



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-04-2026

CORAM

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THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 314 of 2026

AND

CMP NO. 10712 OF 2026

C.Jayaprakash
S/o Chinna Kannu,
Pudupalayam Street,
Gividareddipalayam Village,
Ussoor Post,
Vellore Tk and Dist

..Appellant(s)

Vs

Balan (Died)

1.N.Saravanamoorthy
S/o Late Narayansamy,
No.19, Mahalakshmi Apartment,
2nd Floor D, Hindu Colony,
Nanganallur, Chennai 600 014.

Lakshmi Ammal (Died)
Pushpammal (Died)
Krishnaveni Ammal (Died)
Kannammal (Died)
Gajalakshmi (Died)

..Respondent(s)

PRAYER : Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 17.10.2025 in AS.No.2 of 2024 on the file of the Additional Sub Ordinate Court, Vellore, confirming the fair and decreetal order dated 07.12.2023 in EA.No.442 of 2007 in EP.No.494 of 1992 in OS.No.183 of 1986 on the file of the Additional District Munsif Court, Vellore.

For Appellant(s):

V.Sundarraman



Judgment

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This Second Appeal has been filed to set aside the judgment and decree dated 17.10.2025 in A.S.No.2 of 2024 on the file of the Additional Sub Ordinate Court, Vellore confirming the fair and decreetal order dated 07.12.2023 in EA.No.442 of 2007 in EP.No.494 of 1992 in OS.No.183 of 1986 on the file of the Additional District Munsif Court, Vellore.

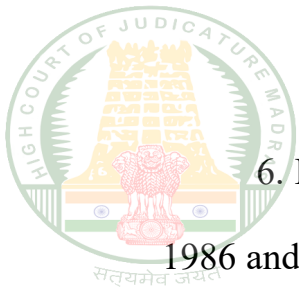
2. Heard the learned counsel for the appellant and perused the materials available on record.

3. The third party obstructor is the appellant herein. One deceased Balan filed a suit for declaration of title and recovery of possession against one Lakshmiammal, the appellant's vendor Kannammal and others in O.S.No.183 of 1986, on the file of the District Munsif Court, Vellore and the said suit was decreed *ex parte* on 23.06.1992. Thereafter, the decree holder filed an execution petition in E.P.No.494 of 1992. In the Execution Petition, the appellant herein / third party objector filed an Obstruction Application in E.A.No.442 of 2007 seeking declaration that the suit property belonged to him and also sought for dismissal of the Execution Petition. The Obstruction Application filed by the appellant was dismissed by the Trial Court. Challenging the same, he filed an appeal in A.S.No.2 of 2024 and the same was also dismissed. Aggrieved by the concurrent findings of the Courts below, the appellant is before this Court.



4. According to the appellant / third party obstructor, the suit property originally belonged to one Nalla Abbu Naidu and he married the appellant's vendor's vendor Lakshmiammal. After the marriage, he had illicit intimacy with one Ammakannu Ammal and neglected his wife. Hence, Lakshmiammal filed a suit for maintenance against Nalla Abbu Naidu and obtained a decree and sought for a decree of charge over the suit items 1 and 2. The Trial Court dismissed the suit and she filed an appeal in A.S.No.109 of 1973 on the file of the District Court, Vellore. The First Appellate Court fixed a monthly maintenance at Rs.25/- and also granted charge over item 2 of the property. Challenging the same, Nalla Abbu Naidu had preferred a second appeal in S.A.No.866 of 1975. Lakshmiammal filed a cross objection seeking charge over the landed properties in item 1. The second appeal filed by Nalla Abbu Naidu was dismissed and the cross objection filed by Lakshmiammal was allowed. Ultimately, a decree was passed granting charge over the landed properties in item 1.

5. It is further stated that even thereafter, the said Nalla Abbu Naidu failed to pay monthly maintenance and hence, Lakshmiammal had taken the possession of the property and enjoyed the same as her absolute property. After the death of Nalla Abbu Naidu, Lakshmiammal has sold the property in favour of the appellant's vendor Kannammal. From the said Kannammal, the appellant purchased the suit property on 16.05.1997.



6. It was stated that the deceased Balan filed a false suit in O.S.No.183 of 1986 and obtained a decree for declaration of title and recovery of possession. It was also stated that the appellant is a *bonafide* purchaser. Without putting notice to the appellant, the suit was filed by Balan. The claim of the above said Balan in the suit that he was the son of Nalla Abbu Naidu was also denied. On these pleadings, the appellant herein sought for allowing his Obstruction Application and dismissal of the Execution Petition filed by Balan / Decree Holder.

7. The decree holder in O.S.No.183 of 1986 *viz.*, Balan filed a counter and opposed the Obstruction Application. The specific case of Balan is that the appellant has no independent right to oppose the execution of the decree. It was also stated that the appellant purchased the property after passing of decree in the suit. Therefore, the purchase made by the appellant is hit by doctrine of *lis pendens* and sought for dismissal of the Claim Petition.

