IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.07.2026
Pronounced on	07.08.2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA No. 217 of 2018
AND
CMP NO. 20788 OF 2018

1.B.Narasimha Sastry @ B.Babu Narasimha Rao,

2.B.Babu Kesava Rao
S/O.late B.Narasimha Sastry

B.Babu Narayana Rao (died)

3.B.Vishnu varadhan
S/o.late .B.Narasimha sastry

4.B.Madhusudhan
S/o.late B.Narasimha Sastry

5.B.Ramakrishna Bai

[Cause title amended vide Court order dated 12.10.2018 (NKKJ & SBJ)]

..Appellant(s)

Vs

1.The Purasawalkam Permanent Fund Ltd.,
Rep By Its Managing Director, No.173 Vellala St,
Purasawalkam Chennai-84

2.M/s Balajee & Co.

Auctioneers, No.160, Thambu Chetty Street,
Chennai-01.

3.Mrs.Pramila Jain
Old No.134, New No.210, N.S.C Bose Road,Sowcarpet, Chennai-79

4.M/s Prakash Gold Palace
Rep By Its Proprietor, Prakash Chand Jain,
Old No.134, New No.210
N.S.C.Bose Road, Ground Floor,
Sowcarpet, Chennai-79

5.M/s Jothi Jewellers
Rep By Its Proprietor, Lalith Kumar,
Old No.134, New No.210,
N.S.C.Bose Road, Ground Floor,
Sowcarpet, Chennai-79

6.M/s Avanthika Jewellers,
Rep By Its Proprietrix,Mrs.Avanthika Old No.134,
New No.210. N.S.C.Bose Road, Ground Floor,
Sowcarpet, Chennai-79

7.M/s.R.D.Agencies,
Rep By Its Proprietor,
Mr.B.Venkatarathinam,Old No.134, New No.210,
N.S.C.Bose Road, Ground Floor,
Sowcarpet, Chennai-79

8.M/s S.S.Jewellery
Rep by its Proprietor,
Ugam Chand Jain, Old No.134 New No.210.
Ist floor, N.S.C.Bose Road, Sowcarpet,
Chennai-79

9.M/s S.R.Fefinery
Rep By Its Proprietor, S.Ramesh Salunkha,Old No.134, New No.210,
1st Floor,N.S.C.Bose Road, Sowcarpet,

Chennai-79

10.M/s Kaizen Impex,
Rep By Its Proprietor,M.A.Mubarak Old no.134,
New No.210,1st Floor, N.S.C.Bose Road,
Sowcarpet, Chennai-79

11.M/s Anisha Overseas Services,
rep by its proprietor,I.A.Shaik Ismail Jelani,
Old No.134, New No.210,1st Floor N.S.C bose
road,Sowcarpet, Chennai-79

12.M/s Bansali & Co.
Rep By Its Proprietor,Praveen Agra,
Old No.134, New No.210,
13.Ist Floor N.S.C. Bose Road,
Sowcarpet , Chennai-79

14.Mrs.Hilda,
Correspondent, Kinder Garden School,
Old No. 134 New No.210 II Floor, N.S.C. Bose
Road, Sowcarpet , Chennai-79

..Respondent(s)

Prayer: This Original Side Appeal is filed under Order XXXVI Rule 1 of Original Side Rules read with clause 15 of the Letters Patent, to set aside the order dated 05/01/2018 passed in C.S.No.160 of 2005 on the file of this Court by allowing the OSA.

For Appellant(s): Mrs.Chitra Sampath, Senior Advocate
For Mr.T.S.Baskaran

For Respondent(s): M/s.K.Sridhar for R1
Mr.Ralph V. Manohar for R3 & R4
R2,R5,R7,R9 to R12-No appearance
R6, R8 & R13- Dismissed as against respondent vide Court order dated 06.07.2026

JUDGMENT

(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

The Original Side Appeal is filed challenging the order dated 05.01.2018 passed by the learned Single Judge in CS.No.160 of 2005.

2. The brief facts of the case are as follows:

The plaintiffs 2 to 5 are the absolute owners of the property situate at Old Door No.134, New Door No.210 N.S.C Bose Road, Sowcarpet, Chennai - 79. By virtue of a settlement deed dated 05.02.1961 executed by their grandfather B.Venkatarathinam, the 1st plaintiff claims that he is a trustee and was directed to hold the property as a trustee till such time the children born to him attain majority. The plaintiffs 2 to 5 had borrowed monies from the 1st defendant, which is a Mutual Benefit Fund and had executed a deed of simple mortgage on 02.12.1996 registered as Doc.No.1185/1996 in the Office of the Sub-Registrar, Sowcarpet. The said mortgage deed was executed as security for repayment of a long term special loan of Rs.30,00,000/- together with interest at 21.6% p.a. It was also agreed that the mortgage loan is to be repaid at equated monthly installments of Rs.66,000/- each over a period of 96 months.

3. It is also stated that the plaintiffs 2 to 5 had borrowed another sum of Rs.10,00,000/- from the 1st defendant herein and subjected the property to further mortgage by a deed of mortgage dated 07.04.1997 registered as Doc.No.426/1997. The interest rate for the said loan was also at 21.6% p.a. and the same was to be repaid at equated monthly installments at Rs.22,000/- over a period of 96 months. Thus according to the plaintiffs 2 to 5, they had borrowed a sum of Rs.40,00,000/- from the 1st defendant and had executed the mortgage deeds stated above as security for repayment of the said sum of Rs.40,00,000/-. It is also claimed that the loan amount was utilized by the plaintiffs 2 to 5 for renovation of the building in the suit property, to enable them to let it out to the defendants 4 to 12. On behalf of the plaintiffs, the 1st plaintiff Mr.Babu Narasimha Rao had inducted tenants in respect of various portions and had received a sum of Rs.38,90,000/- as rental advance cum security deposit.

