
(2005) 08 MAD CK 0149

Madras High Court

Case No: C.R.P. (N.P.D.) No. 294 of 2004

G. Chandrasekaran

APPELLANT

Vs

Palaniappa Company and Others

RESPONDENT

Date of Decision: Aug. 29, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 2(2)

Citation: AIR 2006 Mad 104 : (2005) 4 MLJ 549 : (2006) 1 RCR(Civil) 329

Hon'ble Judges: R. Banumathi, J

Bench: Single Bench

Advocate: S.V. Jayaraman for N. Maninarayanan, for the Appellant; S. Kathirvel, (for No. 6), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Banumathi, J.

Auction-purchaser is the revision-petitioner aggrieved against the order of dismissal of the application in E.A. No. 98 of 2000 in E.P. No. 34 of 1988 in O.S. No. 90 of 1977, dated 7-8-2003 of the learned Principal Subordinate Judge, Thanjavur, the auction-purchaser has preferred this Civil Revision Petition.

2. The simple mortgage decree has assumed manifold dimensions resulting in war of litigations between the parties. The litigation is now centered around the land in 31220 sq. ft., in the area said to be of commercial and residential importance in Tanjore. The disputed property 31220 sq. ft. (about 13 grounds) comprised in T.S. No. 3074/IA. IB, IC bearing Door No. 12-A, Selvam Nagar, Tanjore Town. The said property belonged to one Pakkirisami Pillai. Respondents 2 to 7 are related as under :-

TABLE No. 1
Pakkirisamy Pillai (died on 2-4-81)
= Gamathi Ammal (R-2)

Prema (R-3)	Manoharan (R-4)	Ravichandran (R-5)	Mohan (R-6)	Kalaiselvi (R-7)
			(Contesting Respondent/ Plaintiff in O.S. No. 82 of 2004)	

The Revision Petitioner/Auction Purchaser is the Brother of Dhanalakshmi, who are related as under :-

TABLE No. 2
Gurusamy Pillai

= Dhanalakshmi	Chandrasekaran
= Naga Pillai	(Revision-Petitioner/ Auction-Purchaser)
Srinivasan	

3. O.S. No. 90 of 1977 :-The Suit Property was mortgaged in the name of the First Respondent-Palaniappa Company. The mortgagee filed this mortgage suit for recovery of the suit amount. Preliminary decree was passed on 5-7-1978; final decree was passed on 29-4-1980. For sale of the mortgaged property, E.P. No. 34 of 1988 was filed. Earlier, the property was sold in the Court auction on 3-7-1989 and the property was purchased by the decree-holder himself for Rs. 2,00,100/-. Alleging irregularities and fraud in conducting of the sale, E.A. No. 165 of 1989 was filed under Order XXI, Rule 90. CPC. That application was allowed and the sale was set aside on 28-10-1991. Ten years thereafter, the property was again brought for sale. The Auction-Purchaser purchased the property in the Court auction sale for almost the same amount of Rs. 2,00,200/-on 21-6-1999. The sale was confirmed on 7-10-1999.

4. At the same time when the property 31220 sq. ft. was sold in the Court auction sale, excepting the contesting sixth respondent, other sharers have sold major portion of the aforesaid property to Dhanalakshmi, who is the sister of the auction-purchaser/ revision-petitioner and her husband Naga Pillai and their son Srinivasan. They have purchased 26,235 sq. ft. for Rs. 34.52,200/-under two Sale Deeds as under :

Document No. Date	Name of the Purchaser	Area sold (in sq. feet)	Market value of the area sold as per the Sale Deed (in Rs.)
2078	Tmt. N. Dhanalakshmi		
18-6-1999	W/o G. Nagapillai	9,873	8,88,600
2593	1.Thiru. G. Naga Pillai	16,322	25,63,600
21-6-199	S/o Gurusamy Pillai		
	2. Thiru. N. Sreenivasan		
	S/o G. Naga Pillai	=	=
	Total	26,235 (sic)	34,52,200

