



S.A.No.1075 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 1075 of 2014 and
M.P.No.1 of 2014

Mohandas
S/o. Sundarrajan
Kodamkudi Village
Alangadu Vattam
Sirkali Taluk,
Nagapattinam District

...Appellant

Versus

1. ICICI Bank Limited
Rep by its Branch Manager
Pondicherry

2. ICICI Bank Limited, Mayiladurai
Rep by its Branch Manager
Bava Complex, Muthuvakil Road,
Mayiladuthurai, Nagapattinam District

3. ICICI Bank Limited, Thanjavur
Represented by its Branch Manager,
Thanjavur

4. The Manager (Loan)
ICICI Bank Limited, Trichy
10-A Lakshmi R Gate,
11th floor, Thillai Nagar,
Trichy 620 019.

...Respondents



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PRAYER in S.A.: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of Principal Sub Court, Mayiladuthurai, dated 20.02.2013 made in A.S.No.3 of 2012 confirming judgment and decree of District Munsif Court, Sirkali dated 28.09.2010 made in O.S.No.40 of 2010.

PRAYER IN CMP.: Petition filed under Order 39 Rule 1 and 2 of Civil Procedure Code to pass an order of injunction restraining the respondents, their agent, their men and any person claiming under them from selling the Schedule mentioned property being the subject matter of suit in O.S.No.40 of 2010 on the file of the District Munsif Court, Sirkali, either by auction or otherwise, pending disposal of the above second appeal.

APPEARANCE OF PARTIES:

For Appellant : Mr.S.Jawahar, Advocate

For Respondents : Mr.T.Srinivasa Raghavan & Associates
for R1 to R4

J U D G M E N T

Heard.

2. This second appeal is directed against the judgment and decree dated 20.02.2013 passed by the learned Principal Sub Judge,



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Mayiladuthurai in A.S. No. 3 of 2012, confirming the judgment and decree dated 28.09.2011 in O.S. No. 40 of 2010 on the file of the learned District Munsif, Sirkali whereby the plaintiff sought a declaration that the seizure of his tractor by the defendant Bank is illegal and a consequential mandatory injunction to restore the vehicle to him, with costs.

3. For convenience, the parties are referred to by the ranks they held before the Trial Court. The appellant in this appeal is the plaintiff.

4. The case of the plaintiff, in brief, is that the plaintiff obtained a loan of Rs.3,74,305/- from the defendant Bank for the purchase of the tractor bearing Registration No. TN-51-T-6017, executing the requisite loan and hypothecation documents in its favour. He alleges that, without prior notice and by engaging musclemen, the Bank seized the vehicle from his residence on 04.02.2010, contrary to law and in violation of the terms of the agreement. He also made a claim that cash of Rs.50,000/- and a tape-recorder kept in the tractor were taken away at the time of seizure.



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5. The defendants contested the suit contending that the plaintiff had admittedly committed default in payment of instalments under the loan agreement; that as per the agreed terms of the loan-cum-hypothecation, the Bank was entitled to repossess the vehicle in the event of default; that possession was taken only in exercise of such contractual right; and that the plaintiff, being a wilful defaulter, was not entitled to any equitable relief of declaration or injunction. Reliance was also placed on the decision of the Supreme Court in **Managing Director, Orix Auto Finance (India) Ltd. v. Shri Jagmander Singh and Ors. [2006(1)CTC 670]** holding that, where the agreement so permits, the financier can take possession of the vehicle.

6. The Trial Court, on appreciation of the oral and documentary evidence, held that the plaintiff had not disputed the loan transaction or the execution of the loan and hypothecation documents, and that he had admittedly defaulted in repayment. It further held that under the hypothecation terms, the Bank was entitled to take possession of the vehicle on default, and the plaintiff had not established any illegality in the seizure. Consequently, the suit was dismissed on 28.09.2011.



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7. The First Appellate Court, on reappreciation of the very same evidence, confirmed the findings of the Trial Court, holding that the plaintiff, being in default, could not seek the equitable reliefs of declaration and mandatory injunction and that no illegality in repossession had been made out. The appeal was accordingly dismissed on 20.02.2013.

8. Assailing the concurrent findings, learned counsel for the appellant would contend that the Bank was not entitled to take possession of the tractor without first issuing the 15-day demand notice mandated by Clause (g)(1) of the hypothecation agreement (Ex.B1), and that the alleged forcible repossession through recovery agents is in the teeth of the law laid down by the Honourable Supreme Court deprecating seizure effected through such agents. It is further urged that the Courts below failed to properly appreciate the testimony of DW1 with regard to the non-issuance of notice and the way possession was taken, and that this misreading of evidence has resulted in findings which are perverse and contrary to the material available on record.



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9. The plaintiff's principal ground in this Second Appeal is that the vehicle was repossessed on 04.02.2010 without the fifteen days' prior notice, as required under the agreement was issued to him. The defendant dispute this and rely on a notice addressed to the defendant, Ex.B2, dated 01.01.2010. The plaintiff contends that, absent any acknowledgment or proof of service of Ex.B2, the defendant's plea of due notice cannot be sustained.

10. It is true that no acknowledgment or independent proof of service of Ex. B2 has been produced. Para 11 of the first appellate court's judgment reflects a proper appreciation of Ex.B2. In cross-examination, no suggestion was put to D.W.1 that Ex.B2 was not issued; the only query was the interval between that notice and seizure, to which D.W.1 answered "10–20 days." That line of questioning proceeds on the footing that Ex.B2 existed and was served. The plaint carries no specific denial of Ex.B2, and the pleaded seizure date (04.02.2010) is consistent with an interval of 10–20 days from the notice dated 01.01.2010. In these circumstances, the absence of an acknowledgment or independent postal proof is inconsequential. Once the factum of service of prior notice is



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established, no substantial question of law arises on this issue.

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11. On a careful review of the record, this Court discerns no perversity, illegality, or misapplication of law in the reasoning of the Courts below. The appellant has not shown any infirmity in the concurrent findings that would warrant interference under Section 100 CPC. The findings rest on a proper appraisal of the pleadings and evidence and are neither arbitrary nor unreasonable. Accordingly, no substantial question of law arises for consideration in this Second Appeal.

12. In view of the above discussion, the Second Appeal stands dismissed at the admission stage itself. There shall be no order as to costs. Consequently, the connected miscellaneous petition, if any, stands closed.

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dpq

Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No



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To

- 1.The Principal Sub Court, Mayiladuthurai
- 2.The District Munsif, Sirkali
3. The Section Officer, V.R.Records, Madras High Court.



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DR. A.D. MARIA CLETE, J

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