



A.S.No.118 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.03.2025

Pronounced on : 14.03.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

A.S.No.118 of 2025

and

C.M.P.Nos.2563 & 2566 of 2025

1.Gunaseelan

2.S.Amalraj @ Kathiravan

.. Appellants

Versus

1.P.Perumal

2.Sujathadevi

3.S.Sureka

4.Ranganayagi

.. Respondents

Prayer:- Appeal filed under Section 96 of CPC read with Order 41 Rule 1 of CPC, to set aside the fair and decretal order dated 17.10.2024 passed in E.A.No.212 of 2021 in E.P.No.301 of 2016 in O.S.No.32 of 2013 on the file of the Principal District Judge, Puducherry and dismiss the execution petition as prayed for.

For Appellants : M/s.V.Srimathi

For Respondent : Dr.A.Thiyagarajan, Senior Counsel
for Mr.D.Senthil Kumar for R1
R2 and R3 – Service awaited
R4 - No appearance



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JUDGMENT

Challenging the order passed by the Executing Court under Order

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XXI Rule 97(1) and (2), the present appeal came to be filed.

2. Brief facts in filing this appeal are as follows:

2.a. The appellant has filed a suit for specific performance in O.S.No.24 of 2013 to enforce the agreement dated 23.05.2012 executed by one Sivakumar (deceased). The suit has been filed against the legal heirs of the said Sivakumar. Before filing the suit, he has issued a notice dated 24.01.2013. As the defendants in the above suit remained exparte, the suit was decreed on 11.09.2013. Pursuant to the said decree and judgment, Execution Petition in E.P.No.247 of 2013 was filed. During the pendency of the said EP, the judgment debtors filed an application to set aside the judgment and decree dated 11.09.2013 along with the delay condonation petition. The said application has been dismissed on merits in I.A.No.2795 of 2014 dated 16.04.2015. Thereafter, it appears that the executing court on 04.03.2016 had executed the sale deed in favour the appellant and the Execution Petition was terminated. Subsequently, the appellant has filed another E.P.No.149 of 2016 for delivery of property and delivery was



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ordered and EP was terminated on 22.09.2016 by recording delivery.

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2.b. In the meanwhile, the first respondent filed a suit for recovery of money for a sum of Rs.18,20,000/- together with interest in O.S.No.32 of 2016 on the basis of promissory note dated 12.02.2012. The said suit was filed on 25.03.2013. In the said suit, an application for attachment before the judgment was taken out in I.A.No.62 of 2013 and the said application was allowed on 19.06.2013 and the suit was decreed on 08.07.2013 and attachment order of judgment and decree in O.S.No.32 of 2013 was registered before the Sub-Registrar, Oulgarpet, Puducherry on 12.09.2013. The first respondent in pursuant to the exparte decree filed execution petition in EP.No.2019 of 2013 for realisation of decree amount and the property was put in court auction sale and he was permitted to bid for the court auction sale as per order in I.A.No.2451 of 2015 and granted permission to set off a sum of Rs.28,37,388.20 as per order dated 05.01.2016 and he was declared as a successful purchaser of the schedule property at the sale held for a sum of Rs.29,08,000/-. The first respondent deposited a sum of Rs.70,611.50/- towards the balance sale consideration and the sale has been confirmed on 21.03.2016 and sale certificate was issued on 22.04.2016 and



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the sale certificate was registered as document No.13935/2016 dated 14.06.2016. Thereafter, EP was filed in E.P.No.301/2016 for delivery of possession and the same was ordered on 01.02.2017. When Amin went to the schedule property on 16.02.2017, the appellant obstructed the delivery on the ground that property has already delivered to him by decree and judgment. At this stage, the application has filed under Order XX1 Rule 97 of Code of Civil Procedure by the first respondent to remove obstruction. That application was allowed and the same is challenged in this appeal.

2.c. Before the Executing Court, on the side of first respondent, the first respondent himself was examined as PW1 and marked Exs.P1 to P6. On the side of the appellants, the first appellant was examined as RW1 and marked Exs.R1 to R20.