5. Q.5, No. 1 of 2001 (Sub-Court, Tanjore)

O.S. No. 82 of 2004 (District court, Tanjore) : The Suit in O.S. No. 1 of 2001 was filed by the contesting sixth respondent on the file of sub-Court, Tanjore for partition of his 1/6th share in the property. Later, the suit was transferred to District Court, Tanjore and re-numbered as O.S. No. 82 of 2004. In LA. No. 239 of 2004, the purchasers in the Sale Deeds viz. Dhanalakshmi and Naga Pillai have filed the application under Order 1, Rule 10(2), CPC for impleading them as parties in O.S. No. 82 of 2004. The purchasers have claimed right in the property pursuant to the abovesaid Sale Deeds dated 18-6-1999 and 21-6-1999. Alleging that they made the purchase after bona fide enquiry and that the Vendors are entitled to legitimate share and on that basis prayed to implead themselves as parties. The application was dismissed by the Principal District Court, Tanjore.

6. CR.P. No. 357 of 2004 :- As against the order of dismissal of the application in I.A. No. 239 of 2004, the purchasers-Dhanalakshmi and others have filed this Civil Revision Petition. The Revision Petition was dismissed finding that they are purchasers lis pendens. It was further observed that the brother of Dhanalakshmi (Revision-petitioner herein) had purchased the very same property by Fraud at a Court auction and that order is subject-matter of pending Civil Revision Petition (present Revision Petition). Finding that the petitioners cannot even claim any equity, this Court dismissed the revision petition.

7. Reverting back to E.P. No. 34 of 1988, after the Court auction sale on 21-6-1999, the contesting sixth respondent had filed the petition to set aside the sale under Order XXI, Rule 90, CPC alleging fraud and irregularities. That application was filed with delay. That application was dismissed in unnumbered stage itself. Aggrieved by the dismissal order, the contesting sixth respondent has filed revision petition is C.R.P. (SR) No. 49862 of 2000 and C.M.P. (SR) No. 49864 of 2000. That revision petition was dismissed, even in the admission stage.

8. E.A. No. 98 of 2000 :- Revision-petitioner-auction-purchaser has filed this application under Order XXI, Rule 95, CPC for delivery of possession pursuant to the

confirmation of sale and issuance of the Sale Certificate. The contesting sixth respondent strongly resisted the application alleging fraud and irregularities. According to the sixth Respondent, the property worth about Rs. 40,00,000/- was sold for a meagre amount of Rs. 2,00,200/-. The Application filed to set aside the sale was dismissed without even admitting the same. It was alleged that on the same date of the Court auction sale on 18-6-1999, the revision petitioner/ auction-purchaser's sister and her husband and their son have purchased 26,235 sq. ft. for Rs. 34,52,200/-. While so, the entire extent of 31220 sq. ft. was sold for a low amount of Rs. 2,00,200/-. The sale was for realising the decree amount of Rs. 72.394/-, which is disproportionately a small amount. Hence, the Court auction sale is vitiated by fraud and irregularities and delivery of possession cannot be ordered.

9. Deposit of decree amount on 28-2-2001 :- At the time when the contesting sixth respondent was resisting the application in E.A. No. 98 of 2000, he has deposited the decretal amount of Rs. 72,394/- a sum of Rs. 94,084/- which includes interest and poundage and that amount was deposited by him on 28-2-2001 under Order XXXIV, Rule 5, CPC. According to the contesting sixth respondent, though the co-sharer had alienated the suit property for a huge amount, they failed to contribute even a single pie to discharge the family debt. As against the order of deposit of amount, the auction-purchaser has preferred revision petition in C.R.P. No. 207 of 2003. Since E.A. No. 98 of 2000 itself was dismissed by the Court, C.R.P. No. 207 of 2003 was also dismissed by the High Court on 17-11-2003. It is stated that the first respondent/decreed-holder had already withdrawn the amount and the decree is fully discharged.