4. The plaintiffs would further submit that they had been repaying the

loan from and out of the monthly rents as well as the security deposits. According to the plaintiffs, till May 2001 they had repaid a sum of around Rs.29,00,000/- as against the above two loans. It is the further claim of the plaintiffs that they had specifically instructed the 1st defendant to appropriate the amounts paid by them towards the principal, so that the liability in respect of both the loan accounts could be brought down substantially. It is also claimed that the plaintiffs are unable to state the details of the exact amount paid by them, since the documents were lost by the 1st plaintiff when he travelled from Andhra Pradesh to Chennai by train. A complaint regarding loss of documents was also lodged by him with the Railway Police. The plaintiffs would claim that they were carrying out Aqua Culture Business by setting up a Shrimp Processing Unit at Ongole in Andhra Pradesh in 1996. The said business ran into rough weather and this had resulted in heavy financial burden causing involuntary default in payment of dues to the 1st defendant. Even though the plaintiffs made all legitimate attempts to liquidate the entire liability in a phased manner they were unable to do so. The request made by the plaintiffs for rescheduling the repayment of loan amounts was not acceded to by the 1st defendant.

5. It is also claimed that the plaintiffs 2 to 5 had in February 2001 written

to the 1st defendant requesting for waiver of the interest as well as the penal interest so as to enable them to arrive at a one time settlement. The plaintiffs would further contend that the value of the property mortgaged would be worth about 2.5 to 3 crores when the loan was taken and as per the market value as on the date of the plaint, the property would be worth about 3 to 3.5 Crores. The plaintiffs would state that the mortgage deeds executed by them in favour of the 1st defendant had authorized the 1st defendant to sell the property in the event of default exercising power under Section 69 of the Transfer of Property Act. It is stated that in exercise of such power the 1st defendant made several attempts to sell the property in public auction, but, the sale did not fructify and the 1st defendant had advertised for sale on 12.08.2001, fixing the auction on 20.08.2001. It is however stated that the auction did not take place for want of bidders on 20.08.2001.

6. According to the plaintiffs, subsequently without effecting wide publicity, the 1st defendant brought the mortgaged property for sale through the 2nd defendant auctioneer on 11.03.2002 at 11.00 am. It is claimed that the said auction was held without proper paper publication, advertisement or prior notice to the plaintiffs. It is also claimed that contrary to the general practice of conducting the auction in the front portion of the property in the ground floor,

the alleged auction on 11.03.2002 is purported to have taken place at the balcony of the 1st floor which cannot even accommodate more than 10 to 15 people. It is also claimed that the alleged auction on 11.03.2002 was not concluded in the presence of all the bidders who had participated in the auction. It is further claimed that the 2nd defendant at the instance of the 1st defendant and the 4th defendant had purported to have concluded the sale privately in favour of a person who has not even participated in the auction viz., 3rd defendant who is none other than the daughter-in-law of the 4th defendant. It is stated that the records of the 2nd defendant have been manipulated at a later date to show that the 3rd defendant had participated in the auction that was held on 11.03.2002 and in that auction the property which is worth about 2.5 to 3 crores was sold for a paltry sum of Rs.50,00,000/- in favour of the 3rd defendant.

7. The plaintiffs would claim that the 4th defendant who had participated in the auction had scared away the general public by issuing hand bills to the effect that the plaintiffs 2 to 5 herein had collected huge amounts as advance/ security deposit from the tenants who are in occupation of the premises. The plaintiffs would further contend that the 4th defendant in collusion with the defendants 1 and 2 had managed to get the name of the highest bidder changed as 3rd defendant herein. Therefore, according to the plaintiffs, the alleged

auction sale said to have taken place on 11.03.2002 having not been conducted in a fair and transparent manner could only be construed as a private sale. It is also claimed that the plaintiffs have the necessary evidence to substantiate this claim. They would also point out that the 3rd defendant is none other than the daughter in law of the 4th defendant who is a tenant in a portion of the ground floor in the suit property itself.

8. The plaintiffs would further claim that the 3rd defendant had not paid the 25% of the bid amount on 11.03.2002 when the auction was conducted, but had chosen to issue a cheque on 11.03.2002. It is also the claim of the plaintiffs that the balance sale consideration viz., 75% of the bid amount was not paid within 15 days time stipulated under the conditions of auction. The plaintiffs would state that the sale was confirmed by a resolution of the 1st defendant dated 31.03.2002. Relying upon the conditions of auction, the plaintiffs would contend that the non-payment of balance purchased money within 15 days would render the auction invalid and the earnest money of 25% of the bid amount is liable to be forfeited. It is also claimed that on the date of the auction the amount due to the 1st defendant was about Rs.69,00,000/-. Though the plaintiffs were willing to pay the sum of Rs.50,00,000/- in full quit of the claims of the 1st defendant during July 2001, the 1st defendant had adopted a very

rigid attitude and refused to waive any interest. However, nearly after one year the 1st defendant in active collusion and connivance with the 2nd and the 4th defendants had sold the very same property of the plaintiffs for a meager sum of Rs.50,00,000/- to the 3rd defendant surreptitiously and fraudulently.