2.d. Based on the oral and documentary evidences, the Executing Court has allowed the application on the ground that since sale in favour of the appellant is hit by Section 64 of Code of Civil Procedure, 1908, he did not get any title, that apart, sale is also hit by lis pendens. Challenging the said order, the present appeal has been filed.

3. The learned counsel for the appellants vehemently contended that



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the attaching creditor could only attach the right, title and interest of his debtor at the date of attachment. The order of attachment could not confer upon him any right superior to that of the judgment debtor on the date of attachment. The attachment order has not been communicated immediately from the date of attachment dated 19.06.2013 and it was registered before the Sub Registrar only on 12.09.2013. Before that the judgment in suit for specific performance was passed in favour of the appellant on 11.09.2013. It is the further contention that money suit filed by the first respondent is nothing but collusive one and to defeat the very agreement itself. The appellant issued legal notice on 24.01.2013 for enforcing the contract. After receipt of the legal notice, promissory note has been antedated to 12.02.2012 and the money suit has been filed on 25.03.2013. Therefore, according to her, doctrine of lis pendens will certainly apply to such case. Further the attachment order is also not communicated as mandated under Order 38 Rule 11-B of Code of Civil Procedure (High Court Amendment, Madras). Therefore, even any attachment is passed on 19.06.2013, as long as the same is not communicated, same will not bind the parties. It is well settled law that lis pendens will also apply to involuntary sale. The appellant has purchased the property in pursuant to the decree and judgment of suit for specific

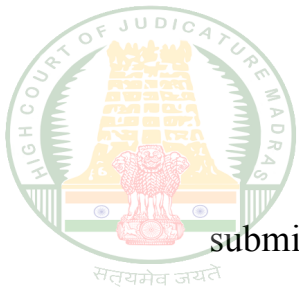


performance, any subsequent sale in execution of money decree will not convey any better title. This aspect has not been considered by the Trial Court. Admittedly, the appellant has also taken possession in pursuant to the EP, therefore, the Trial Court holding that lis pendens will apply against the appellant is nothing but perverse. The Trial Court has given undue importance to the draft sale deed. At the most, such sale can be challenged only by the judgment debtors and not by the third parties.

4. In support of her submission, she relied on the following judgments:

- i. *V.S.Thiru Venkita Reddiar vs. S.Noordeen and others* reported in *AIR 1978 Ker 11*
- ii. *Sri Krishna Chit Funds (Sattur Private Limited) vs. R.S.Pillai and another* reported in *2000 (II) CTC 524*
- iii. *Purna Chandra Basak vs. Daulat Ali Mollah* reported in *AIR 1973 Cal 432*
- iv. *Vannarakkal Kallalathil Sreedharan vs. Chandramaath Balakrishnan and another* reported in *(1990) 3 SCC 291*

5. Whereas, the learned senior counsel for the first respondent



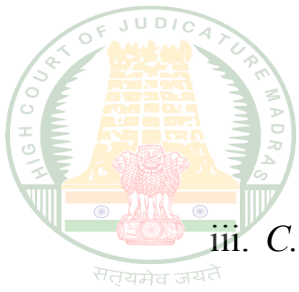
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submitted that attachment order has been passed on 19.06.2013. Once the attachment is already passed, any sale is void. The attachment is also effected on 27.06.2013 and registered on 12.09.2013 without showing the encumbrance, sale deed has been registered in favour of the appellant. If the encumbrance was reflected properly and filed before the Court, sale would not have been registered in favour of the appellant. Further contention is that as per the the Rule No.182 of Civil Rules of Practice, affidavit ought to have been filed by the appellant which has not been done so and Order XXI Rule 34 of CPC has not been followed properly. The draft sale deed has not been served on the judgment debtor. Further, according to him once the attachment has been passed, any sale is hit by Section 64 of Code of Civil Procedure. Section 52 of Transfer of Property Act will apply to the facts of the present case and therefore, the Trial Court has rightly considered the above aspect and allowed the application. Hence, sought for dismissal of this appeal.

