Yamuna Reddy (Died)

- 2.M.K.Meera Reddy
- 3.Uday Reddy
- 4.Usha Reddy

S.S.Sivaprakasa (Died)  
Gautham Menon (Decd.)

- 5.K.R.Gopalakrishnan
- 6.R.Sadasivamn
- 7.J.C.Mohanasundaram
- 8.R.Nirmala Devi
- 9.K.Ranjan
- 10.Padmanabhan
- 11.K.Meerakumaraswamy
- 12.Indira Namalur
- 13.R.Lakshmipathy
- 14.G.Sampathlakshmi
- 15.R.Santha Kumari
- 16.R.Vasantha Kumari
- 17.T.K.Barathan
- 18.B.Jayalakshmi
- 19.P.K.Varadarajan
- 20.G.Govardhan
- 21.H.N.Markandan
- 22.P.Bhoopathi
- 23.S.Prem Anand
- 24.P.K.Masilamani
- 25.M.Ananda Sundari
- 26.P.Ravichandran
- 27.J.Ravindran
- 28.J.Vijayakumari



- 29.M.S.Karunakaran
- 30.M.K.Sekar
- 31.M.K.Kirubakaran
- 32.S.Hemalatha
- 33.K.Soundaravalli Ammal
- 34.D.Sesharatnam
- 35.M.Kuberan
- 36.J.Sivakumar
- 37.V.Rajakumar
- 38.R.Balasubramaniam
- 39.K.Ramachandran
- 40.P.N.Pradeep Raj
- 41.R.Ravi Kumar
- 42.N.Krishnamurthy
- 43.G.Kamala Kumar
- 44.M.A.Mohanakrishnan
- 45.G.Shayamala
- 46.N.M.Manivannan
- 47.G.Vijayaraghavan
- 48.A.Girish Kumar
- 49.P.B.Pandurangan
- 50.E.Pichumani
- 51.B.K.Jaganathan
- 52.V.Krishnaveni Ammal
- 53.M.Sugirtha
- 54.R.Rajendran
- 55.P.V.Thyagarajan
- 56.R.Maheswari
- 57.Anusaya Ammal
- 58.P.V.Gowri Ammal
- 59.Kalavathi T.
- 60.G.Sasikala
- 61.D.Kuppuswamy
- 62.D.Rajalakshmi
- 63.R.Srinivasan
- 64.S.Abithagujalambal
- 65.P.G.Mohan
- 66.K.Jayaraman
- 67.V.Natarajan



- 68.S.Chitra
- 69.A.N.Somasundaram
- 70.V.B.Rangamani
- 71.S.Ramasubramanian
- 72.N.S.Thyagamani
- 73.R.Govindaswamy
- 74.P.A.Krupakaran
- 75.G.Audinarayamma
- 76.V.Sundar Rajan
- 77.K.Venkatesh
- 78.M.R.Gnanamani
- 79.M.K.Sundaresan
- 80.S.Ramamurthi
- 81.S.Vinayagar
- 82.M.Elangovan
- 83.N.S.Manohar
- 84.V.Kumar
- 85.C.Vadivel
- 86.R.T.Ramesh
- 87.K.Lakshmi Narayanan
- 88.M.Manohar
- 89.K.Chengalvarayan
- 90.A.K.Ramachandran
- 91.J.Parthasarathi
- 92.N.S.Sivasubramaniyan
- 93.K.Mari
- 94.A.Srinivasan
- 95.S.Natarajan
- 96.S.Kalja Kumar
- 97.K.Kalaichelvi
- 98.K.Selvaraj
- 99.P.T.Santhabai
- 100.R.Jayanani
- 101.S.Muthunathan
- 102.B.Kandaswamy
- 103.V.Thirumagal
- 104.N.B.Kothandaraman
- 105.K.Jayamani
- 106.S.Suresh