10. E.A. No- 103 of 2001 :- The contesting sixth respondent has filed this application under Order XVI, Rules 1 and 2, CPC to issue summons to the purchasers Dhanalakshmi, Naga Pillai and Srinivasan to appear before the Court and to produce the original sale deeds dated 18-6-1999 and 21-6-1999 and to give evidence regarding those documents. E.A. No. 103 of 2001 was dismissed by the lower Court, against which the contesting sixth respondent had preferred C.R.P. (NPD) No. 3507 of 2001. By an elaborate order, A. Ramamurthi, J. has allowed the revision petition setting aside the order in E.A. No. 103 of 2001. Allowing the Revision and remitting the matter back to the Executing Court for issuance of Summons to the purchasers, learned Judge has observed :

...E.A. No. 103 of 2001 is allowed and the matter is remitted back to the Executing Court, namely Principal Sub-Court, Thanjavur to issue necessary summons to Tmt. N. Dhanalakshmi, Naga Pillai, and Srinivasan to appear before the Court on the date fixed by the Court for the purpose of producing the original sale deeds bearing document No. 2078, dated 18-6-1999 and No. 2593 dated 21 -6-1999 and give evidence regarding these documents. The Executing Court is directed to dispose of the matter in a period of three months from the date of receipt of a copy of this order....

11. Pursuant to the above direction, summons were issued to the purchasers, who have produced their original sale deeds. But, the purchasers have not appeared before the Executing Court. In E.A. No. 98 of 2000, oral and documentary evidence has been adduced by the parties. Upon consideration of the evidence adduced and other circumstances, the Executing Court, Tanjore has dismissed the application E.A. No. 98 of 2000 and ordered recalling of the sale certificate issued to the auction purchaser. Pointing out the two sale deeds dated 18-6-1999 and 21-6-1999 under which a portion of the property was purchased for Rs. 34,52,200/-, learned Subordinate Judge found that the entire extent of 31,220 sq. ft. has been sold for a meagre amount of Rs. 2,00,200/- and the sale cannot be validated. Referring to number of decisions relied upon by the contesting sixth respondent, the Executing Court observed that the auction purchaser/revision-petitioner had not approached the Court with clean hands and the petitioner has fraudulently purchased the property in the Court auction abusing the process of the Court and is not entitled to delivery of possession.

12. As against the order of dismissal of the application in E.A No. 98 of 2000 filed under Order XXI, Rule 95, CPC the revision petitioner has preferred this civil revision petition.

13. Assailing the impugned order, Mr. S.V. Jayaraman, learned senior counsel appearing for the revision-petitioner/auction-purchaser has submitted that the Executing Court has erred in presuming the fraud on the mere allegations. Contending that the sixth respondent was not ready to deposit the decree amount at any stage, learned senior counsel inter alia raised the following contentions :-

having not resorted to any known provisions of the law to set aside the Court auction sale, it is not open to the sixth respondent to challenge the same in the proceedings under Order XXI, Rule 9, CPC;

If the sixth respondent was really interested in attacking the Court auction sale, he ought to have taken necessary steps either under Order 21, Rule 90 or must have filed petition u/s 47, CPC;

the option exercised under Order 34, Rule 5, CPC depositing the amount nearly two years after the confirmation of sale cannot be sustained.

Raising the above points, learned Senior Counsel contended that the Executing Court had not properly appreciated the facts and circumstances of the case. It is further submitted that without going into the aspect of presuming fraud, erred in recalling the Sale Certificate.

14. Countering the arguments and placing reliance upon number of decisions and drawing the attention of the Court to the Sale Deeds dated 18-6-1999 and 21-6-1999 and the consideration of more than Rs. 34,00,000/-, learned Counsel for the contesting sixth respondent has submitted that the Court auction sale was for a

pittance amount. Drawing attention to number of other proceedings between the parties learned Counsel has submitted that the Court cannot allow a party to benefit himself by unjust enrichment. It is further submitted that when the sale price was very low and the sale is vitiated by fraud and irregularities, the Executing Court has rightly ordered recalling of the sale certificate. learned Counsel further submitted that the auction-purchaser is none other than the brother of Dhanalakshmi and that the auction-purchaser is working as the Manager in Pillai and Sons Mother Company (which has its working place at the disputed property) of which Srinivasan is a Dealer. learned Counsel has vehemently contended that the auction-purchaser has played fraud upon the Court by purchasing the property in the Court action sale to derive undue advantage for his sister Dhanalakshmi and her husband and son. Placing reliance upon number of decisions, learned Counsel further urged that the Court auction sale is a clear abuse of process of the Court and the Sale Certificate was rightly ordered to be recalled.