6. In support of his submission, he relied on the following judgments:

- i. *Antoinette Beaumont vs. Ritha Vincent* reported in 2022 1 LW 631
- ii. *C.Subramanian vs. N.Chockalingam Asari* reported in 2011 (2) CTC 401 (Mad)



iii. *C.S.Mani (Deceased) by LR C.S.Dhanapalan vs. B.Chinnasamy Naidu*

WEB COPY (deceased) through LRs. reported in (2010) 9 SCC 513

iv. *Ramasamy Raja and another vs. P.Subbayya Pillai* reported in 2005 (3) CTC 640

7. In light of the above submissions, now, the points arises for consideration are as follows:-

- (i) Whether the money decree obtained by the first respondent is by way of collusion?
- (ii) Whether the purchase made by the first respondent is hit by doctrine of lis pendens?
- (iii) Whether the attachment made before the judgment will affect the sale executed in pursuant of the Court decree for specific performance?
- (iv) To what other reliefs, the parties are entitled to?

Points (i) to (iv)

8. The above factual narrations makes it very clear that the appellant has filed the suit for specific performance in O.S.No.24 of 2013 on 13.02.2013. Prior to that he also issued a legal notice on 24.01.2023. Thereafter, first respondent has filed a suit in O.S.No.32 of 2013 for



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recovery of money for a sum of Rs.18,20,000/-. The said suit was filed on 25.03.2013 and prior to that, it is to be noted that the legal notice is also issued by the first respondent on 06.03.2013. Throughout the suit, the defendants remained exparte. In the said suit, application has been filed in I.A.No.62 of 2013 for attachment before the judgment. In the said application also, the defendants remained exparte and attachment order was passed on 19.06.2013 to attach the property by 03.07.2013. However, the fact remains that having obtained the attachment order, no order has been communicated to the Sub-Registrar. It is relevant to note that though it is contended that attachment is effected only on 27.06.2013, any order of attachment before the judgment is passed, the same has to be communicated to the concerned jurisdictional Sub-Registrar as per Order 38 Rule 11-B of Code of Civil Procedure (High Court Amendment, Madras). The same reads as follows:

" 11-B. Order of attachment to be communicated to the Registering Officer – Any order of attachment passed under rule 5 or 6 of this Order raising the attachment passed under rule 9 of this Order shall be communicated to the Registering Officer within the limits of whose jurisdiction the whole or any part of the immovable property comprised in such order is situate."

9. This amendment was brought by way of High Court Amendment,



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Madras on 29.06.1987. Similarly, amendment is also brought under Order XXI Rule 58-A of Code of Civil Procedure (High Court Amendment, Madras) with effect from 29.06.1987. This has not been done so in the present case.

10. In the meanwhile, suit for specific performance filed by the appellant was decreed on 11.09.2013. The attachment was registered along with the main decree only on 12.09.2013. Therefore, as long as the attachment has not been communicated as mandated under law, it cannot be said that on the date of decree, there was an attachment. Be that as it may, in a suit for specific performance, in fact, the defendants have contested and filed an application to set aside the exparte decree in I.A.No.2795 of 2014. Ex.R16 would clearly show that the said application has been dismissed on merits and it has reached finality. Having contested the suit for specific performance, the defendants in money suit conveniently remained exparte from the very beginning and even at the time of the attachment order.

11. The evidence of PW1 clearly indicate that he is only tailor by



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profession and the entire family is depending on his income. His further evidence does not indicate as to how he mobilised the fund to pay such huge amount. From the conduct of the defendants opposing the specific performance suit and remaining exparte in the money suit gives an inference that there is a collusion between them. It is relevant to note that the legal notice dated 06.03.2013 has been issued by the first defendant on the basis of a promissory notice, that too, after the appellant issued pre-suit notice to the defendants/judgment debtors on 24.01.2013. Further, he has deposited only a sum of Rs.70,611.50/- after setting off the money decree. Throughout the money suit, the defendants remained exparte. These facts also give rise to an inference that money suit has been instituted after the suit for specific performance was filed with the collusion of the parties.

