

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
22.04.2026PRONOUNCED ON
12.06.2026

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THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CRP No. 1474 of 2016
and CMP.No.9237 of 2016

D.Thirunavukarasu

..Petitioner(s)

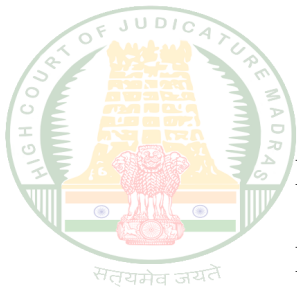
Vs

1. P.V.P. Murthy (died)
2. Gopinath
3. Prabhakaran
4. M/s Skygrow Maarthi Benefit Fund Ltd, Rep by its Managing Director, Go.Neelaram, No.243, Bharathi Salai, Triplicane, Chennai 600 005.
5. M.Padmavathy
6. F.Hemamalini
7. M.Gokulnath
8. V.Rekha
9. M.Ragunath
- 10.T.Harini
- 11.M.Srinath

(Respondent-1 Died. Respondents 5 to 11 are brought on record as LRs of the deceased R1 Viz.P.V.P.Murthy vide Court order dated.15/04/2025 made in CMP No.5727 of 2024 in CRP No.1474 of 2016)

..Respondent(s)

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 10.03.2015 made in CMP.No.1353 of 2014 in AS.No.464 of 2010 on the file of the Additional City Civil Court-IV, Chennai.



For Petitioner(s): Mr. S.Rajendra Kumar

For Respondent(s): R1- Died

RR2 & 3 – Not ready in notice

Mr.R.Bharath Kumar for R4

Mr.A.Chidambaram for RR5 to 11

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ORDER

The present Civil Revision Petition has been filed challenging the order dated 10.03.2015 made in CMP.No.1353 of 2014 in AS.No.464 of 2010 on the file of the Additional City Civil Court-IV, Chennai.

2. Heard Mr. S.Rajendra Kumar, learned counsel for the petitioner, Mr.R.Bharath Kumar, learned counsel appearing on behalf of the fourth respondent and Mr.A.Chidambaram, learned counsel appearing on behalf of the respondents 5 to 11.

3. The learned counsel appearing for the petitioner would submit that respondents 1 to 3 herein had jointly borrowed monies from the fourth respondent and had also executed a registered mortgage deed in the year 1996. As they committed to default in payment of the borrowed amount with interest, the suit scheduled property was brought to public auction by the fourth respondent in which the petitioner had purchased the suit property, being the



successful bidder. Pursuant to the same, a sale deed has also been executed and the same was registered in the Office of the Sub-Registrar, Thousand Lights.

Even though, the first respondent had instituted three suits to prevent the public auctions, the said suits all came to be dismissed for non-prosecution and that the respondents 1 to 3 had never challenged the public auction or the sale deed that had been executed in favour of the petitioner. Thereafter, the petitioner had instituted a suit seeking delivery of the vacant possession together with a sum of Rs.5,000/- per month towards future damages by occupation which came to be decreed. Against which the first respondent had preferred an Appeal suit. The same came to be dismissed against the respondents 2 to 4 and however, by a subsequent application, the same also came to be restored. In the said Appeal suit, the first respondent had taken out two Interlocutory Applications, one seeking for a direction directing the petitioner to appeal in person and make himself available for cross-examination and another application to issue subpeona to the auctioneer. The petitioner was represented by a valid Power of Attorney who had deposed on supporting the plaint.

4. He would submit that it is not the case of the first respondent that the Power of Attorney was not aware of the public auction of the purchase of the suit property. He had not also been cross-examined in that regard. He would further submit that having not challenged the auction sale nor having even made a counter claim in the suit with regard to the validity of the auction sale or the



sale deed under which the petitioner had purchased the property in the auction sale, there is no necessity to firstly examine the auctioneer.

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5. That apart, he would submit that when there is no challenge to the auction or the sale deed, there is no necessity even to summon the petitioner who had been hitherto represented by a Power of Attorney to enter into the box for cross-examination. He would submit that utmost adverse inference could be drawn for the petitioner for not examining himself. In the present case, he would submit that the suit was only for recovery of property based upon the said auction purchase which had fructified into a registered sale deed and for damages for use and occupation.

6. In support of his contention, he had relied upon the judgments of the Hon'ble apex Court in the case of *Government of Karnataka and Ors., Vs. K.C.Subramanya and Ors.*, reported in *2014 (1) LW 103* and another judgment in the case of *Parsotim Thakur and Ors. Vs. Lal Mohar Thakur and Ors.*, reported in *AIR 1931 PC 143*.