- 107.M.Ghouse Mohideen
- 108.S.Ponnuvelu
- 109.D.Mohanarangam
- 110.M.Mohan
- 111.M.D.Maran
- 112.K.Sudhakar
- 113.M.Rajan
- 114.N.Murali Manoharan
- 115.V.Ramesh
- 116.K.Jayaprakash Narayanan
- 117.A.S.Rajasekarar
- 118.Boopathi
- 119.C.Nanda Kumar
- 120.S.Jagadisan
- 122.R.Mohan Rao
- 123.Malini Ravindran
- 124.J.Mythreyi
- 125.R.Ranganathan
- 126.L. Venkatesan
- 127.M.Radhakrishnan
- 128.S.V.Bharatha Devi
- 129.S.G.Rajendran
- 130.P.Surya Prakash
- 131.K.R.Swaminathan
- 132.N.Sankara Narayanan
- 133.S.Raghupathy
- 134.S.Jayamani
- 135.S.Lokabiram
- 136.S.Perumal
- 137.S.Lakshmi Kanthammal
- 138.B.Parandhammu
- 139.R.Kousalya
- 140.R.Shantha
- 141.R.Saroja
- 142.C.Surendra
- 143.K.Indira
- 144.Jaya B.Dolia
- 145.E.Chandrasekar Rao
- 146.S.Vairamani



- 147.S.Anand
- 148.C.B.Amarendra
- 149.Padmanabhan
- 150.G.Dharani
- 151.S.Jayaseelan
- 152.S.R.Chandrasekar
- 153.Areluthu Ammal
- 154.S.P.Kalaivani
- 155.M.Premalatha
- 156.M.Sujatha
- 157.T.Kumarivanaja
- 158.P.Sugumaram
- 159.N.Sudarsanam
- 160.G.Bala Krishnan
- 161.K.Ragunathan
- 162.K.N.Balakrishnan

(Respondents 5 to 162/Defendants 4 to 161  
Are represented by his/her Authorised Agent,  
K.R.Gopalakrishnan

163.The Madras Purasawalkam Hindu  
Janopakara Saswatha Nidhi Association  
Having registered office at New No.5/4,  
Old No.4, C.P.Road, Chidambaram Nagar,  
Old Washermanpet, Chennai 600 021.

- 164.G.Kumar
- 165.R.Sheela
- 166.R.Vijaya
- 167.Jayaprakasam
- 168.B.Baskaran
- 169.Vijayalakshmi
- 170.M.Subramanian

.. Respondents

Prayer in OSA.No.97 of 2025: Appeal filed under Order XXXVI Rule 9 of the Madras High Court Original Side Rules read with Clause 15 of Letters Patent against the Fair and Decretal order dated 21.01.2025 passed by this Court in Application No.233 of 2025 in C.S.No.721 of 1998.



|                                                                   |                                        |
|-------------------------------------------------------------------|----------------------------------------|
| Mr.K.V.Babu                                                       | For Appellant in OSA.No.31 of 2025     |
| Mrs.Chitra Sampath, Senior Counsel<br>For Ms.P.Buvaneswari        | For Appellant in OSA.No.97 of 2025     |
| Mr.R.Manickavel                                                   | For Advocate Commissioner              |
| Mr.Sri Charan Rangarajan, Senior Counsel<br>For Mr.Nallasenapathy | For Receiver                           |
| Mr.R.Ramanlal, Senior Counsel<br>For Ms.B.Sripadmaja              | For R2 to R4 in both OSAs              |
| Mr.N.Suresh                                                       | For Petitioner in CMP.No.10283 of 2025 |
| Mr.Muthucharan Sundresh                                           | For Auction Purchaser                  |

### COMMON JUDGMENT

Dr. ANITA SUMANTH.,J

O.S.A.No.31 of 2025 challenges order dated 21.01.2025 passed in Application No. 233 of 2025 in C.S.No.721 of 1998. C.S.No.721 of 1998 was filed by three plaintiffs with the following prayers:-

*For permanent injunction restraining the defendants from convening or holding any requisition meeting or any Extraordinary General Meeting pursuant to their notice dated 24.08.1998 until normalcy is restored in the functioning of Nidhi.*

2. Pending suit, Application No. 233 of 2025 came to be filed by The Madras Purasawalkam Hindu Janapokara Saswatha Nidhi/ the Permanent General Benefit Fund Limited ('Nidhi') seeking permission to sell various



properties that had been mortgaged to the Nidhi and as described in the suit schedule, by way of public auction.