9. It is claimed that there was no wide publicity before effecting auction sale on 11.03.2002. The property is a building consisting of ground + three floors situate in the area of land measuring about 1470 sq.ft. It is also submitted that the entire area has been built up and the property being situate in a prime commercial area, the suit property would have definitely fetched more than Rs.2,00,00,000/- having regard to the market potential. Pointing out the fact that, the 3rd defendant after purchase of the property had launched proceedings for fixation of fair rent against various tenants, wherein, the value of the property was shown to be about Rs.2,00,00,000/-. The plaintiffs would claim that the sale price viz., highest bid amount does not reflect the true and correct market value of the property. The plaintiffs would contend that even the sale of portion of the property would have fetched the sum of Rs.69,00,000/- that the plaintiffs owe to the 1st defendant on the date of the auction. It is also claimed that the 4th defendant carried out a malicious propaganda against the plaintiffs stating that they have collected huge amount of rental advance as well as

security deposits from the tenants and there were also other sundry creditors. Thus according to the plaintiffs, in view of the malicious propaganda, bonafide persons who wanted to bid at the auction were prevented from doing so. It is claimed that the 1st defendant had committed material irregularity in conduct of the auction sale and as such the entire auction process resorted to at the instance of the 1st defendant is vitiated by fraud.

10. According to the plaintiffs, the auction which was to be held on 20.08.2001 did not materialise for want of the bidders and the maximum amount offered was only Rs.43,25,000/- as against the demand of Rs.70,00,000/- made by the 1st defendant against the plaintiffs. However, without the knowledge of the plaintiffs, the 1st defendant brought about the so called auction on 11.03.2002. The plaintiffs would state that they were not aware of the auction held on 11.03.2002 and they came to know about it only when the tenants stopped payment of the rent. It is also the further contention of the plaintiffs that the 3rd defendant is a Benami of the 4th defendant who is a tenant in respect of two shop portions in the ground floor of the building. Contending that the provisions of Section 69(2)(a) of the Transfer of Property Act have been violated and the entire sale is vitiated on the account of fraud perpetrated by the 1st and 2nd defendants in collusion and connivance with the

3rd and 4th defendants, the plaintiffs would claim that the auction sale is vitiated. The delay in execution of the sale deed on 25.11.2002 for an auction which was concluded on 11.03.2002 is also projected as a ground by the plaintiffs to claim that all was not well with the auction dated 11.03.2002. On the above submissions the plaintiffs sought for the reliefs of redemption and declaration that the auction held on 11.03.2002 is illegal. Consequential relief of setting aside the sale deed dated 25.11.2002 was also prayed for.

11.The 1st defendant filed the written statement resisting the suit contending that while the execution of the mortgage deed and the borrowing were admitted, the 1st defendant would submit that the plaintiffs were not regular in repayment of the loan. The property was originally brought for sale on 16.10.1998 itself and it was at the instance of the plaintiffs, the auction was stopped by the 1st defendant with a view to enable the plaintiffs to redeem the property. It is claimed by the 1st defendant that the property was again brought for auction on 16.05.2000, 23.05.2000 and 08.11.2000. It is also submitted that the 1st defendant had brought the mortgaged property to sale on 20.08.2001 at about 3.00 pm. The upset price was fixed at Rs.72,00,000/- and the highest bid was only Rs.43,25,000/-. Hence the 1st defendant rejected the said bid as it was insufficient to even discharge the mortgage loan.

12.Upon instruction of the 1st defendant, the 2nd defendant brought the property to sale on 11.03.2002. Before fixing the date of auction, the 2nd defendant had sent notices to the plaintiffs and thereafter fixed the date of auction on 11.03.2002 at 11.00 am. Though the plaintiffs had received all the notices addressed to them at the suit property, the notice sent to them with reference to the auction dated 11.03.2002 was returned to the 2nd defendant with an endorsement **"**left**"**. The 1st defendant would claim that a notice of the auction was published in one issue of Dhina Thandhi on 05.03.2002 and hand bills were also distributed in the area. There was wide publicity for the auction and there were a number of bidders who took part in the auction.

13.The opening bid was announced at Rs.50,00,000/-, since there were no bidders, the opening bid was reduced to Rs.43,25,000/-. The proprietor of the 4th defendant Mr.Prakash Chand Jain was declared the successful bidder at a bid of Rs.50,00,000/-. The auction purchaser had paid a sum of Rs.5,000/- in cash before participating in the auction as per the conditions of auction and after the final bid was knocked down in his favour he paid a sum of Rs.12,45,000/- by way of cheque, which together with the sum of Rs.5,000/- paid in cash made up 25% of the bid amount. The 1st defendant would deny the allegations that there was any collusion between the 1st defendant, 2nd defendant and the 4th defendant.

14.The claim of the plaintiffs that the auction was held in the balcony of the 1st floor was also denied. Equally the claim of the plaintiffs that the defendant 1, 2 and 4 colluded together and brought about the private sale of the property without conducting an auction was also denied. It was claimed by the 1st defendant that the 4th defendant had nominated the 3rd defendant, his daughter-in-law, as the purchaser and had requested the 1st defendant to execute the sale deed in her favour. Therefore, the 1st defendant had executed the sale deed in favour of the 3rd defendant as requested by the 4th defendant. It is also claimed by the 1st defendant that the auction was held in a proper manner and about 23 persons participated in the auction. According to the 1st defendant, even during the auction process the 4th defendant had made it clear that he should be allowed to nominate a person if he is successful in the bidding process.