8. Before the Executing Court, the appellant was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. On behalf of the appellant, 20 documents were marked as Exs.P1 to P20 and on behalf of the respondents, the first respondent / Saravanamurthy was examined as R.W.1 and one Baskaran was examined as R.W.2. On behalf of the respondents, 29 documents were marked as Exs.R1 to R29.



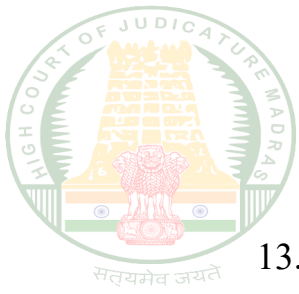
9. The Execution Court, on appreciation of the oral and documentary evidence available on record, came to the conclusion that the petitioner / appellant failed to establish his right over the suit property and dismissed the Objection Petition. Aggrieved by the same, he filed an appeal in A.S.No.2 of 2024 on the file of the Additional Sub Court, Vellore. The First Appellate Court confirmed the findings of the Execution Court. Aggrieved by the concurrent findings, the petitioner / appellant is before this Court.

10. The learned counsel for the appellant submitted that the appellant's vendor's vendor Lakshmiammal obtained a charge decree against Nalla Abbu Naidu and subsequently, she possessed the property as a sole heir of Nalla Abbu Naidu and sold the same to the appellant's vendor Kannammal. It is a specific argument of the learned counsel that the decree holder / Balan was not a son of Nalla Abbu Naidu and therefore, he could not maintain the suit for declaration of title and recovery of possession. It is further submitted by the learned counsel that the appellant had no notice of the legal proceedings between Balan and his vendors and therefore, he is a *bonafide* purchaser of the property. The learned counsel also submitted that the Courts below, without taking into consideration the points raised by the appellant, had erroneously dismissed the Objection Application and also the First Appeal.



11. The deceased Balan filed a suit seeking declaration of title and recovery of possession against the appellant's vendor Kannammal and her vendor Lakshmiammal and others in O.S.No.183 of 1986. The said suit came to be decreed *ex parte* on 23.06.1992 as seen from Ex.P19 and Ex.P20. The appellant herein is not claiming any independent right over the suit property. He is only claiming right over the property as a purchaser from Kannammal who in turn purchased the property from Lakshmiammal. The appellant's vendor Kannammal as well as Lakshmiammal were parties to the suit filed by Balan in O.S.No.183 of 1986. In the said suit, they never disputed the paternity of Balan.

12. The appellant who is claiming right under judgment debtor, is not entitled to raise a point which ought to have been raised by the judgment debtor in the suit. Therefore, the issue raised by the appellant with respect to the paternity of the said Balan is barred by constructive *res judicata* as the same was not raised by his vendor in the suit. As mentioned earlier, the *ex parte* decree was passed on 23.06.1992. The appellant herein purchased the suit property only on 16.05.1997 under Ex.P6. Therefore, it is clear that the appellant purchased the property only after passing of decree in the main suit. In fact, the Execution Petition had been filed by the decree holder as early as in 1992 in E.P.No.494 of 1992. Therefore, the appellant purchased the property only pending the Execution Petition.



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13. As per the law settled by the Hon'ble Apex Court in *G.T.Girish Vs. Y.Subbaraju*, reported in 2022 (12) SCC P.321, a *pendente lite* purchaser cannot raise the defence of *bonafide* purchaser. The petitioner / appellant being a *pendente lite* purchaser, is not entitled to raise a defence as a *bonafide* purchaser and the decree passed against his vendor is binding on him. In any event, as mentioned earlier, the appellant has no independent claim over the suit property. He is only claiming right under judgment debtor who suffered a decree. The decree passed against the judgment debtor is binding on the appellant. Both the Courts below had rightly appreciated the evidence available on record and dismissed the Obstruction Application and the First Appeal. Hence, I do not find any serious error or infirmity in the judgment and decree passed by the Courts below. The appellant has not made out any substantial question of law for consideration.

14. In the result, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15. Taking into consideration the Execution Petition was filed in 1992, the Executing Court is directed to dispose of the Execution Petition as expeditiously as possible having in its mind the time line of six months as fixed



by the Apex Court in *Rahul S Shah Vs. Jinendra Kumar Gandhi and Others*,
reported in 2021 (6) SCC 418.

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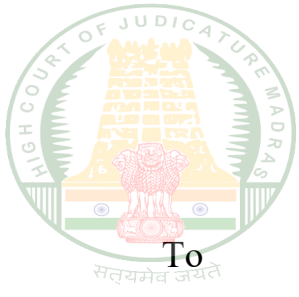
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Index: Yes

Speaking order

Neutral Citation: Yes

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To

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- 1.The Additional Sub Ordinate Court, Vellore.
- 2.The Additional District Munsif Court, Vellore.



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S.SOUNTHAR J.

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