12. Much emphasis has been made by the learned senior counsel for the first respondent for non complying the provisions under Order XXI Rule 34 of Code of Civil Procedure. Of course, Order XXI Rule 34 of CPC mandates that draft of the sale deed has to be delivered before the Court. Thereafter, the Court shall cause the draft to be served on the judgment debtor together with a notice requiring objections (if any) to be made within



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such time as the Court fixes in this behalf. In this regard, learned Senior Counsel for the first respondent cited the judgment of the Hon'ble Supreme Court in *Rajbir vs. Suraj Bhan and another* reported in 2022 *LiveLaw (SC)* 255, wherein, it was held that it is also the duty of the court to execute the decree as it is and in accordance with law. Order XXI Rule 34 cannot be diluted and any such departure from the provisions can have highly deleterious consequences not merely qua the parties in question but also persons who come to deal with those parties in future.

13. It is to be noted that before the Executing Court also the judgment debtors remained exparte. Further, it is not placed on record to show that draft sale deed has not been filed at all. In fact, Court has passed an order directing the sale of property and sale deed was executed 04.03.2016. Therefore, without the draft sale deed, Court would not have executed the sale deed on 04.03.2016. If at all such procedural violation can be challenged only by the judgment debtors not by the first respondent. Therefore, the judgment cited by the first respondent will not come to his aid in any manner. It is relevant to note that the sale deed was executed in favour of the appellant on 04.03.2016, the attaching creditor could only



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attach the right, title and interest of his debtor at the date of attachment. The order of attachment could not confer upon him any right superior to that of the judgment debtor on the date of attachment. In this case, the property was transferred on 04.03.2016 in pursuant to the specific performance decree dated 11.09.2013.

14. The learned senior counsel for the first respondent's submission that Rule No.182 of Civil Rules of Practice has not been followed is concerned, such contention cannot be countenanced for the simple reason that provision for filing affidavit is mandatory only when the attached property is brought for sale.

15. Though learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of *Vannarakkal Kallalathil Sreedharan vs. Chandramaath Balakrishnan and another* reported in (1990) 3 SCC 291, wherein, it has held as follows:

7. Hence under a contract of sale entered into before attachment the conveyance after attachment in pursuance of the contract passes on good title in spite of the attachment. To the same effect are the decisions of the Bombay High Court in Rango Ramachandra Kulkarni v. Gurlingappa Chinnappa



Muthal [AIR 1941 Bom 198 : 43 BLR 206] and Yeshvant Shankar Dunakhe v. Pyaraji Nurji Tamboli [AIR 1943 Bom 145 : 45 BLR 208] . The High Court of Travancore-Cochin in Kochuponchi Varughese v. Ouseph Lonan [AIR 1952 TC 467 : ILR 1952 TC 201] has also adopted the same reasoning.

8. The Punjab & Haryana High Court, however, has taken a contrary view in Mohinder Singh v. Nanak Singh [AIR 1971 P & H 381 : 73 Punj LR 257] . It has been held that a sale in pursuance of a pre-attachment agreement is a private alienation of property and must be regarded as void against the claim of the attaching creditor. In support of this proposition, Section 64 of the Code of Civil Procedure was relied upon which according to the High Court was intended to protect the attaching creditor against private alienation. This was also the observation of the Lahore High Court in Buta Ram v. Sayyad Mohammad [AIR 1935 Lah 71 : 16 Lah 328] .

9. In our opinion, the view taken by the High Courts of Madras, Bombay, Calcutta and Travancore-Cochin in the aforesaid cases appears to be reasonable and could be accepted as correct. The agreement for sale indeed creates an obligation attached to the ownership of property and since the attaching creditor is entitled to attach only the right, title and interest of the judgment-debtor, the attachment cannot be free from the obligations incurred under the contract for sale. Section 64 CPC no doubt was intended to protect the attaching creditor, but if the subsequent conveyance is in pursuance of an agreement for sale which was before the attachment, the contractual obligation arising therefrom must be allowed to prevail over the rights of the attaching creditor. The rights of the attaching creditor shall not be allowed to override the contractual obligation arising from an antecedent agreement for sale of the attached property. The attaching creditor cannot ignore that obligation and proceed to bring the property to sale as if it remained the absolute property of the judgment-debtor. We cannot, therefore, agree with the view taken by the Punjab and Haryana High Court in Mohinder Singh case [AIR 1971 P & H 381 : 73 Punj LR 257] ."