15. The 1st defendant would further submit that the delay in execution of the sale deed occurred, because the 4th defendant wanted to clear the air regarding the title to the entire property, inasmuch as the plaintiffs had sold a

portion of the property to one Rajasekar. It is also claimed that in view of the requirement of clearance under Chapter XX of the Income Tax Act, the execution of the sale deed was delayed. The 1st defendant would also rely upon the mortgagors' estimated value of the property in the mortgage deed at Rs.61,50,000/- and claim that, in view of the fact that the plaintiffs had collected huge amounts, as admitted by them, as security deposit/ rental advance, the sale price of Rs.50,00,000/- is commensurate with the value of the suit property. The 1st defendant would further contend that it was not necessary for the 1st defendant to take the consent of the plaintiffs inasmuch as the mortgage deed authorized the 1st defendant to sell the property by way of public auction. The claim of the plaintiffs that the property is worth more than Rs.3,00,00,000/- was also stoutly denied by the 1st defendant. On the above contentions the 1st defendant had sought for dismissal of the suit.

16.The 2nd defendant auctioneer would, in its written statement, contend that the property was originally brought for auction on 16.10.1998, though hand bills were issued with a view to publicize the sale, the 2nd defendant did not go ahead with the auction as per the instructions of the 1st defendant. Subsequently, the property was attempted to be sold on 16.05.2000, 23.05.2000 and 08.11.2000. Though, the auction was notified the same was deferred at the instance of the plaintiffs who had offered to pay the entire amount due under the mortgage and settle the dues to the 1st defendant. Upon instructions from the 1st defendant, the 2nd defendant had brought the property to sale by public auction on 20.08.2001 at 3.00 pm, the upset price was fixed at Rs.72,00,000/-, since there were no bidders and the highest bid was only Rs.43,25,000/- made by one Jayanthilal, the 1st defendant did not agree to accept the said highest bid. Thereafter, upon instructions from the 1st defendant the 2nd defendant notified the auction on 11.03.2002. A public notice was issued in one issue of Dhina Thandhi and hand bills were also circulated in the locality. The opening bid was fixed at Rs.50,00,000/- and since there were no bidders, the same was reduced to Rs.43,25,000/- which was the highest bid in the auction that was held on 20.08.2001.

17.It is also claimed that 23 persons participated in the auction by depositing a sum of Rs.5,000/- as cash deposit and the proprietor of the 4th defendant one Prakash Chand Jain was the highest bidder, whose bid was at Rs.50,00,000/-. The 1st defendant had accepted the said offer and upon such acceptance the 4th defendant had paid 1/4th of the bid amount viz., Rs.12.5 lakhs by way of cheque on the same day. It is also claimed by the 2nd defendant that immediately after the auction the 2nd defendant had sent letters by registered post to the plaintiffs intimating them about the auction held on 11.03.2002; and were returned with an endorsement "always not available intimation delivered". Therefore, the auction sale was confirmed by the 1st defendant and the 4th defendant nominated the 3rd defendant to take the sale deed. The 2nd defendant would deny the claim of the plaintiffs that the auction was conducted without proper publicity and that the proprietor of the 4th defendant Mr.Prakash Chand Jain scared away bonafide bidders. The claim of the plaintiffs that there was fraud and collusion between the defendants 1, 2, 3 and 4 in bringing about the auction process was also denied by the 2nd defendant.

18.The 3rd and 4th defendants have filed a common written statement. According to them, the auction was advertised for 11.03.2002 and the proprietor of the 4th defendant Prakash Chand Jain participated in the said auction. Even at the time of bidding, the proprietor of the 4th defendant Prakash Chand Jain had made it clear that he would be bidding for himself or for his nominee and the same was accepted. After declaring the highest bidder an endorsement was made in the auction proceedings itself as Prakash Chand Jain or nominee. It is also stated that Prakash Chand Jain has paid a sum of Rs.5,000/- in cash and the 25% of the bid amount viz., Rs.12,50,000/- [Rs.12,45,000/- by cheque dated

11.03.2002 + Rs.5,000/-in cash] on 11.03.2002 itself. Since it was found that the plaintiffs had sold away a portion of the property in favour of one Rajasekar during the year 2001, the proprietor of the 4th defendant viz., Prakash Chand Jain had sought for clarifications from the 1st defendant. The 1st defendant was also addressed regarding the need for obtaining permission from the appropriate Authority under Chapter XX of the Income Tax Act. The execution of the sale deed in favour of Mr.Rajasekar on 20.05.2001 by the plaintiffs with reference to a portion of the suit property and the requirement of clearance by the Income Tax Department delayed the execution of the sale deed and finally the 3rd defendant paid the balance amount of Rs.37,50,000/- and upon the request of the proprietor of the 4th defendant, a sale deed was executed by the 1st defendant in favour of the 3rd defendant.

19. It is also claimed by the defendants 3 and 4 that the plaintiffs had acknowledged the sale as well as title of the 3rd defendant and had required that they should be recognized as tenants of a portion of the ground floor occupied by M/s.Poojitha Telephone Services. It is also claimed that by a notice dated 09.03.2003 the 5th plaintiff had acknowledged the ownership of the 3rd defendant. While the plaintiffs 2 to 4 would claim that they also had an interest in the business called M/s.Poojitha Telephone Services run by the 5th plaintiff

and one Saravanan, the 5th plaintiff would claim that he alone is a partner of the said business with the said Saravanan and the other plaintiffs have nothing to do with the said business. The 3rd and 4th defendants would contend that the plaintiffs who were fighting among themselves with reference to the interest in the partnership business viz., M/s.Poojitha Telephone Services had joined hands to file the present suit to defeat the rights of defendants 3 and 4. The claims of the plaintiffs relating to the irregularities in conduct of the auction sale were also denied by the defendants 3 and 4. While dealing with the claim of the plaintiffs that the suit property had been sold for a meager sum of Rs.50,00,000/-, the 3rd and 4th defendants would contend that the plaintiffs had received huge amount of monies from various tenants who were in occupation of the suit property. Therefore, the said liability also should be taken into account in arriving at the value of the property.