15. Upon consideration of the contentions of both parties, impugned order and other materials on record, the following points arise for consideration in this Civil Revision Petition :-

- i. Whether the Court auction sale on 21-6-1999 confirmed on 7-10-1999 has become final precluding the Court from going into the fraud and irregularities alleged by the sixth respondent ?
- ii. In E.A. No. 98 of 2000 filed under Order 21, Rule 95, CPC whether the Executing Court was not right in recalling the sale Certificate ?
- iii. Whether the impugned Order recalling the Sale Certificate dismissing E.A. No. 98 of 2000 suffers from material irregularity warranting interference ?

16. The amount of Rs. 95,084/- (which includes the decretal amount of Rs. 72,394/-and interest and poundage) was deposited by the contesting sixth respondent/one of the judgment-debtors under Order 34, Rule 5, CPC on 28-2-2001. As noted earlier, the final decree was passed on 29-4-1980. The mortgaged property was sold on 21-6-1999; confirmed on 7-10-1999. Nearly two years after the confirmation of the sale, the contesting sixth respondent has deposited the decree amount and other amount payable on 22-2-2001. The deposit of the amount under Order 34, Rule 5, CPC is very much assailed that the amount has not been deposited within the stipulated time and not in accordance with Order 34, Rule 5, CPC. It is the further contention that the sixth respondent has neither deposited the decree amount nor was ready to deposit the same at early point of time.

17. Order 34, Rule 5(1), CPC expressly recognises the right of the mortgagor to redeem the mortgage at any time before the confirmation of the sale made pursuant to a final decree passed in a suit for sale. The judgment-debtor is required to make a deposit of the amount due in the Court on or before the day fixed or at any time before the confirmation of sale is made in pursuance of the final decree

passed under Sub-section (3). It is stated that after the amount was deposited on 28-2-2001, the decree-holder has withdrawn the amount and the decree is fully satisfied. When the decree-holder himself has adopted the course accepting the amount, it is not open to the auction-purchaser to contend that the deposit of amount on 28-2-2001 is not in accordance with Order 34, Rule 5, CPC. Further, the fact that the sixth respondent has deposited the decree amount and other amount due in the Court after the confirmation of the sale does not preclude him from challenging the Court auction sale.

18. After the Court auction sale on 21-6-1999, the contesting sixth respondent had taken steps to set aside the same alleging that the sale is vitiated on the ground of fraud and material irregularities. It is stated that the application was dismissed by the Executing Court, as against which, the sixth respondent is said to have filed a revision petition in the High Court in CRP (SB) No. 49862 of 2000 and C.M.P. (SR) No. 49864 of 2000. Though the matters were said to have been listed for hearing on 25-8-2000, the revision petition is said to have been dismissed.

19. learned Counsel for the sixth respondent has placed reliance upon the decision reported in [Kharaiti Lal Vs. Raminder Kaur and Others](#), and submitted that when the sixth respondent has taken steps for setting aside the Court auction sale, the deposit made (though beyond time) under Order 34, Rule 5, CPC is valid. In the said decision, the Supreme Court has held,

...if appeal against the order confirming auction sale is pending and deposit is made under Order 34, Rule 5, CPC, then it is perfectly valid and legal....

Under such factual matrix that the Appeal against the order confirming auction sale was pending, the Apex Court found that the deposit made under Order 34, Rule 5, CPC is valid and legal. In this case, no Appeal has been preferred; the sixth respondent has only filed CRP (SR) No. 49862 of 2000 and C.M.P. (SR) No. 49864 of 2000, challenging the Court auction sale. Hence, the above decision cannot be applicable to the case in hand.

20. E.A. No. 98 of 2000 was filed by the revision-petitioner/auction-purchaser"under Order XXI, Rule 95, CPC to take delivery of possession. learned Counsel for the revision-petitioner has submitted that once the sale was confirmed on 7-10-1999 and the Sale Certificate was issued, the Court auction sale has become final and it was not open to the sixth respondent to raise objection for delivery of possession. The approach of the Executing Court is assailed on the ground that once the process of issuing the Sale Certificate is completed, it was the duty of the Executing Court to have ordered delivery of possession and ought not to have attached weight to the objections raised by the sixth respondent.

