

**S. Sadayandi and anr. Vs. D.S. Pudupaty Co-operative Building Society
Represented by Its Secretary**

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SooperKanoon Citation : sooperkanoon.com/808506

Court : Chennai

Decided On : Sep-17-1993

Reported in : (1994)1MLJ369

Appellant : S. Sadayandi and anr.

Respondent : D.S. Pudupaty Co-operative Building Society Represented by Its Secretary

Judgement :

ORDER

Pratap Singh, J.

1. This civil revision petition is directed against the order passed in E.A. No. 575 of 1986 in E.P. No. 28 of 1981 on the file of the District Munsif, Uthamapalayam.

2. The short facts are: The revision petitioners were landlord to the respondent-society. For that amount, the respondent moved before the Deputy Registrar of Co-operative Societies and the said Deputy Registrar had passed an award. To realise the amount given in the award, the respondent filed E.P. No. 28 of 1981 for attachment and sale of the properties belonging to the revision petitioners. In the Court auction sale, the respondent himself had purchased the property. Later, the respondent filed E.A. No. 573 of 1986 for delivery, and delivery was ordered.

Aggrieved by the said order, this revision has been filed.

3. Mr. Sankaran, learned Counsel appearing for the revision petitioners, would submit that by virtue of Section 91 of the Tamil Nadu Co-operative Societies Act, 1961, which was in force at the time of court auction sale, the proceedings were in accordance with the Civil Procedure Code and inasmuch as the respondent had not obtained permission to bid in the court auction sale as enjoined by Order 21, Rule 72 of the Code of Civil Procedure, the very purchase by the respondent was invalid and consequent delivery was equally invalid. He would further submit that the time for seeking delivery through court was only one year from the date of confirmation of the sale and that in this case, the sale was confirmed on 17.6.1985 and this petition for delivery was filed on 10.8.1986 and that it was barred by limitation and on that ground also, the order directing delivery by the court below cannot be sustained.

4. I have carefully considered the submissions made by the learned Counsel. I find that both the grounds urged by the learned Counsel are well founded. Once the matter was brought to the civil court for execution in accordance with the provisions of Civil Procedure Code, all provisions contained therein regarding execution would come into play. While so, the decree-holder himself cannot purchase the property in court auction sale without getting permission of the court to bid in the court auction sale as enjoined by Order 21, Rule 72 of the Civil Procedure Code. The learned Counsel for the petitioner would further submit that no such permission was obtained. Consequently, the sale as well as the delivery sought for in pursuance of the sale are not tenable and the order of the court below directing delivery would not stand to scrutiny. Furthermore, when the confirmation of the sale was on 17.5.1985 and the petition for delivery was filed on 10.8.1986 and as stated by the learned Counsel, it is barred by time, by virtue of Article 132 of the Limitation Act.

5. Hence the order of the court below directing delivery is not correct and is liable to be set aside. Hence, the revision is allowed setting aside the order passed in E.A. No. 571 of 1986 and consequently E.A. No. 575 of 1986 shall stand dismissed. No costs.