20.It is also the contention of the defendants 3 and 4 that the property infested with tenants would fetch only a lower value in a public auction. The fact that the plaintiffs had also created an encumbrance over the property by executing the sale in favour of one Rajasekar during the year 2001, when the mortgage in favour of the 1st defendant was still in force is also to be taken into consideration while dealing with the question of valuation of the property. On the above contentions the defendants 3 and 4 sought for dismissal of the suit.

21.The 5th defendant which is a tenant filed a written statement but did not participate during trial. The plaintiffs had filed a reply statement reiterating the contentions in the plaint.

22.On behalf of the plaintiffs P.W.1 was examined and 28 documents were marked. On the side of the defendants three witnesses were examined and 115 documents were marked.

23.The learned Single Judge upon considering the pleadings, evidence and arguments advanced by the respective counsel dismissed the suit against which the present appeal is preferred by the plaintiffs.

24.Mrs.Chitra Sampath, the learned Senior Counsel for the appellant would submit that the mortgagee had failed to establish that there was a real auction as contemplated in the eye of law on 11.03.2002. In the absence of any document to show the names and addresses of the bidders who have allegedly made the deposits under Ex. D26, there is no proof as to the real persons who had attended the alleged auction on 11.03.2002 and made the deposit. Ex.D.8, the enclosures containing the name and address of the bidders had been demonstrated to be false and contrary to Ex.D26. Her further submission is that the only remaining document is Ex.D27, the report of the bidding process, which carries no weight for the reason that only 6 names appeared alternatively in Ex.D27. Among the above 6 persons, only two persons had not made any EMD and of the remaining 4, Mr.Prakashchand Jain, the 4th respondent/ 4th defendant, is closely related to the other two persons namely Padhamchallani and Jayanthilal. The last of the 4, Saravanan, is the employee of Prakashchand Jain. Thus, Ex.D27 is nothing but a make-believe document at the instance of the 4th respondent / defendant. Further, it is contended that the respondents failed to produce documents to prove the auction on 11.03.2002 and that payment was not made as per the terms and conditions of the auction. Her further contention is that, only a paltry sum was paid as sale consideration. Hence she would submit that in a suit to set aside the private auction, the initial burden lies on the Mortgagee to prove the auction and only thereafter the burden shifts on the Plaintiff to prove infirmities and other defects that will vitiate the auction. To support her contention, she has relied upon the judgment reported in (1972) 2 Mad LJ 390, inner Page No. 736, 2nd para it was held that.….

The only question is whether there was a sale on 12th

February 1959 and whether the sale was conducted in a valid and proper manner in accordance with the provisions of S. 69 of the Transfer of Property Act. The burden of proof of establishing that a sale actually took place on 12th February 1959 is upon the mortgagee and the auction purchaser. But the burden of proving that the sale is invalid by reason of any infirmity or by reason of any fraud or collusion is, undoubtedly, on the mortgagors.

25.The learned Senior Counsel would submit that, in the light of the above, the Defendants 1 & 2 had not produced documents to prove that there was a real, fair and transparent conduct of auction on 11.03.2002. Though the Defendants 1 & 2 have relied on Exs. D-1 to D-30, only Exs. D-8, D-26 & D-27 alone pertain to the alleged auction held on 11.03.2002. The two other bidders namely Padhamchallani and Jayanthilal, appearing in Ex. D-27 are the father-in-law of the 4th Defendant's son and the brother of Padhamchallani, respectively. One other person, Mr. Saravanan, whose name appears in Ex. D-27, is an employee of Mr. Prakashchand Jain. It is thus established that Ex. D-27 is also a manipulated document. From the above, it is clear that Ex. D-8, D-26 & D-27 are manipulated documents and the Defendants have failed to establish that there was a free and fair auction conducted in terms of the auction notice under Ex. P-12.

26.Further, she would submit that, Ex. D-40 (Ex. P-13) is the Registered Sale Deed in the name of the 3rd Defendant. The recital in the sale deed indicates that it was the purchaser under the document, namely, Pramila Jain, the 3rd Defendant, who was the Auction Purchaser during the auction held on 11/03/2002. It is also recorded in the Sale Deed that it was the purchaser, namely Pramila Jain, who made the deposit of Rs. 12,50,000/- (25% of the sale price) by way of a cheque dated 11/03/2002 in favour of the Mortgagee. It is also further recorded that the bid was confirmed on 31/03/2002 by the Board of Directors of the 1st Defendant by their resolution No. 4546 dated 31/03/2002. The Sale Deed confirmed that the Mortgagee, 1st Defendant, received the balance 75%, Rs. 37,50,000/- from the purchaser by way of a pay order dated 23/11/2002.

27.In the above Sale Deed, there is no indication that the purchaser, Pramila Jain, was a nominee for Prakashchand Jain, that it was Prakashchand Jain who was the auction purchaser and that it was Prakashchand Jain who made the payment of 25% of the bid amount and that the auction was confirmed in favour of the said Prakashchand Jain. Though a resolution of the Board of Directors had been mentioned in the sale deed, no such resolution was filed by the 1st Defendant during the trial. Further, the terms and conditions of auction under Ex. P-12 do not provide for any nomination by the auction purchaser. Admittedly, as per the evidence of DW-1 and DW-3, no extension was asked by DW-3 or granted by DW-1 for the payment of the balance 75%. It has been brought out in the cross-examination of DW. 3.