21. The Court auction sale could have been challenged in either of the follpwing ways :

Firstly, under Order 21, Rule 89 of CPC by :-

(i) depositing the amount specified in the proclamation less any amount received by the decree-holder since the date of proclamation;

(ii) depositing 5% of the money for payment to auction-purchaser

(that amount to be deposited within 60 days from the date of sale)

Secondly, under Order XXI, Rule 90, CPC alleging material irregularity or fraud in publishing or conducting the sale and alleging substantial injury to the applicant.

(O. XXI, Rule 90, CPC application to be filed within 60 days from the date of sale)

22. The sixth respondent has not filed any of the application either under Order 21, Rule 89, CPC or under Order 21, Rule 90, CPC within 60 days from the date of sale i.e. 21-6-1999. The main contention of the revision petitioner/auction-purchaser is that the sixth respondent having not adopted any of the course available under the known procedure of law, it is not open to the sixth respondent to raise the objection regarding the validity of the sale and it is not open to him to challenge the sale in the proceeding under Order XXI, Rule 95, CPC. It is not as if, the sixth respondent remained inactive without challenging the Court auction sale. As noted earlier, he is said to have filed the application to set aside the sale on the ground of fraud and material irregularities which was dismissed in the unnumbered stage. The Revision Petition preferred against the order of dismissal in CRP (SR) No. 49862 of 2000 and C.M.P. (SR) No. 49864 of 2000 posted in the cause list on 25-8-2000 is also said to have been dismissed. The main contention of the revision-petitioner/auction-purchaser is that having not filed the application under Order 21, Rule 89, CPC or under Order XXI, Rule 90, CPC (within a period of 60 days) and the CRP having been dismissed in the admission stage, it is not open to the revision-petitioner/auction-purchaser to challenge the Court auction sale in the proceedings in E.A. No. 98 of 2000. Since the application to set aside the sale was dismissed unnumbered and the CRP was also dismissed in the admission stage, it would have been better for the sixth respondent to have filed the application, challenging the Court auction sale. Perhaps, in the midst of all the litigations, the sixth respondent was not suitably advised.

23. Contending that the order of rejection of the application and the memorandum of grounds of revision in the admission stage is merely an incidental order, which would not render the sale a conclusive one, learned Counsel for the sixth respondent has relied upon the decision reported in *Ratansingh v. Vijaysingh* 2001 SAR (Civil) 123 : AIR 2001 SC 279. In the said case when the decree was sought to be executed after 12 years, the decree-holder tried to save the limitation. In that context, the Supreme Court has observed that the order rejecting the Memorandum of Appeal is only an incidental order and does not fall within the meaning of expression "decree" u/s 2(2), CPC. That observation of the Supreme Court in a

different context, cannot be invoked in the case in hand where the CRP (SR) No. 49862 of 2000 and C.M.P. (SR) No. 49864 of 2000 were dismissed in the admission stage itself. In view of the glaring irregularities particularly on the sale consideration, this Court is of the view that the dismissal of the said Application and CRP (SR) No. 49862 of 2000 and CMP (SR) No. 49864 of 2000 in the admission stage does not preclude the Sixth respondent from challenging the validity of the sale.

24. Generally speaking all irregularities are cured by the issuance of the Sale Certificate. In other words, on the issue of Sale Certificate, the auction-purchaser's title becomes final and the right to possession becomes impeachable. Though the confirmation Of sale and the issuance of Sale Certificate is prima facie evidence of title of the auction-purchaser, the circumstances brought forth in this case and the abuse of process of Court in the Court auction sale compel the Executing Court to take suo motu notice of the abuse of the process of Court. In such circumstances of abuse of process of Court, it is not as if the Court is powerless. The Court has got exorbitant power to take note of such things when they are brought to the notice of the Court. Taking suo motu judicial notice of the illegality in conducting of the sale, learned Counsel for the sixth respondent has relied upon the decision reported in [Nani Gopal Paul Vs. T. Prasad Singh and others](#), wherein the Supreme Court has observed :

