



*S.A.No.515 of 2014*

**S.A. No. 515 of 2014**

**DR.A.D. MARIA CLETE, J**  
Heard.

2.The 1st respondent in this appeal, as a third party, filed R.E.A. No.181 of 2006 purportedly under Order 97 CPC (evidently intended as Order 21 Rule 97 CPC) and Section 47 CPC, seeking to set aside the auction sale held on 26.12.2005 in R.E.P. No.241 of 2005 on the ground of fraud. In the said court auction, the appellant emerged as the successful bidder and purchased the immovable property in question.

3.The appellant contends that a petition under Order 21 Rule 97 CPC is not maintainable at this stage, as that provision is attracted only when the auction purchaser seeks delivery of possession and faces obstruction. This contention is well-founded. With respect to Section 47 CPC, it is equally inapplicable. Section 47 deals with questions arising between the parties to the suit or their representatives relating to the execution, discharge, or satisfaction of the decree. As clarified in Explanation II to Section 47, it is the auction purchaser who is deemed to be a party to the suit, and not a third party who does not represent either side to the decree. In the present case, the 1st respondent is not challenging the decree but is only seeking to set



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aside the auction sale dated 26.12.2005; therefore, Section 47 CPC does not apply.

4. Similarly, Order 21 Rule 97 CPC is not the relevant provision at this stage, as rightly argued by the counsel for the appellant. However, it is a settled principle that wrong quoting of a provision does not, by itself, render the application defective, and the Court is empowered to treat the petition under the appropriate provision of law, depending on the relief sought.

5. Considering the prayer in R.E.A. No.181 of 2006, the proper provision applicable is Order 21 Rule 90 CPC, which deals with setting aside a sale on grounds such as fraud or material irregularity. The appeal is, therefore, considered in that legal framework.

6. The application has been filed by the 1st respondent in this appeal claiming to be an agreement-holder under an agreement of sale dated 2.11.2004 executed by the Judgment debtor along with her sister in respect of the suit property. It is further stated that she has already instituted O.S. No.419 of 2005 seeking specific performance of the said agreement. The Execution Court, in its order dated 29.01.2007, categorically held that by



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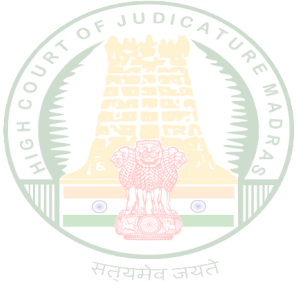
virtue of an agreement for sale, the petitioner (1<sup>st</sup> respondent in this appeal)

does not acquire any vested right in the property, except a mere right to seek enforcement of the contract. No interest in the petition-mentioned property stands transferred to the petitioner by such agreement. This crucial aspect has not been adverted to by the appellate court.

7. Section 54 of the Transfer of Property Act, 1882 defines a “sale” and, in its concluding portion, expressly stipulates that a contract for sale “does not, of itself, create any interest in or charge on the property.” In light of this statutory mandate, the maintainability of a petition under Order 21 Rule 90 CPC at the instance of an agreement-holder assumes significance.

8. Accordingly, the following substantial question of law arises for consideration:

***“Whether a person who has merely entered into a contract for sale of an immovable property can be treated as a ‘person interested’ in the property sold in court auction so as to maintain a petition under Order 21 Rule 90 of the Code of Civil Procedure, 1908, in view of Section 54 of the Transfer of Property Act, 1882?”***



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9.In fine, the Second Appeal is admitted. The Registry is directed to

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issue notice to respondents R1 to R3. Considering that the matter is already more than ten years old, the Registry shall also serve notice on the respondents through the counsel who appeared before the courts below.

The appellant is additionally permitted to effect private notice to the respondents by RPAD/Speed Post. List the matter after eight weeks.

**26.11.2025**

*ay*



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**DR. A.D. MARIA CLETE, J**

*ay*

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**26.11.2025**