

*Comp.A.Nos.434 & 435 of 2009 batch*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 07.01.2022

Pronounced on : 16.03.2022

C O R A M :

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

**Comp.A.Nos.434 and 435 of 2009**  
**and**  
**Comp.A.Nos.354 and 355 of 2021**  
**in**  
**C.P.No.57 of 1998**

1. Maxworth Orchards (India) Limited  
No.9, Mahalingam Main Road,  
Mahalingapuram, Nungambakkam,  
Chennai – 600 034.  
Rep. by its Administrator / Provisional  
Liquidator Mr.K.Alagiriswamy

2. The Official Liquidator,  
UTI Buildings,  
2<sup>nd</sup> Floor, Rajaji Salai,  
Chennai – 600 001.  
(2<sup>nd</sup> Applicant impleaded as per order of this  
Court dt 16.04.2010 in C.A.Nos.884 to 885/2008  
in C.P.No.57 of 1998)

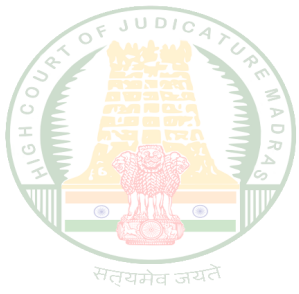
... Applicants

(in C.A.Nos.434 & 435 of 2009 and  
1<sup>st</sup> and 2<sup>nd</sup> Respondents in  
C.A.No.354 & 355 of 2021)

1. T.Mohan (alias Dhavamani)  
2. D.Thirumagal

... Applicants

(in C.A.No.354 & 355 of 2021)

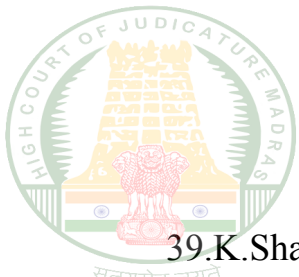


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Vs

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- 3.N.Radhakrishnan
- 4.S.Muruganandam
- 5.Karuppaian Chettiar
- 6.G.Periasamy
- 7.S.Nagarajan
- 8.S.Rajappa
- 9.Mrs.Vallinayaki
- 10.Angurasan
- 11.K.Palanisamy
- 12.J.Sambandam
- 13.J.Mariappan
- 14.S.Karuppaian
- 15.R.Pitchai Ammal
- 16.K.Chinnamani
- 17.N.Ponnuruvam
- 18.G.Kamalam
- 19.Paramanam
- 20.Maruthaian
- 21.Raman
- 22.Lakshmanan
- 23.S.Veerassamy
- 24.R.Pechayee
- 25.V.Palanivel
- 26.Kathamuthu
- 27.Karuppan
- 28.Shanmugam
- 29.Thindu Dhiraiyar
- 30.V.Kaliaperumal Chettiar
- 31.M.Karuppan
- 32.K.Murugesan
- 33.K.Selvaraj
- 34.K.Mahendran
- 35.S.Thangarasu
- 36.T.Murugesan
- 37.Annakamu
- 38.K.Kanakavel



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39.K.Shanmugam

40.K.Asaithambi

41.G.Maruthappa

42.P.Jayamani

43.Uthiriyam

44.A.Venkatesan

45.M.Shankar

46.The Sub Registrar

Gandharvakottai Sub Registrar Office,  
Gandharvakottai,  
Pudukottai Dist.

47.The Tahsildar

Pudukottai Dist,  
Pudukottai.

... Respondents 3 to 47  
(in all C.As)

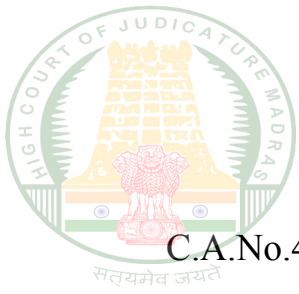
**Prayer in Comp.A.Nos.434 and 435 of 2009:** This Application has been filed under Order XIV Rule 8 O.S. Rules Read With Sections 446(2), 450, 456 & 457 of Companies Act & Sections 9, 11(b), 19 of the Company (Court) Rules praying to set aside the Sale Deeds/Settlement Deeds bearing Nos.1415/2004 dated 19.08.2004, 1544/2004 dated 07.09.2004, 1548/2004 dated 07.09.2004, 1549/2004 dated 07.09.2004, 2220/2004 dated 15.12.2004, 533/2006 dated 15.03.2006, 537/2006 dated 15.03.2006, 538/2006 dated 15.03.2006, 1357/2007 dated 13.06.2007, 1359/2007 dated 13.06.2007, 2453/2008 dated 24.04.2008, 670/2002 dated 09.05.2002, 668/2002 dated 09.05.2002, 669/2002 dated 09.05.2002, 671/2002 dated 09.05.2002, 672/2002 dated 09.05.2002, 673/2002 dated 09.05.2002, 730/2002 dated 20.05.2002, 131/2006 dated 25.01.2006, 729/2002 dated 20.05.2002, 667/2002 dated 09.05.2002 and 1112/2003 dated 11.08.2003 registered in the office of the Respondents 1 to 45 and consequently declare