3. That application came to be allowed by way of the impugned order dated 21.01.2025, where the learned Judge notes that the Nidhi is the mortgage holder of the property and hence the money due to it would have to be recovered in a manner known to law. The Court also records that in the event of third parties who had entered into private contracts with individuals whose title is itself doubtful, such parties would have no say in respect of the sale of the property by the Court. Aggrieved, the present appeals have been filed.

4. O.S.A.No.97 of 2025 has been filed by Mrs.Shantha Rajabather/vendor who challenges order dated 21.01.2025, and is represented by Mrs.Chitra Sampath, learned Senior Counsel for Ms.P.Buvaneswari. The vendor claims to be the owner of the property sold to Mrs.K.Vijaya Sree/purchaser, represented by Mr.K.V.Babu. The property in question is situated at Old No. 37, New No. 85, 1<sup>st</sup> Main Road, Gandhi Nagar, Adyar, Chennai – 600 020 ('property'/ 'property in question').

5. The brief facts are as follows. The two Original Side Appeals have been filed by individuals claiming to be the owner and successful purchaser of the property in question. The vendor claims that the property in question was owned



by her husband/Mr.E.S.Rajabather, who admittedly mortgaged the same with the Nidhi.

6. Her husband had executed a settlement deed in respect of the property in question vide Document No. 1978 of 2015 dated 15.07.2015, which the vendor claims is in her favour. He had filed C.S.No.738 of 2002 seeking a declaration for a One Time Settlement (OTS) for the discharge of mortgage at a sum of Rs. 1,50,00,000/-(Rupees One Crore and Fifty Lakhs Only).

7. According to the vendor, a sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs only) has been deposited as a pre-condition for the grant of injunction in an application filed in C.S.No.738 of 2002. The settlement deed dated 15.07.2015 has been challenged in W.P.No.21374 of 2018 by one of the legal heirs of E.S.Rajabather and that writ petition was allowed on 21.09.2023, as against which W.A.No. 1923 of 2024 has been preferred, which is pending.

8. According to the vendor, the Commissioner appointed by this Court as well as herself, had negotiated an OTS for discharge of the liability on payment of a sum of Rs. 7,50,00,000/- (Rupees Seven Crore and Fifty Lakhs Rupees). The settlement was recorded under letter dated 09.01.2023. The settlement did not go through for the reason that the vendor was unable to find an appropriate purchaser for the whole of the property in question.

9. While so, she was able to secure a purchaser for the second floor of the property alone, to Mr.Gunasekaran and Mrs. Durgalakshmi, who are tenants on



that floor and the sale deed was registered on 15.02.2023, the consideration remitted to the credit of the mortgage account with the Nidhi. Efforts continued for the sale of the remaining portions of the property in question.

10.While so, the vendor would claim that she had been successful in her attempt to sell the remaining portion of the property to the purchaser and had also communicated the said sale to the Nidhi remitting an amount of Rs. 3,50,00,000/- (Rupees Three Crores and Fifty Lakhs only) to the credit of the mortgage account. She submits that, by an order dated 13.12.2020, time had been extended by thirty days (30) for the remittance of the balance of Rs. 4,00,00,000/- (Rupees Four Crores only) and that she had never been informed that, at that time, the offer of settlement had lapsed.

11. She is thus aggrieved by the property being brought to public auction on 06.07.2024 where one Mr.Ramanujam has been declared as the successful purchaser. She also claims that there is an order of injunction passed on 04.09.2024 in O.A.Nos. 626 and 627 of 2024, restraining the Nidhi from interfering from her peaceful possession and enjoyment of the property in question and from executing and registering the sale deed in favour of the purchaser. All litigation relating to the Nidhi, including the property in question had thereafter been consolidated by an order of the Hon'ble the Chief Justice.

12. By an order dated 15.11.2024, the learned Judge to whom the matters had been assigned, had passed an order allowing the plaintiffs in C.S.No.199 of



2024 to be impleaded as defendant in C.S.No.721 of 1998 and to treat the plaintiff in C.S.No. 199 of 2024 as a counter claim in C.S.No.721 of 1998.