...We are of the view that we can take suo motu judicial notice of the illegality pointed out by the Division Bench, committed by the single Judge of the High Court in bringing the properties to sale. Accordingly, we are of the view that the circumstances are sufficient to vitiate the validity of the sale conducted by the Court Receiver"as approved by the learned single Judge. Confirmation of sale was illegal. Though, as contended by Shri Ganesh that normally an application under Order 21, Rule 89 or Rule 90 or u/s 47, CPC need to be filed within limitation to have the sale conducted by the Court set aside and that procedure need to be insisted upon, we are of the view that this Court or appellate Court would not remain a mute or helpless spectator to obvious and manifest illegality committed in conducting Court sales. We are informed and it is not disputed that the appellant had deposited only Rs. 5 lakhs and balance amount was assured to be deposited, only after delivery of possession. That also would be illegal....

The Supreme Court has taken suo motu judicial notice of the illegality in the sale and set aside the sale even after the expiry of period of limitation prescribed therefor. Viewed in the light of the above decision, the Executing Court cannot be said to have exceeded its limits in setting aside the sale recalling the Sale Certificate in the proceedings under Order XXI, Rule 85, CPC. When such irregularity/fraud is brought to the notice of the Court, the Court cannot remain a mute spectator solely because the sale was already confirmed.

25. There are several glaring irregularities which could have gone unnoticed to any judicial mind. In view of the certain following irregularities apparent on the face of

record, the Executing Court was justified in taking suo motu Judicial Notice of the illegality and set aside the sale even after the expiry of period of limitation prescribed therefor. The property 31226 sq. ft. was earlier sold in the Court auction for the first time on 3-7-1989 for Rs. 2,00,100/-. On the application filed by another judgment-debtor-fifth respondent in E.A. No. 165 of 1989 under Order XXI, Rule 90, CPC that sale was set aside by the order dated 28-10-1991. Ten years thereafter, on 21-6-1999, the property was sold almost for the same amount of Rs. 2,00,200/-. The property 31220 sq. ft. measuring more than 13 grounds is said to be in the area of commercial and residential importance in Tanjore Town. Srinivasan son of Naga Pillai and Dhanalakshmi is the Dealer of Maruti Suzuki. The said place 12-A, Selvam Nagar, Thanjavur is said to be the work place of Pillai and Sons Motor Company. When the place is located in such area of commercial importance, it is quite unbelievable that the market value of the property would have remained the same for a period of ten years. Under Exs. Rule 1 and K. 2 Sale Deeds dated 18-6-1999 and 21-6-1999, the said Dhanalakshmi, Naga Pillai and Srinivasan have purchased 26,235 sq. ft. for Rs. 34,52,200/-. While so, the entire extent of 31220 sq. ft. had been purchased by the auction-purchaser for a pittance amount of Rs. 2,00,200/-. The said property is the work place of Pillai and Sons Motor Company. Srinivasan is said to be the Dealer of Maruti Suzuki. The revision-petitioner is none other than the brother of Dhanalakshmi. He is also said to be the Manager of Pillai and Sons Motor Company. In view of the close relationship of the parties and other circumstances, the revision-petitioner/auction purchaser must have been quite aware of the sale of 26,235 sq. ft. property for a huge amount of Rs. 34,52,200. In fact, the notice sent to the auction-purchaser itself was acknowledged by him, putting his signature, affixing the seal of "Pillai & Sons Motor Company, 31, Rajappa Nagar, Thanjavur-7", while the property measuring 26,235 sq. ft. has been sold for Rs. 34,52,200/-, it is highly improper and unjust for the auction-purchaser to have purchased the entire extent of property of 31220 for a meagre amount of Rs. 2,00,200/-.