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16. It is relevant to note that the above judgment was passed based on unamended provision of Section 64 of Code of Civil Procedure, 1908. Therefore, same is not applicable. Whereas, in *Ramasamy Raja and another vs. P.Subbayya Pillai* reported in 2005 (3) CTC 640, this Court recorded the following facts:

" 20. It is worthwhile to examine the reports of the Law Commission of India in this regard. The 27th report submitted in December 1964 is extracted hereunder :-

"64(1). The question has been raised whether a transfer actually made after the attachment but in pursuance of an agreement made before the attachment is invalidated by [Section 64](#). One view is that the Section does not apply in such cases vide *Babala Venkata Reddy Vs. Mangadu Yellappa Chetty* (AIR 1917 Madras 4, 51), (*Abdur Rahim and Srinivasa Ayyangar JJ*), *Ghuaram Vs. Parashram* (AIR 1936 Nag. 163, 165) (Pollock, J.), *Yeswant Vs. Pyaraji - Attachment after judgment* (AIR 1943 Bom 145) and *Ranga Ramachandra Vs. Garbingappa - Attachment before judgment* (AIR 1941 Bom 198, 200, 201).

64(2). In the draft Report which was circulated for comments an exception was proposed to [Section 64](#) to the effect that "Nothing in this section applies to any private transfer or delivery of the property attached or of any interest therein, made in execution of any contract for such transfer or delivery entered into before the attachment". But, after careful consideration, it has been decided not to make any such exception. A sweeping provision of this kind might be abused, and the practice of bringing into existence agreements which are really executed after attachment but are ante-dated to an earlier date, might be encouraged by such exception.



64(3). The decision as to how far such a transfer should be recognised as valid by the Court, would seem often to depend on the equities of each case. Some of the decisions are based on the specific provisions of Order XXXVIII, rule 10; a few exhibit special features arising out of the passing of a decree for specific performance. So far as other situations are concerned, the equities of the case should, it is considered, be taken by the Court into account."

In the 54th report submitted in February 1973, the relevant passages are extracted hereunder:-

"1.E.48. [Section 64](#) is as follows :

'64. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Explanation - For the purpose of this Section, claims enforceable under an attachment include claims for the rateable distribution of assets.' There has been a conflict of decisions on the question whether a transfer made after attachment in pursuance of an agreement entered into before attachment is void. The Commission in its Report on the Code (27th Report, Page 118, Note on [Section 64](#)), considered this conflict; but was not inclined to suggest a change. It noted that in the draft Report which had been circulated to State Governments, High courts etc.) for comments, an exception was proposed to [Section 64](#) to the effect that "Nothing in this Section applies to any private transfer or delivery of the property attached or of any interest therein, made in execution of any contract for such transfer or delivery entered into before the attachment". But, after careful consideration, the Commission decided not to make any such exception. The Principal consideration which weighted with the Commission was thus stated -

'A sweeping provision of this kind might be abused and the practice of bringing into existence agreements which are really



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executed after attachment but are ante-dated to as earlier date, might be encouraged by such exception.' The Commission also added -

'The decision as to how far such a transfer should be recognised as valid by the Court would seem often to depend on the equities of each case. Some of the decisions are based on the specific provisions of Order 38 Rule 10; a few exhibit special features arising out of the passing of a decree for specific performance. So far as other alterations are concerned, the equities of the case should, it is considered be taken by the Court into account.'

1.E.49. We have carefully considered the matter. We agree that a sweeping provision saving every transfer made in pursuance of a pre-attachment agreement, might lead to fictitious claims, as was noted by the previous Commission. But we think that a provision of a limited character, applicable only where the agreement itself is registered before the attachment, would be harmless. A transfer in pursuance of such agreement should override the attachment, if the agreement precedes the attachment.