13. The Registry had been directed to carryout amendments and the learned Judge had also recorded the undertaking of the Nidhi that they will not proceed further in respect of the sale of the property. Hence the vendor would contend that the question of auction sale does not arise as in light of order dated 15.11.2024, and the Nidhi ought not to have moved Application No. 233 of 2025 seeking sale of the properties.

14. C.S.No.738 of 2002 had been dismissed for non-prosecution on 01.03.2024 and a petition for restoration was pending in Application No. 4255 of 2024.

15. Appellant/Vendor claims that she is the only one targeted for coercive recovery action despite substantial re-payments having been made. Thus, she would claim that she is entitled to interest thereupon. She also submits that the impugned order had been passed in violation of the principles of natural justice and in such circumstances must be quashed.

16. The purchaser would endorse the submissions made by the vendor pointing out in addition that she was a bonafide purchaser whose interests have been seriously prejudiced by virtue of the impugned order. She has filed C.S.No.199 of 2024, wherein the prayers are as follows:-



- a. To declare that the auction conducted on 06.07.2024 by the 4th Defendant at the instance of the 1st Defendant and confirming the auction in favour of the 2nd Defendant in respect of the suit property as null and void
- b. To declare that the Plaintiff is the absolute owner in respect of the suit Schedule property.
- c. for a permanent injunction restraining the 1st Defendant and 2nd Defendant their men agents servants or anybody claiming right either under or through them in any manner interfering with the Plaintiffs peaceful possession and enjoyment of the suit schedule mentioned property in any form
- d. for a permanent injunction restraining the 1<sup>st</sup> defendant from executing and registering the sale deed in respect of the suit property in favour of the second defendant on the basis of the auction confirmation dated 22.07.2204
- e. for the cost of the suit

17. Mr.Sricharan Rangarajan, learned Senior Counsel, for Mr.Nallasenapathy / Receiver, would vigorously contest the appeals on several fronts. Firstly, he states that the Nidhi holds a superior lien over the property in question, relying on Section 48 of the Transfer of Property Act (in short ‘TP Act’) and Section 171 of the Contract Act dealing with general lien of bankers and other financiers.

18. He refers to, and relies upon the following judgments:

- (i) *ICICI Bank V.SIDCO Leathers*<sup>1</sup>
- (ii) *Bisseswar Poddar V. Nabadwip Poddar*<sup>2</sup>
- (iii) *G.Kaliasundaram V. R.Krishnamurthy*<sup>3</sup>
- (iv) *P.R.Govindaswami Naicker V. Pukhraj Sowcar*<sup>4</sup>

<sup>1</sup> (2006) 10 SCC 452

<sup>2</sup> CDJ 1960 Cal HC 141

<sup>3</sup> 2025 SCC Online Madras 32

<sup>4</sup> (1940) 52 LW 324



- (v) *The Committee representing RBF Nidhi Limited, New No.15 (Old No.8) West Cott Road, Royapettah, Chennai 600 014 v. Vipanchi Investments Pvt. Ltd., 8C/1510-G Trichy Road, Coimbatore 641 018 rep. by its Director Mr.S.R.Eshwaran<sup>5</sup>*

19. The Advocate Commissioner Mr.R.Manickavel, has also filed a counter denying all the averments put forth by the appellants. He argues that the appellants are neither mortgagors nor legal heirs of Mr.Rajabather. They are not owners of the suit property and have no say in the disposal thereof. They have sold the property pending mortgage and the sale is hit by lis pendens.

20. The transfer is hence void and hit by Section 52 of the TP Act. They have been fully heard by the Civil Court and there is no justification whatsoever in their standing in the way of a validly conducted public auction resulting in the sale of the property to the auction purchasers. In all, the respondents would, in one voice, contend that there is no merit in the appeals that are liable to be dismissed.

21. We have heard all learned counsel and perused the material papers. The facts at issue are as follows:

- (i) On 19.02.1965, a sale deed was executed by the Tamil Nadu Co-operative Society in favour of Padmini Rajabather (first wife of E.S.Rajabather)

---

<sup>5</sup>(2009 1 L.W. 926)



vide document No.873 of 1965 in respect of the Schedule property admeasuring 5 grounds and 1487 sq.ft.