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that the conveyance of the properties under the said Sale Deeds do not convey any right, title or interest in the schedule property(Schedule 1) in favour of the Respondents 1 to 45 and consequently grant order of permanent injunction restraining the Respondents 1 to 45 their men, agent or servants or any one claiming through them from any way interfering with the possession of the Applicant Company over the Scheduled Property(Schedule No.1); and to grant an interim order of injunction restraining the Respondents 1 to 45 their men, agent or servants or any one claiming through them from any way alienating by Sale, Mortgage, Lease or otherwise over the property covered under Schedule 1 and consequently granting an injunction restraining the Respondent No.46 from registering any further Sale, Mortgage or Lease on the property covered under Schedule 1 and direct the Respondent No.47 not to issue any patta in the Survey Nos covered in the Schedule of Property 1 and grant an interim order of injunction restraining the Respondents 1 to 45 their men, agent or servants or any one claiming through them from any way interfering with lawful possession of Scheduled Property covered under Schedule 1 of the Applicant Company.

**Prayer in Comp.A.Nos.354 & 355 of 2021:** This Application has been filed under Order XIV Rule 8 O.S. Rules Read With Sections 446(2), 450, 456 & 457 of Companies Act & Sections 9, 11(b), 19 of the Company (Court) Rules praying to stay the Sale notification dated 30.12.2021 issued by the first Respondent to the extent that pertains to the Applicant's property morefully described in the Scheduled hereunder, pending disposal of



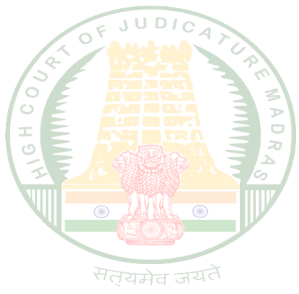
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C.A.No.434 of 2009 in C.P.No.57 of 1998 and direct the first Respondent to delete the properties belonging to the Applicant morefully described in the Schedule hereunder, and which is set out an Item Nos.3 and 4 vide Project for sale, named, "Max Aachampatti – I & II" located in Malayapatti Village, Gandharvakottai Taluk, Pudukottai District,(in Trichy Hub), from the sale Notice dated 03.12.2021 published by first Respondent, pursuant to the order dated 26.11.2021 passed by this Court in A.No.297 of 2021 in C.P.No.57 if 2021 pending disposal of A.No.434 of 2009 in C.P.No.57 of 1998.

For Applicant : Mr.J.Sivanandaraj  
for M/s.S.Sakthivel  
(Applicant in C.A.Nos.354 & 355  
of 2021)  
(Respondents 1 and 2 in C.A.Nos.  
434 & 435 of 2009)

For Respondents : Mr.H.Karthik Seshadri  
for Mrs.Nagasaila Suresh  
for Administrator  
Applicant in CA.Nos.434 & 435 of  
2009 and 2<sup>nd</sup> Respondents in C.A.  
Nos.354 & 355 of 2021)

Mr.Bavisetty Sridhar  
Deputy Official Liquidator for  
Official



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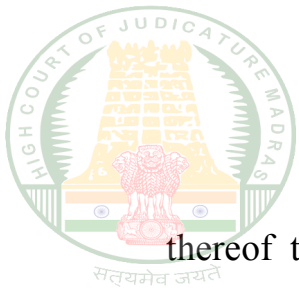
## **COMMON ORDER**

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Company Application Nos.434 & 435 of 2009 were filed by Maxworth Orchards (India) Limited (Maxworth), represented by the Administrator and the Official Liquidator, seeking to restrain the original land owners, and T. Mohan and D. Thirumagal, who claim title through them (the Alleged Purchasers), the respondents therein, from further alienating the assets described in the schedule to the judge's summons and to set aside the sale deeds and other conveyances registered in favour of the first and second respondents therein.