Recommendation 1-K.50. We therefore, recommend that the following Exception be added below [Section 64](#) :

'Exception-Nothing in this Section applies to any private transfer or delivery of the property attached or of any interest therein, made in execution of any contract for such transfer or delivery entered into and registered before the attachment'."

21. This amendment was actually introduced only in 2002 and in the statement of objects and reasons to [the Code of Civil Procedure](#) (Amendment Act 2002). Paragraph 3(l) reads as follows :-

"[Sections 39, 64](#) and Rules 32 and 92 under Order 21 of the Code shall be amended on the basis of the 54th, 139th and 144th reports of the Law Commission of India. These amendments are clarificatory in nature".

Therefore, [Section 64\(2\)](#) only clarifies what the Legislature always intended the Section to mean.

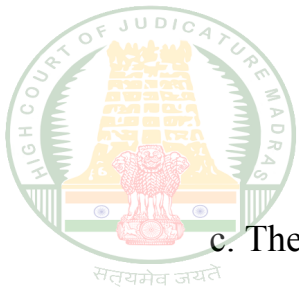


22. *It may also be worthwhile to look at the other Acts, where somewhat similar provisions have been introduced. Section 64(2) refers to an agreement of private transaction. Such agreements are not required to be registered. But yet the Legislature has protected only such of those agreements which have been registered before the attachment; from the effect of Section 64(1), which renders void, all private transactions"*

17. In view of the above settled position of law, any alienation by way of private transaction is void after the attachment as against all claims enforceable under attachment. But the fact remains in this case the question of attachment and its communication assumes insignificance for the simple reason that suit for specific performance was filed on 13.02.2013, money suit was filed on 25.03.2013 by the first respondent. Therefore, as on 13.02.2013, the suit for specific performance had commenced.

18. The Hon'ble Supreme Court in the case of *M/s.Siddamsetty Infra Projects Pvt. Ltd., vs. Katta Sujatha Reddy and others* in a review petition in Review Petition (C).No.1565 of 2022 in C.A.No.5822 of 2022 has held that even in a suit for specific performance, doctrine of lis pendens will apply. To apply lis pendens, the following conditions are essential:

- a. There must be a pending suit or proceeding;
- b. The suit or proceeding must be pending in a competent court;



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c. The suit or proceeding must not be collusive ;

d. The right to immovable property must be directly and specifically in question in the suit or proceeding;

e. The property must be transferred by a party to the litigation; and

f. The alienation must affect the rights of any other party to the dispute.

19. Therefore, admittedly, in this case the suit filed for specific performance is not collusive one. In fact, application in I.A.No.2795 of 2014 was filed by the defendants to set aside the exparte decree dated 11.09.2013 and the said application was dismissed on merits on 16.04.2015. It can be seen under Ex.R16. Thus, the suit is not a collusive one.

20. Further, it is also now well settled that the Rule of Lis Pendens applies to the involuntary sale in *Samarendra Nath Sinha and another vs. Krishna Kumar Nag* reported in *AIR 1967 SC 1440*, wherein, the Hon'ble Supreme Court held that Section 52 strictly speaking does not apply to involuntary alienation such as court sale, principle of lis pendens applies to such alienations.

21. In *Kedar Nath Lal and another vs. Ganesh Ram and others*



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reported in (1969) 2 SCC 787, the Hon'ble Supreme Court has held that if the property was acquired pendente lite, the acquirer is bound by the decree ultimately obtained in the proceedings pending at the time of acquisition. This result is not avoided by reason of the earlier attachment. Attachment of property is only effective in preventing alienation but it is not intended to create any title to the property. On the other hand, Section 52 places a complete embargo on the transfer of immovable property right to which is directly and specifically in question in a pending litigation. Therefore, the attachment was ineffective against the doctrine. Authority for this clear position is hardly necessary but if one is desired it will be found in *Moti Lal v. Karrab-ul-Din*. [1897 SCC OnLine PC 16 : (1896-97) 24 IA 170].