(ii) On 09.11.1971, a portion of the property admeasuring 2 grounds 248 sq.ft. or 5048 sq.ft. was sold by Padmini Rajabather to E.S.Rajabather, her husband vide registered document No.2794 of 1971.

(iii) Padmini Rajabather died intestate in 1989. Her legal heirs,i.e., E.S.Rajabather and their children availed 14 loans for a sum of Rs.1.60 crores executing 4 registered mortgages to the Madras Purasawalkam Hindu Janopakara Saswatha Nidhi mortgaging the property ad measuring 6468 sq.ft.

(iv) C.S.No.721 of 1998 had been filed by Yamuna Reddy (Died), M.K.Meera Reddy, Uday Reddy, Usha Reddy, S.S.Sivaprakasa (Died) and Gautam Menon (deceased) against the Nidhi and others seeking permanent injunction restraining the defendants from convening or holding any requisition meeting or any Extraordinary General Meeting pursuant to their notice dated 24.08.1998 until normalcy is restored in the functioning of the Nidhi.

(v) Thereafter, A.Nos.488 and 489 of 1999 had been filed by one T.R.Venkatachalam for, and on behalf of the depositors/shareholders Welfare Association of the Madras Purasawalkam Hindu Janopakara Saswatha Nidhi,seeking impleadment of himself in the suit and for administration of Nid-



hi by appointing a Commissioner. Hon'ble Mr.Justice S. Ramalingam had been so appointed on 03.03.1999.

(vi) In 2002, E.S.Rajabather filed C.S.No.738 of 2002 challenging the proceedings initiated by the Nidhi for recovery of mortgage dues. The Suit was dismissed for non-prosecution on 01.03.2024.

(vii) Shantha Rajabather (second wife of E.S.Rajabather) has filed an application for setting aside the dismissal and that application is pending.

(viii) On 27.11.2009, Rajabather, ostensibly, executed a deed settling the mortgage property upon Shantha Rajabather and his daughter Aruna Srikanth for their lifetimes and thereafter to the children of Aruna Srikanth.

(ix) He cancelled this settlement deed vide document No.1864 of 2015 on 06.07.2015 and on 15.07.2015 settled the property in favour of Shantha Rajabather vide document No.1978 of 2015.

(x) Both the cancellation of Settlement Deed dated 27.11.2009 and subsequent Settlement came to be challenged by Aruna Srikanth, Akshay Srikanth and Aakash Srikanth in W.P.No.21374 of 2018 and on 21.09.2023, the Writ Petition was allowed as against which, Writ Appeal No.1923 of 2024 has been filed and is pending. Hence, as on date all the settlement deeds stand effaced.

22. The legal question as to whether at all such deed could have been executed by him in the face of a valid mortgage stands settled in favour of the



Nidhi by the decisions cited by the Respondents as set out in paragraph 18 supra.

23. As right contented on behalf of the Nidhi, Section 48 of the TP Act provides for priority of rights created by transfer, and states that where a person seeks to transfer the same immovable property, creating a series of rights therein, and those rights cannot all exist or be exercised together, each right created at a later point in time shall be subject to the right created in the earlier point in time.

24. The legal position thus is to the effect that the Nidhi, being the holder of the first charge, as per the records produced before us, holds a superior right in the subject properties, preferential to the rights, if any, created earlier.

25. In *ICICI Bank* (supra), the Supreme Court has categorically settled the position that a transfer made subsequently would be subject to rights that were previously created and we may usefully reproduce the judgment at paragraphs 48 to 52 below:

*48. Section 9 of the Companies Act only states that provisions thereof would override the memorandum or articles of association of the company or any other agreement executed or resolution passed by the company. There does not exist any provision in the Companies Act which provides that the provisions of Section 48 of the Transfer of Property Act would not be applicable in relation to the affairs of a company. Unless, expressly or by necessary implication, such a provision contrary to or inconsistent therewith carrying a different intent can be found in the Companies Act, Section 48 of the Transfer of Property Act, cannot be held to be*



WEB COPY



inapplicable.