Company Application Nos.354 & 355 of 2021 were filed by the the Alleged Purchasers, who claim title under multiple sale deeds executed in their favour between 2002 and 2008, to delete the properties described in the schedule to the judge's summons from the sale notice and to stay the sale notice as regards those properties pending disposal of these applications.

2. The company in liquidation/Maxworth was engaged in the business of procuring lands and subsequently transferring small parcels



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thereof to depositors / debenture holders. For such purpose, Maxworth entered into agreements with land owners or aggregators and obtained powers of attorney ( PoAs) in favour of its employees. Maxworth claims that such PoAs are coupled with interest inasmuch as consideration was paid for the purchase of the relevant lands. By using such PoAs, the relevant employees of Maxworth subsequently conveyed small parcels of land in favour of depositors of Maxworth. Maxworth conceived of and executed several projects in this manner. Since the business was mismanaged, Maxworth became insolvent. With regard to most of these projects, the process of conveying parcels thereof to depositors was incomplete when Maxworth became incapable of discharging its obligations to depositors. As a result, at that time, PoAs were in force in favour of ex-employees and the lands continued to be in the names of the original land owners.

3. In such circumstances, C.P.No.57 of 1998 was filed by EPC Industries Limited on or about 24.02.1998 to wind up Maxworth. While such petition was pending, Company Application No.63 of 2001 was filed to convene a meeting of unsecured creditors to consider a scheme of



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arrangement. In those proceedings, an Administrator was appointed on 12.02.2001. Thereafter, the Administrator filed Company Application No.740 of 2003 to restrain the agents under all the PoAs from alienating lands purchased by Maxworth in the names of these agents by using its funds and an injunction order was issued as prayed for by the Administrator on 24.04.2003. This order was extended until further orders by later order dated 18.11.2003. It should be mentioned that A.Venkatesan and M.Shankar, who are arrayed as respondents 44 and 45 in Company Application Nos.434 & 435 of 2009, were parties to Company Application No.740 of 2003. Subsequently, on 06.02.2006, the Administrator was conferred with all the powers of a provisional liquidator. Thereafter, the Official Liquidator was appointed as Provisional Liquidator on 17.09.2010.

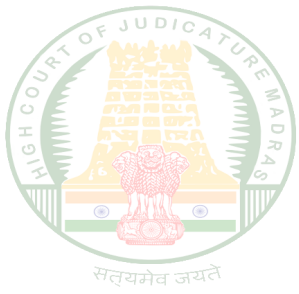
4. Meanwhile, upon coming to know from the caretaker of the properties of the Maxworth-Aachampatti project that the original land owners, who had executed the PoAs in favour of A.Venkatesan and M. Shankar, had subsequently alienated the relevant properties in favour of T. Mohan and D. Thirumagal, Application Nos.434 & 435 of 2009 were filed to set aside the sale deeds and restrain further alienation. By orders dated



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06.04.2009 and 24.02.2011, this Court restrained the private respondents therein from further alienating or encumbering the schedule mentioned property and also restrained the jurisdictional sub registrar from registering conveyances in respect thereof. These interim orders remain in force as on date. After receiving notice in the above applications, T. Mohan and D. Thirumagal, the first and second respondents therein, who are the Alleged Purchasers, filed a counter in November 2012 asserting that they are *bona fide* purchasers for valuable consideration.

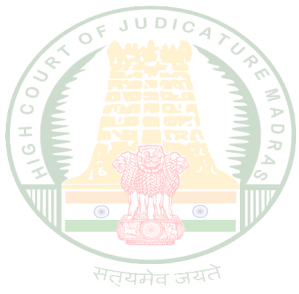
5. Much later, after obtaining all available information with regard to the unsold projects of Maxworth, the Official Liquidator filed C.A.No.297 of 2021 to conduct an auction sale in respect of 24 projects of Maxworth. By order dated 26.11.2021, this Court permitted the Official Liquidator to publish a sale notice and fixed dates for the conduct of auction sale. Prospective bidders were permitted to inspect the properties and available title and revenue documents relating thereto. C.A.Nos.354 and 355 of 2021 were filed by the Alleged Purchasers upon noticing that the sale notice covered lands over which they claim title.



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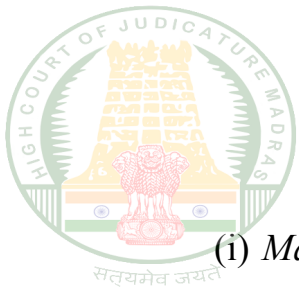
6. Oral submissions were made on behalf of the learned Administrator by Mr.H.Karthik Seshadri, learned counsel; by the Official Liquidator; and by Mr.J.Sivanandaraj, learned counsel for M/s.S.Sakthivel, learned counsel for the Alleged Purchasers.