22. In paragraph 17, it has been held as follows:

*"17. Lastly it was contended that the sale was by Court auction and the doctrine of lis pendens would not apply to such a sale. This point was considered in Samarendra Nath Sinha v. Krishna Kumar Nag [1966 SCC OnLine SC 29 : (1967) 2 SCR 18] by one of us (Shelat J.) and it was observed as follows:
"... The purchaser pendente lite under this doctrine is bound by the result of the litigation on the principle that since the result must bind the party to it so must it bind the person deriving his right, title and interest from or through him. This principle is well illustrated in Radhamadhub Holdar v. Monohur Mookerji [1888 SCC OnLine PC 8 : (1887-88) 15 IA 97] , where the facts were almost similar to those in the instant case. It is true*



that Section 52 strictly speaking does not apply to involuntary alienations such as court sales but it is well established that the principle of lis pendens applies to such alienations. (See Nikant v. Suresh Chandra [1885 SCC OnLine PC 18 : (1884-85) 12 IA 171] and Motilal v. Karrab-ul-Din) [1897 SCC OnLine PC 16 : (1896-97) 24 IA 170]
This ground also has no validity."

23. The above judgment makes it clear that even any attachment in a money decree, the attachment was ineffective against the doctrine of lis pendens. Admittedly, in the present case, the sale was executed in favour of appellant by the Court on 04.03.2016. Whereas, sale was confirmed in favour of the first respondent only on 21.03.2016. Sale certificate was issued on 22.04.2016. It is well settled that auction purchaser derives his right only on confirmation of sale in his favour, when, the sale certificate is issued. Whereas, in this case, the sale certificate was issued on 22.04.2016, that too, after the sale deed executed by the Court in favour of the appellant on 04.03.2016. Therefore, on that date, i.e., 22.04.2016, the judgment debtors had no title to convey. Thus, merely, on the basis of auction purchase made by the first respondent subsequent to sale executed in favour of the appellant, the first respondent cannot claim any right. It is also to be noted that the appellant also took delivery of the property by filing E.A.No.247 of 2013 as per Ex.R14 and Ex.R15. Therefore, when a person was lawfully



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inducted into the possession by the Court Order, the Executing Court instead of deciding the title simply allowing the application filed by the subsequent money decree holder without even discussing as to whether there is any collusion in filing the money decree, certainly, the order of the Trial Court is liable to be dismissed.

24. The Trial Court has also given much importance to the judgment of this Court made *Annakkili vs. Murugan* reported in *AIR 2022 Mad 63*, wherein, this Court has held that doctrine of lis pendens will apply to the money suit also. It is to be noted that the above judgment of this Court is totally contra to the judgment of the Hon'ble Supreme Court in *Samarendra Nath Sinha's case* (cited supra), wherein, it was held as follows:

" 16. What then is the position of the respondent once it is held that the final decree for foreclosure was validly passed by the trial court? Could he challenge that decree in an appeal against it in the High Court on the basis that he was entitled to redeem the said mortgage? Section 91 of the Transfer of Property Act provides that besides the mortgagor any person other than the mortgagee who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same may redeem or institute a suit for redemption of such mortgaged property. An execution purchaser therefore of the whole or part of the equity of redemption has the right to redeem the mortgaged property. Such a right is based on the principle that he steps in the shoes of his predecessor-in-title