49. Section 48 of the Transfer of Property Act reads as under:

*"48. Priority of rights created by transfer. Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created."*

50. The said provision, as noticed hereinbefore, deals with a specific situation. The exceptions to the provisions of Section 48 are as under:

*(i) where parties execute a registered deed at any point in time which is subsequent to a prior but an unregistered deed. This is also subject to the doctrine of notice i.e. that parties to the registered deed executed after the unregistered deed did not have notice of the same;*

*(ii) where there are exceptions carved out by a statute-for example, Section 98 of the Bengal Tenancy Act;*

*(iii) a mortgage executed on the directions of the court to preserve a property;*

*(iv) where a "salvage lien" is created i.e., where lien is created for moneys advanced for the purposes of saving the property from destruction or forfeiture. The salvage lien is confined in English law to maritime lien.*

51. In Mulla's Transfer of Property Act, 9th Edn., pp. 346-47, it is stated:

*"Again, when a court for the purpose of preserving the property in suit, directs the receiver to execute a mortgage, it has jurisdiction to order that the mortgage shall take precedence over prior charges. This is an application of the equity which gives salvage liens i.e. liens for money advanced for the purpose of saving the property from destruction or forfeiture, priority over all their encumbrances. With regard to such liens the general rule is reversed and they are entitled to priority in inverse order to their dates. Salvage liens are confined in English law to maritime liens. A salvage lien was claimed in an old Calcutta*



*case in respect of an advance made for the purpose of carrying on an indigo factory, and again in another case in respect of an advance made to enable the mortgagor to pay the rent of the premises mortgaged, but in both cases the claim was repelled.*

*The lien of a co-sharer for owelty money on partition is entitled to precedence over prior mortgagees of property allotted to the co-sharer who is liable to pay owelty."*

52. Section 47 of the Provincial Insolvency Act is attracted by virtue of Section 529(1) of the Companies Act. Sub-section (2) of Section 47 would become applicable where a secured creditor voluntarily relinquishes his security for the general benefit of the creditors.

26. Thus, if at all Shantha Rajabather believes that she has acquired rights in respect of the mortgaged property, such rights could only be by way of damages/compensation which she would have to establish in a manner known to law.

27. Though learned counsel for the appellants have advanced extensive arguments on the settlement deeds, we find no merit in those arguments in view of our conclusion on the legal issue above. To clarify, once the property had been mortgaged by a valid deposit of title deeds in favour of the Nidhi, it is the Nidhi that holds a superior claim overriding all subsequent alienations.

28. E.S.Rajabather passed away in 2020 and on 12.01.2023, an offer of one time settlement had been made by Shantha Rajabather to settle the mortgage dues at a figure of Rs.7.5 crores, payable within 60 days, in four



instalments. A sum of Rs.3.5 crores was paid between January and July 2023 and in the interim period, an extent of 1215 sq.ft. of undivided share of land had been sold to Gunasekaran and Durgalakshmi, registered as document No.538 of 2023 for a sum of Rs.2.80 crores.

29. The aforesaid purchasers had mortgaged that portion to Hero Fincorp Limited under a registered document No.4872 of 2023 on 11.12.2023 for a sum of Rs.4.29 crores. On 06.07.2023, Shantha Rajabather made one more sale of 1480.52 sq.ft. of the undivided share with the ground and first floor to Vijaya Sree under document No.2516 of 2023 for a sum of Rs.1.35 crores, who in turn, has mortgaged, on 24.11.2023, the aforesaid purchase with Axis Bank Limited, registered as document No.4668 of 2023 for a sum of Rs.2.15 cores.