28.Further, the 1st Defendant is not entitled to sell the mortgaged property by way of private sale as per the terms of the Mortgage. In the event of such a contingency, the mortgagee should obtain the consent of the Mortgagors. Admittedly, the Mortgagors were not even informed of the alleged sale. From the above documentary and oral evidence, it is clear that the alleged sale on 11/3/2002 was a make-believe affair and that there was no actual auction at all. All the documents had been manipulated and made ready only after the issue of the legal notice by the Plaintiffs. The alleged sale in favour of the 3rd Defendant was not pursuant to any auction on 11/3/2002 and the 3rd Defendant was never an auction purchaser as per the documents filed before this Court. The plaintiffs had produced Ex. P 26 & 27 to show the guideline value of the mortgaged property. The learned Single Judge found that the auctioneer had not discharged his duties properly and that the Plaintiffs can at best be entitled to compensation. The Plaintiffs have therefore filed this application for amendment seeking alternative relief of damages for the loss of their property by fraudulent and collusive transaction. It is further submitted that under the SARFAESI Act and under Order 21 Rule 85 & 86 of CPC, the time for payment of the balance 75% of the bid amount is not extendable. In case of failure to deposit, the bidder loses his right to buy the property for which the learned Senior Counsel relied upon the judgment in ***M.R.Vasumathi- Vs. The Authorized Officer & Ors.,*** reported in ***(2026 INSC 633).*** Hence prayed to allow the OSA and the amendment petition for compensation.

29.On the other hand, Mr.K.Sridhar, learned counsel appearing for R1 and Mr.Ralph V.Manohar learned Senior counsel for the respondents 3 & 4 would contend that the 1st plaintiff has no *locus standi* to file the above suit. The other plaintiffs 2 to 6 did not enter into the witness box to support their pleadings in the plaint, especially when, specific allegations were made as against the 5th plaintiff who issued the notice to the 3rd defendant, not only admitting the auction sale held on 11.03.2002, but also the purchase made by her and that apart requesting the 3rd defendant to grant him tenancy in respect to a portion in the suit property and also paid the rent. It is further submitted that the plaintiffs failed to establish their plea of the alleged illegality and irregularity, in the conduct of the auction sale held on 11.03.2002. Further, it is submitted that in order to challenge the sale held on 11.03.2002 there must be definite and specific pleadings relating to any fraud as provided under Order VI Rule 4 of CPC.

30.It is further submitted that when there was an auction admittedly held on 11.03.2002, that would be the sufficient compliance relating to the procedures that ought to be adopted and followed, and accordingly, the plaintiffs cannot have any cause of action to challenge the same itself. The reliance placed by the learned Senior Counsel for the appellants on the judgment dated 09.06.2026 in ***M.R. VASUMATHI VS. THE AUTHORIZED OFFICER AND OTHERS*** reported in ***2026 INSC 633*** would not in any manner support the stand taken by the plaintiffs, in as much as, the above judgment had been rendered by the Honourable Supreme Court, under the statutory provisions contained under the SARFAESI Act, and the Rules, more particularly, under Sections 13.3 and 13.4 framed under the SARFAESI Act.

31.It is further submitted that the Division Bench of this Court reported in ***1996 (1) Law Weekly 372 (Shri Bhagwandas and Others Vs.***

K.g***G.Purushothaman and Others)*** had very elaborately dealt with all the questions and the issues, as raised, by the plaintiffs in the present suit and this exhaustive judgment stands good even as on this date, and applying all the principles laid down there, the present plaintiffs cannot maintain any suit as against the defendants. Furthermore, the judgment relied on by the defendants 3 and 4 ***(2026) SCC OnLine SC 1301 (BIHAR STATE FINANCIAL CORPORATION AND ANOTHER. VS. BHUSHAN SINGH AND OTHERS)*** rendered under Section 29 of the State Financial Corporation Act is directly applicable to the facts of the present case as well. Further, it is submitted that whereas, this application for amendment had been filed on or about the month of August 2018, and as such, any amendment application filed beyond the prescribed period of limitation for the institution of the suit is barred under law, as laid down in ***AIR 1997 Supreme Court 772 (T.L. MUDDUKRISHANA VS. SMT. LALITHA RAMCHANDRA RAO).***

32. Hence, the present amendment application is devoid of merit, and the plaintiffs are not entitled to convert their claim, into a different cause of action after the lapse of the prescribed period of limitation. The plaintiffs had not brought their claim and the relief as against the 3rd defendant, as applicable to her under Section 69 of the Transfer of Property Act and so, the plaintiffs would

not in any manner be entitled to seek for any relief, as against the 3rd defendant being the auction purchaser, and the 4th defendant is totally an unnecessary party, as, he participated in the auction only for and on behalf of his daughter-in-law the 3rd defendant. Hence, prayed for dismissing the above Original Side Appeal.

33.Heard on both sides and records perused.

34.It is not in dispute that, the appellants borrowed a mortgage loan from the 1st respondent by creating a simple mortgage over the suit property. Owing to persistent default in repayment, the mortgagee invoked its power of sale under Section 69 of the Transfer of Property Act, and brought the property to auction on 11.03.2002 through the 2nd respondent/auctioneer.