and has therefore the same rights which his predecessor-in-title had before the purchase. Under Section 59-A of the Act also all persons who derive title from the mortgagor are included in the term “mortgagor” and therefore entitled to redeem. But under Section 52 which incorporates the doctrine of lis pendens, during the pendency of a suit in which any right to an immovable property is directly and specifically in question such a property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein except under the authority of the court and on such terms as it may impose. Under the Explanation to that section the pendency of such a suit commences from the date of its institution and continues until it is disposed of by a final decree or order and complete satisfaction or discharge of such a decree or order has been obtained. The purchaser pendente lite under this doctrine is bound by the result of the litigation on the principle that since the result must bind the party to it so must it bind the person deriving his right, title and interest from or through him. This principle is well illustrated in Radhamadhub Holdar v. Monohar [15 IA 97] where the facts were almost similar to those in the instant case. It is true that Section 52 strictly speaking does not apply to involuntary alienations such as court sales but it is well-established that the principle of lis pendens applies to such alienations. (See Nilkant v. Suresh Chandra [12 IA 171] and Motilal v. Karrabuldin [24 IA 170]). It follows that the respondent having purchased from the said Hazra while the appeal by the said Hazra against the said preliminary decree was pending in the High Court, the doctrine of lis pendens must apply to his purchase and as aforesaid he was bound by the result of that suit. In the view we have taken that the final foreclosure decree was competently passed by the trial court, his right to equity of redemption was extinguished by that decree and he had therefore no longer any right to redeem the said mortgage. His appeal against the said final decree was misconceived and the High Court was in error in allowing it



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and in passing the said order of remand directing the trial court to reopen the question of redemption and to allow the respondent to participate in proceedings to amend the said preliminary decree. "

25. In *Ponnuswami Pillai vs. Chidambaram Chettiar* reported in *AIR 1918 Madras 279*, a Division Bench of the Madras High Court held that it is unnecessary to invoke the doctrine of *lis pendens* which applies under Section 52 Transfer of Property Act to immovable property, a class of property into which a simple money decree cannot be treated as falling.

26. Similarly, the High Court of Bombay in the case of *Lakshman Mahadev vs. Ramachandra Kisan* reported in *1932 Bom 301*, Patna High Court in the case of *Bhagwan Das vs. Akbar Hussain Khan* reported in *AIR 1936 Patna 571*, A Full Bench of the High Court of Kerala in *Lakshmanan vs. Kamal* reported in *1958 KLJ 901*, Delhi High Court in the case of *Manoj Kr.Shah vs. Anand Kr* reported in *2007 97 DRJ 189* have held that *lis pendens* does not apply to a suit for recovery of money.

27. Therefore, this Court is of the view that transfer of any property during the suit for money decree, such transfer can be attacked under Section 53 of Transfer of Property Act as a fraud on creditor. Whereas, doctrine of



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lis pendens will not apply. Therefore, the judgment of this Court in *Annakkili* (cited supra) runs contra to the judgment of the Hon'ble Supreme Court in Samarendra Nath Sinha's case (cited supra), judgment of Division Bench of this Court in Ponnuswami Pillai's case and a Single Bench of this Court in *Ammavasai vs. Tulasikannu* made in *CMSA(MD).No.6 of 2008* dated 29.06.2017 has not laid the correct position of law. Be that as it may, the Trial Court applied the doctrine of lis pendens in favour of the first respondent namely the money decree holder instead of decree holder in a suit for specific performance. Since the suit is related to the enforcement of the contract in respect of immoveable property lis pendens will apply even to involuntary sale (court auction sale), such approach of the Trial Court applying lis pendens doctrine to money decree is erroneous. Accordingly, this Court is of the view that as appellant has acquired title any subsequent sale is hit by doctrine of lis pendens. Appellant has better title than the first respondent. Therefore, the Trial Court allowing the application filed under Order XXI Rule 97 by the money decree holder is not maintainable and is liable to be dismissed. Execution Petition filed by the appellant for delivery of possession also cannot be maintainable since the appellant was put in possession in pursuant to the execution of sale in his favour by the Court and



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sale is much prior to the purchase made by the money decree holder.

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28. In all, the order of the Executing Court dated 17.10.2024 passed in E.A.No.212 of 2021 in E.P.No.301 of 2016 in O.S.No.32 of 2013 is set aside and this appeal stands allowed, accordingly. No costs. Consequently, connected miscellaneous petitions stand closed.

14.03.2025

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Internet : Yes/No

Index : Yes/No

Neutral Citation : Yes/No

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To

1. The Principal District Judge
Principal District Court, Puducherry

2.The Section Officer
VR Section, Madras High Court

N.SATHISH KUMAR, J.

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C.M.P.Nos.2563 & 2566 of 2025

14.03.2025