7. The learned counsel appearing for the respondents 5 to 11 at the outset would submit that the present Revision is not maintainable as the petitioner had not challenged the order in the other Interlocutory Application where subpeona had been issued to the auctioneer. He would submit that the first respondent had



disputed the auction sale under which the petitioner had purchased the property and that apart, he had also alleged fraud that has been played upon the Court and on him in the manner in which the auction had been conducted and the claim to the property have been made and in that context, he would take this Court to the averments in support of the application filed by him. He would further submit that only to substantiate the said fraud, he had taken out the two applications, wherein, he would be able to sustain his claim and assail the judgment and decree.

8. He would further rely upon a judgment of the learned Single Judge of this Court made in *CRP(PD).No.1345 of 2008* dated 28.09.2009 and contend that a Power of Attorney cannot act as a witnesses on the side of the plaintiff and depose in a dual capacity. He would further submit that the Power of Attorney can only in his personal capacity speak about the fact which are within his personal knowledge and cannot appear as a witness particularly in this case to substantiate/ support the auction sale. Hence, he seeks dismissal of the Revision.

9. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.



10. The primordial objections of the respondents is that the present Revision would not be maintainable in view that the petitioner had not challenged the order passed in another Interlocutory Application, in the consideration of the Court does not warrant any consideration. In an Appeal suit, the first respondent who was the appellant and who had suffered a decree of eviction by way of recovery of possession and damages for future use and occupation had taken out two applications. One to summon the petitioner who had hiterto to be represented by a Power of Attorney to be cross-examined and another to issue subpeona to the auctioneer in whose auction, the petitioner had successfully bid. These two reliefs sought for in the Interlocutory Applications do not support each other and are independent. Hence, the non-challenge to an order in another Interlocutory Application even though had been made under a common order need not be specifically challenged.

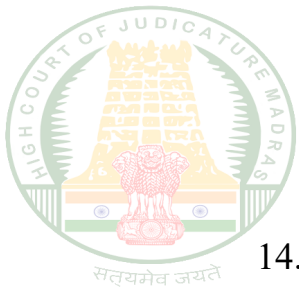
11. Coming to the *lis* in the present Revision, it is to be noted that the petitioner claiming to be an auction purchaser of an auction conducted pursuant to the mortgage created in favour of the fourth respondent by the first respondent and in whose favour a sale deed has been executed had instituted a *lis* for vacating and delivering the vacant possession to himself and for future damages towards use and occupation of the suit property. The first respondent who was a mortgagee had not denied the mortgage but on the other hand, had contested that he was not the absolute owner of the property and have only



limited right. He had challenged the *locus* of the plaintiff by claiming him to be only a name lender to the fourth respondent, who is the mortgagor. The second and the third respondents have remained *ex-parte* and had not contested the suit.

12. The first respondent had heavily relied upon a judgment of the learned Single Judge in support of his claim that the Power of Attorney cannot act as a witnesses and cannot depose more than what he has in his personal knowledge. It is the case where an application filed by a party as a Power of Attorney to represent the plaintiff was rejected. The learned Single Judge in the said judgment had made a reference to a judgment of the Hon'ble Apex Court reported in **1999 (3) SCC 573**. The said reference would indicate that in such case where a party does not appear and speak about the facts within his knowledge and is represented by a Power of Attorney, an adverse inference can be drawn against him.

13. Further, as rightly pointed out by the learned counsel for the petitioner, an application under Order XLI Rule 27 could only be exercised by a Court if it had come to a conclusion that in spite of exercise of due diligence, the evidence could not be produced and that evidence was not within his knowledge. An unsuccessful litigant cannot be allowed to patch up a weak part of his case and fill up the omissions in course of an Appeal.



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14. In the present case, it is not the case of the first respondent that such facts were not within his knowledge and only in the Appeal stage he had attempted to bring under new pleadings to plead the fraud in the manner in which the auction was conducted. It is also to be noted that even though a claim of fraud had been attempted to be brought in, the first respondent who was the defendant in the suit where reliefs of eviction was sought against him by way of recovery of possession and future damages had not been made any attempt to question the auction sale or the sale deed that had been executed.

15. In this context, this Court is of the view that there was no necessity for the petitioner to be summoned for being cross-examined particularly when there was no challenge to his title to the property except for unsubstantiated averments during the trial.

16.

17. Considering the fact that the appeal suit is of the year 2010, there shall be a direction to the learned Additional City Civil Judge-IV, Chennai to



dispose of the Appeal suit within a period of three months from the date of receipt of a copy of this order.

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12.06.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

GBA

To

- 1.The Additional City Civil Court-IV,
Chennai.
- 2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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CRP No. 1474 of 2



K.KUMARESH BABU, J.

GBA

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