35.The appellants contended that the auction was merely a sham exercise and in fact no auction was conducted on 11.03.2002. According to them, adequate publicity was not given, the list of bidders did not tally with the Earnest Money Deposit register, persons who had not deposited EMD were permitted to participate, and ultimately the 4th respondent / defendant participated in the auction and whereas the property was conveyed in favour of the 3rd respondent, who had not participated in the bidding. It is further alleged that the 1st respondent colluded with the auctioneer and the 4th respondent to effect a private sale under the guise of a public auction. It is further alleged that the balance amount was not paid by the purchaser within the stipulated time and further the property worth substantially more was sold for a paltry amount.

36.On the other hand, the respondents deny every allegation of fraud. It is their case that the auction was conducted in accordance with the auction conditions, several bidders participated, and the highest bid was accepted. The 4th respondent participated in the auction and purchased the property on behalf of the 3rd defendant who is his daughter-in-law as agreed upon. It is further submitted that though there was some delay in remitting the balance sale consideration, such delay occurred only because the appellants themselves had created encumbrances over the property during the subsistence of the mortgage, making immediate execution of the sale deed impossible. Immediately after the encumbrances were cleared, the balance consideration was paid and the sale deed was executed.

Points for determination:

1.Whether the auction sale dated 11.03.2002 was vitiated by fraud, collusion or material irregularity?

2.Whether the participation by the 4th respondent and bid in the auction on behalf of his daughter-in-law, the purchaser of the property, renders the auction illegal?

3.Whether delay in payment of the balance sale consideration invalidates the sale?

4.Whether the appellants are entitled to setting aside the sale?

5.Whether the Amendment Petition can be allowed or not?

Point Nos.1 to 5:

37.The principal contention of the appellants is that the auction was merely a camouflage for a private sale. The appellants have relied upon the judgment reported in ***(1972) 2 Mad LJ 390*** and would contend that in a suit to set aside the private auction, the initial burden lies on the mortgagee to prove the auction and only thereafter the burden shifts on the plaintiffs to prove infirmities and other defects that will vitiate the auction. But, the burden to establish fraud is always upon the party alleging it. Fraud must be specifically pleaded and strictly proved. Courts cannot infer fraud merely because the borrower has suffered loss of property.

38.In the present case, the appellants alleged that the bidder list did not tally with the EMD register, however, no reliable documentary evidence has been produced to demonstrate that fictitious bidders were introduced or that the highest bid was manipulated. No independent bidder has been examined to support the allegation. Further, D.W.1 & D.W.3 have clearly explained that the list maintained for two auction dates on 20.08.2001 and 11.03.2002 came to be mixed up, resulting in some discrepancies. It is also to be noted that the above witnesses were examined after 15 years and therefore, it is not possible for them to narrate the facts precisely and the same is also pointed out by the learned Single Judge, who also accepted the explanations given by the above witnesses.

39.The further contention of the appellants/plaintiffs is that no such auction was conducted on 11.03.2002 and that, wide publicity was not given by the respondents for conducting the auction. In fact, in paragraph 16 of the plaint, it was stated by the appellants/plaintiffs that subsequently, the 1st respondent /1st defendant without effecting wide publicity and without proper advertisement or prior notice to the plaintiffs regarding the auction brought the mortgaged property belonging to the Appellants/plaintiffs for sale once again through the 2nd respondent / 2nd defendant on 11.03.2002 at 11 a.m. Once, the plaintiffs themselves had clearly admitted the conduct of auction on 11.03.2002 at 11 a.m, they cannot be permitted to say that no such auction was conducted on 11.03.2002. Further, the auction records produced by the respondents substantially establish that there was wide publicity before conducting the auction and that the auction was held on the notified date i.e., on 11.03.2002. Ex.P.12 and D.24 would establish that there was wide publicity before conduct of auction on 11.03.2002. Moreover, the appellants have not denied that the auction was conducted in the suit property.

40.As rightly pointed out by the learned counsel for the respondents, there is no bar for anyone to participate and bid in the auction, through another person, and so, the fact that the 4th respondent / defendant, being the father-in-law of the 3rd respondent / defendant participated in the auction, on behalf of his daughter-in-law, the 3rd respondent / 3rd defendant, and was declared to be a successful bidder for the sum of Rs.50,00,000/-, does not vitiate the auction.

41.Further, during the course of evidence, D.W.1 & D.W.2 had explained relating to the receipt of the initial payment, and also the 25% of the purchase money for Rs.12,50,000/-, under cheque No.148130 dated 11.03.2002, and it was also so admitted by the appellants/plaintiffs in their plaint, and so, it is futile on the part of the appellants to challenge the above said auction held on 11.03.2002.

42.The other grievance of the plaintiffs is that, the balance amount of 75% was not paid by the 3rd respondent / defendant within 15 days from the date of the acceptance of the offer, though according to the appellants/plaintiffs, the Board of Directors of the 1st respondent/defendant confirmed the auction by their resolution No.4546 dated 31.03.2002. Equally untenable is the challenge founded upon delay in payment of the balance sale consideration. The materials indicate that after the mortgage had been created, the appellants themselves created encumbrances over the property. Those encumbrances had necessarily to be cleared before conveyance could be completed. The delay, therefore, cannot be attributed either to the auction purchaser or to the mortgagee. A mortgagor who has himself created impediments cannot subsequently rely upon consequential delay to invalidate the auction. The principle that no person can take advantage of his own wrong squarely applies.

43.The arguments regarding inadequacy of price is also devoid of merits. Mere inadequacy of consideration, in the absence of proof of fraud or material irregularity causing substantial injury, is not a ground to set aside a completed auction sale. The appellants have not produced any contemporaneous valuation or comparable sale instances to establish that the property was deliberately sold at a throwaway price.