26. Neither the decree-holder nor the auction-purchaser had brought it to the notice of the Court about the sale of the shares of other sharers/respondents 2 to 5 and 7. Likewise, the decree-holder has not brought it to the notice of the Court to separate the remaining extent of 4985 sq. ft. to be sold to realise the decree amount of Rs. 72,394/- and the subsequent interest. Had it been brought to the notice of the Court, certainly, the Executing Court would have sold only that portion of the remaining extent of 4985 sq. ft. That apart, the decree amount was a very low amount of Rs. 72,394/-. For realising the said amount, one lot - a portion of the entire extent would have been sufficient. Both the decree-holder and the auction-purchaser have suppressed the material facts within their knowledge.

27. There seems to be no bona fide for the Court auction-purchaser/revision-petitioner. The sister of the revision petitioner and her husband and son have purchased major portion of the property 26,235 sq. ft. from other sharers. The place being used as work place for Pillai and Sons Motor

Company, the family of the sister of the auction purchaser was having an eye on retaining the entire extent of property, perhaps for their business purpose. This is made clear by the reply issued by Dhanalakshmi to the sixth respondent. Denying the right of the sixth respondent in the property comprised in T.S. No. 3074/ IA, IB, IC bearing Door No. 12-A, Selvam Nagar, Tanjore, she has alleged that they have purchased the house property from the lawful owners and that the sixth respondent is making a false claim with ulterior motive. Obviously, abusing the process of the Court, the auction-purchaser had purchased the entire extent of 31,220 sq. ft. in the Court auction perhaps with the intention of conveying the same to his sister and for the sake of completion of their claim over the entire extent of 31220 sq. ft. The contesting Sixth respondent was unwilling to part with his share.

28. Learned senior counsel has submitted that the auction-purchaser being a bona fide purchaser, his interest ought to be safeguarded. In considering the facts and circumstances of the case, close relationship of the auction-purchaser, this Court is unable to accept the contention that the revision-petitioner is a bona fide auction-purchaser. In the similar circumstances, holding that the auction-purchaser is not a bona fide purchaser, M. Thanikachalam, J. has set aside the Court auction sale. In the decision reported in *Rajendra Kumar v. Natarajan* 2004 (2) MLJ 497 learned Judge has held :

...Considering the close relationship between the decree-holder and the judgment-debtors, as well as the interested oral testimony of R.W. 1, which fails to inspire about his bona fide, it must be held that the third party auction-purchaser viz. the Revision-petitioner is not a bona fide purchaser, in the auction and he is a tool in the hands of his brother-in-law/decreed-holder and such a person, as held by the Apex Court in AIR 1990 SC 1828 cannot claim protection and applying the above ratio, the sale is liable to be set aside....

29. Alleging that the revision-petitioner/ auction-purchaser has committed fraud and deception upon the Court, learned Counsel for the sixth respondent has submitted number of decisions Including 1994 (1) SCC 1 : AIR 1994 SC 853 : 1996 (5) SCC 550 : AIR 1996 SC 2592. Further, in support of his contention that the Court at any stage could recall its earlier order, learned Counsel has relied upon the decision reported in 2000 (3) CTG 506 : AIR 2000 SC 1165. Placing reliance upon the above decisions, learned Counsel for the sixth respondent has submitted that taking note of the fraud and deception played upon the Court, exemplary cost is to be awarded to the Sixth Respondent, who is said to have been subjected to much hardship.

30. As found earlier, it is a clear case of abuse of process of Court. The parties are entangled in several rounds of litigations. The suit for partition is also pending. When the parties are entangled in several litigations, it would not be appropriate to record any finding on the alleged fraud. This is all the moreso, when the sixth respondent himself has slumbered in not taking immediate action for challenging the Court auction sale.

31. Taking note of the abuse of process of Court, the Executing Court/learned Subordinate Judge, Tanjore has rightly set aside the sale and dismissed the application in E.A. No. 98 of 2000. The contention urged by the revision-petitioner that the sixth respondent is precluded from challenging the validity of the same does not merit acceptance. The impugned order does not suffer from any material irregularity warranting any interference.

32. The impugned order dated 7-8-2003 of the learned Principal Subordinate Judge, Thanjavur in E.A. No. 98 of 2000 in E.P. No. 34 of 1988 in O.S. No. 90 of 1977 is confirmed and this Civil Revision Petition is dismissed with the costs of the contesting sixth respondent.