30. Shantha Rajabather seeks extension of time to settle the balance of Rs.4.00 crores in the one-time settlement offered and was granted extension of 30 days by order dated 13.12.2023. The order reads as follows:

*When the matter came up today, the Receiver has submitted that he has filed a report on 08.03.2023 and seeks permission of this Court as per the report filed by him.*

*2.Considering the report filed by the Receiver wherein he states that the Nidhi is in abject bankruptcy condition, it is ordered as below:*

*(i) The time limit for the payment of balance amount of Rs.4 Crores is extended by 30 days from the date of intimation of this order by the Receiver to the Borrower ie. Mrs. Shanta Rajabather. In case if the payment is not made within 30 days as directed above, the one time Settlement extended by the erstwhile Receiver stands*



WEB COPY



*cancelled and the Receiver is directed to claim the entire loan dues as on date, less the amount already paid by the Borrower.*

*(ii) M/s.R.Sadasivan & Co., Chartered Accountants is appointed as the Auditor for Nidhi to prepare the Annual accounts @ Rs.1,00,000/- + GST per Financial year as remuneration.*

*(iii) Re-employ the working staff on a consolidated pay of Rs.30,000/- who are drawing more than Rs.1,00,000/- and Rs.25,000/- who are drawing Rs.50,001 to Rs.1,00,000/- and Rs.20,000/- who are drawing upto Rs.50,000/- after terminating their services as on 31.01.2024.*

*3. Having considered the facts and circumstances of the case and report filed by the Receiver, in the interest of the Depositors and to recover the balance amount, the learned Advocate Commissioner is hereby directed to take steps to sell the property belonged to the Nidhi and file a status report on or before 10.01.2024.*

*4. Post on 10.01.2024 along with status report*

31. Hence, failure to pay the balance of the settlement amount has resulted in an automatic trigger for the parties to proceed against the mortgaged property to recover the mortgaged dues. This, in fact, is what has transpired, as Shantha Rajabather did not honour the settlement and hence on 06.05.2024, 07.06.2024 and 01.07.2024 the Court Commissioner had sent demand notices under Section 69 of the T.P.Act to all occupants, claimants and legal heirs of late Rajabather.

32. Paper publication was also effected in Dinathanthi and Times of India, in editions dated 23.06.2024, advertising sale of the mortgaged properties by public auction. The auction was conducted on 06.07.2024 and the



sale to S.Ramanujam and Gopalakrishnan took place on the same day. On 16.07.2024, the sale price of Rs.5.35 crores was deposited by the auction purchasers.

33. In July, 2024, Vijaya Sree, Gunasekaran and Durgalakshmi, third party purchasers filed A.No.3895 of 2024 in C.S.No.721 of 1998 that was ordered impleading them on 15.11.2024. Vijaya Sree has also filed C.S.No.199 of 2024 and obtained an order of interim injunction on 04.09.2024 in O.A.Nos.626 and 627 of 2024 restraining the Nidhi from executing sale deeds in favour of the auction purchasers and not to disturb her peaceful possession.

34. C.S.Nos.199 of 2024 and 721 of 1998 have been tagged together on 13.11.2024 and, by order dated 15.11.2024, the learned Judge has held that the suit in C.S.No.199 of 2024 will be taken as a counter claim in C.S.No.721 of 1998. The injunction granted on 04.09.2024 in C.S.No.199 of 2024 was not extended. The undertaking of the Commissioner that he will not proceed further in respect of the sale of the property covered in A.No.3895 of 2024 was recorded and the Commissioner was directed to proceed with the sale of the other portions of the property.

35. Having considered the entire conspectus of the matter, the learned Judge has passed an order on 21.01.2025 in A.No.233 of 2025 in C.S.No.721 of 1998, impugned in these appeals, accepting the prayer of the Commissioner to



sell the mortgage properties to recover the mortgage dues.

WEB COPY

36. On 12.02.2025, A.No.4255 of 2024 filed by Shantha Rajabather seeking to condone the delay in filing application to restore C.S.No.738 of 2002 was considered by the learned Judge, who directed C.S.No.721 of 1998, 738 of 2002 and 199 of 2024 to be heard jointly. However, A.No.4255 of 2024 seeking condonation of delay in seeking restoration is yet pending.

37. The mortgaged properties were brought to public auction after due procedures were followed in terms of the provisions of the TP Act and item 3 of the auction notice was sold on 15.02.2025. The entire sale consideration of Rs.2,52,50,000/- has been deposited and the matters stand at the stage of execution of sale deed in favour of the auction purchasers.