44.The learned Single Judge has rightly held that the allegations of collusion remain unsubstantiated. The evidence on record establishes substantial compliance with the auction conditions. Once the highest bid was accepted, consideration was paid after removal of the impediments created by the appellants themselves, and the sale deed was executed, the transaction attained finality.

45.Further, the settled legal principles are

a. Fraud must be specifically pleaded and proved by cogent evidence.

b. Mere inadequacy of price does not invalidate an auction sale.

c. A completed auction sale cannot be set aside unless material irregularity has caused substantial injury.

d. Delay attributable to the conduct of the borrower cannot be used by the borrower to impeach the sale.

e. The burden lies upon the person challenging the auction to establish prejudice resulting from the alleged irregularity.

46.On an independent reappraisal of the oral and documentary evidence, this Court finds no reason to differ from the findings of the learned Single Judge. The appellants have failed to establish either fraud, collusion or any material irregularity affecting the fairness of the auction. The delay in payment of the balance consideration stands satisfactorily explained by the encumbrances created by the appellants themselves. The participation of the 4th respondent in the auction on behalf of his daughter-in-law, does not violate any condition of auction. Further, the appellants / mortgagors are not automatically entitled to compensation merely because the mortgage property has been sold in auction. Compensation or damages may be awarded only if the mortgagee or the auctioning authority as acted unlawfully, negligently, fraudulently, or in breach of the terms governing the sale. In the present case, the appellants failed to establish that there was illegal or fraudulent action or that the respondents have violated the mandatory statutory provisions. The appellants failed to establish that the sale consideration is so grossly inadequate that it shocks the conscience of the Court and is coupled with material irregularity or fraud. There is nothing on record to show that the respondents have acted negligently. Admittedly, the mortgage debt has not been satisfied by the mortgagors. It is only in the event of a wrongful sale that~~,~~ the appellants can seek for compensation. The Hon'ble Supreme Court has consistently held that, a mortgagee exercising the power of sale acts in a fiduciary capacity to the extent of protecting the mortgagor's equity of redemption.

Mere procedural irregularity is insufficient unless it has caused substantial injury. The burden lies on the mortgagors to establish fraud, material irregularity, negligence, or resultant loss. In the present case, the appellants failed to establish fraud, material irregularity, negligence, or resultant loss and therefore, they are not entitled for any compensation or damages. The findings of the learned Single Judge are based upon proper appreciation of evidence and do not warrant interference in an original side appeal.

47.In the result,

(i).The Original Side Appeal is dismissed.

(ii).The judgment and decree of the learned Single Judge are affirmed.

(iii).The auction sale dated 11.03.2002 and the consequential sale deed executed in favour of the auction purchaser are upheld.

(iv). There shall be no order as to costs.

(v). Connected miscellaneous petition, shall stand closed.

(P.V.,J.) (K.G.T.,J.)

07-08-2026

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

VSN

To

1.The Purasawalkam Permanent
Fund Ltd., Rep By Its Managing Director, No.173
Vellala St, Purasawalkam Ch-84
2.M/s Balajee & Co.
Auctioneers, No.160 Thambu Chetty St, Ch-01

3.Mrs.Prmila Jain
Old No.134, New No.210 N.S.C Bose Road,
Sowcarpet, Ch-79

4.M/s Prakash Gold Palace
Rep By Its Proprietor, Prakash Chand Jain Old
No.134 New No.210. N.S.C.Bose Road, Ground
Floor, Sowcarpet, Ch-79

5.M/s Jothi Jewellers
Rep By Its Proprietor, Lalith Kumar Jain Old
No.134 New No.210. N.S.C.Bose Road, Ground
Floor, Sowcarpet, Ch-79

6.M/s Avanthika Jewellers
Rep By Its Proprietrix, Mrs.Avanthika Jain Old
No.134 New No.210. N.S.C.Bose Road, Ground
Floor, Sowcarpet, Ch-79

7.M/s.R.D.Agencies
Rep By Its Proprietor, Mr.B.Venkatarathinam Jain
Old No.134 New No.210. N.S.C.Bose Road,
Ground Floor, Sowcarpet, Ch-79

8.M/s S.S.Jewellery
Rep By Its Proprietor, Ugam Chand Jain Chand
Jain Old No.134 New No.210. N.S.C.Bose Road,
Ground Floor, Sowcarpet, Ch-79

9.M/s S.R.Fefinery
Rep By Its Proprietor, S.Ramesh Salunkha Jain
Old No.134 New No.210. N.S.C.Bose Road,
Ground Floor, Sowcarpet, Ch-79

10.M/s Kaizen Impex
Rep By Its Proprietor M.A.Mubarak
Oldno.134/new No.210 1st Floor N.S.C.Bose
Road, Sowcarpet, Ch-79

11.M/s Anisha Overseas Services
REP BY ITS PROPRIETOR, i.a.SHAIK ISMAIL
JELANI OLD NO.134 NEW.210 1ST FLOOR
N.S.C BOSE ROAD SOWCARPET, CH-79

12.M/s Bansali & Co
Rep By Its Proprietor, Praveen Agra, Old 134
New.210 Ii Floor N.S.C. Bost Road, Sowcarpet ,
Ch-79

13.Mrs.Hilda
Correspondent, Kinder Garden School, Old 134
New.210 Ii Floor N.S.C. Bost Road, Sowcarpet ,
Ch-79

14.The Section Officer,
Original Side,
Madras High Court, Chennai.

P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.

VSN

OSA No. 217 of 2018
AND
CMP NO. 20788 OF 2018

07-08-2026