38. In the course of the hearings, Mr.Muthucharan Sundresh, learned counsel has intervened on behalf of the auction purchasers and submits that Mr.Ramanujam and Mr.Gopalakrishnan have deposited a sum of Rs.5.35 crores towards sale consideration. The two properties purchased by them (Item 1 and 2) are:

*Schedule of property – All that 6468 sqft. by way of undivided share out of 8447 sq.ft, in the premises known as “Padmini Building” bearing Old Door No.37, New No.85, First Main Road, Gandhi Nagar, Adyar, Chennai – 600 020 comprised in Old S.No.75, then 75/2, Block No.36 of Kottur Village, now*



Guindy Taluk.

WEB COPY

*Item 1 - 1480.52 sq.ft. land by way of undivided share out of 6468 sq.ft. together with 4245 sq.ft. built up area in the ground floor and 4753 sq.ft. in the first floor under the occupation of the tenant M/s.Bata India Limited*

*Item 2 - 1215 sq.ft. land by way of undivided share out of 6468 sq.ft. together with 6100 sq.ft. built up area in the second floor under the occupation of the tenant M/s.Nettyfish Solutions.*

39. Likewise, the sale of the third item of auction notice (second auction), more fully described as *Item 3 - 1215 sq.ft. land by way of undivided share out of 6468 sq.ft. together with 7700 sq.ft. built up area in the third floor under the occupation of the tenant Abott Health Care*, was conducted on 15.02.2025 and the auction purchasers Mr.Ramanujam and Mr.Gopalakrishnan has deposited the entire sale proceeds of Rs.2,52,50,000/-.

40. We are of the considered and categorical view that all required formalities in regard to the auction have been followed, and the auctions conducted in a timely fashion. The grievances of the Appellants are mainly premised on their claim to title to the properties.

41. Shantha Rajabather, appellant in O.S.A.No.97 of 2025 has herself no valid claim to the property as we have held supra that it is the Nidhi that holds a superior and overriding claim to the property. Even as per Shantha Rajabather's version, any title that she acquires is only by way of settlement, effected almost



a decade after the mortgages were registered in favour of the Nidhi. Hence, title, if any, can only be subject to the superior title and claim of the Nidhi.

42. Moreover, both the Settlement Deeds executed by Rajabather have been cancelled by the Court by order dated 21.09.2023 in W.P.No.21374 of 2018, pending in W.A.No.1923 of 2024. As far as C.S.No.738 of 2002 is concerned that would have to run its own course and be decided by the Civil Courts.

43. Be that as it may, and whatever may be the result of that litigation, it is the Nidhi that would hold primacy as far as the title and claim towards the mortgaged properties are concerned. As far as Vijaya Sree is concerned, appellant in O.S.A.No.31 of 2025, she has as good or bad a claim as her vendor does. Considering that we have concluded that even the vendor has no valid title or claim to the subject properties, and seeing as the sale has been made on 06.07.2025 when the property has been mortgaged to the Nidhi as early as in 1993, 1994 and 1996, we reject her arguments. She is however at liberty to seek remedy of damages as against her vendor.

44. In light of the above discussion, these appeals are devoid of merit and are hence dismissed with no order as to costs. The auctions conducted on 06.07.2024 and 15.02.2025 in favour of Mr.Ramanujam and Mr.Gopalakrishnan are confirmed. The sale deeds will be executed in favour of



the auction purchasers within a period of four (4) weeks from date of receipt of a copy of this order and all other formalities conducted to confirm the sale in their favour.

[A.S.M., J] [N.S., J]  
25.10.2025

Index: Yes/No  
Speaking Order/ Non-Speaking Order  
Neutral Citation: Yes/No  
Ssm/sl

To

The Sub-Assistant Registrar,  
Original Side, High Court  
Madras.



WEB COPY



O.S.A.Nos.31 & 97 of 2025  
and C.M.P.Nos.10283, 2940, 5826, 5822 of 2025  
and O.S.A.SR.No.23741 of 2025

DR. ANITA SUMANTH.,J.  
and  
N.SENTHILKUMAR.,J.  
Ssm/sl

O.S.A.Nos.31 & 97 of 2025  
and C.M.P.Nos.10283, 2940, 5826, 5822 of 2025  
and O.S.A.SR.No.23741 of 2025

25.10.2025