7. On behalf of the Administrator, an overview was provided with regard to the methodology adopted by Maxworth to procure lands. The chronology of the winding up proceeding and the endeavour to revive Maxworth through a scheme of arrangement were explained as follows. The winding up petition was presented on or about 24.02.1998. Pursuant thereto, the Administrator was appointed on 12.02.2001. Company Application No.740 of 2003 was filed and an order dated 24.04.2003 was passed restraining the agents from alienating or encumbering the assets using the PoAs, and this order was extended until further orders on 18.11.2003. Further orders were passed on 06.02.2006 conferring the powers of a provisional liquidator on the Administrator. The Official Liquidator was appointed as Provisional Liquidator on 17.09.2010. The said order was assailed by filing an original side appeal, which is said to be pending.



8. Learned counsel for the Administrator next referred to the applications filed by the Administrator in the year 2009 to set aside the sale deeds and the interim orders passed therein. After pointing out that the Alleged Purchasers and the original land owners are parties thereto, with regard to Company Application Nos.354 & 355 of 2021, it was submitted that the original land owners executed sale deeds in favour of the Alleged Purchasers after the execution of PoAs in favour of ex-employees of Maxworth. Since the Alleged Purchasers purchased the immovable assets from the original land owners after the presentation of the winding up petition, it was submitted that these conveyances are void. Learned counsel further contended that the transactions are not *bona fide* and are, therefore, liable to be set aside.

9. As regards the deficiency in documentation, it is contended that the Official Liquidator and Administrator are constrained to carry out liquidation with the available records. Thousands of depositors of Maxworth have been left in the lurch and unless these assets are brought to sale, the said depositors would be left without remedy. In support of these contentions, the following judgments were cited:



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(i) *Maxworth Orchards (India) Limited v. Ashok Madhavarao*

*Inamke and others, Order dated 25.10.2007 in Company Application Nos.378 to 380 of 2007 (Ashok Madhavrao Inamke)*

(ii) *Chetan Arvind Bhagat and others v. Maxworth Orchards (India)*

*Limited, judgment dated 21.07.2009 (DB) in O.S.A.Nos.384 to 386 of 2007 (Chetan Arvind Bhagat)*

(iii) *Chetan Arvind Bhagat and others v. Maxworth Orchards*

*(India) Limited, SLP (C)Nos.20710-20712 of 2009*

(iv) *Maxworth Orchards (India) Limited v. P. Ananthalakshi and*

*others , order dated 17.09.2010 in Company Application Nos.1937 to 1939 of 2003 batch (P. Ananthalakshmi)*

(v) *Maxworth Orchards (India) Limited v. B.Ravi Babu and others,*

*order dated 08.06.2011 ((B.Ravi Babu)*

(vi) *R. Ramesh babu v. The Official Liquidator as Provisional*

*Liquidator of Maxworth Orchards (India) Limited, order dated*

*18.01.2021 in Company Application Nos. 7 and 8 of 2021 (R.*

*Ramesh Babu)*



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For all these reasons, it was submitted that C.A.Nos.434 & 435 of 2009 are liable to be allowed and C.A.Nos.354 & 355 of 2021 are liable to be dismissed.

10. The Alleged Purchasers made submissions to the contrary. The first contention was that there are no sale deeds in favour of Maxworth. The signatories to the Memorandum of Understanding dated dated 15.05.1995 (the MoU) were not the agents under the PoAs. The second contention was that the documentary evidence does not establish the connection between Venkatesan, who was appointed as the power of attorney, and Maxworth. The third contention was that there is no proof of payment of consideration by Maxworth to the original land owners. In fact, it was contended that even an agreement of sale is not on record.

11. As regards the Alleged Purchasers, it was submitted that these persons examined the relevant title and revenue records and verified the encumbrance certificates. After being satisfied on the above basis, they purchased the property from the original land owners and not from the agent. Such purchase was made after the PoAs in favour of Venkatesan



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were cancelled on 15.06.2001. In the interregnum between the date of execution of the PoA on 11.06.1995 and the cancellation thereof on 15.06.2001, no sale deeds were executed by the agent in favour of Maxworth or its customers.

12. The Alleged Purchasers referred to the case laws cited by learned counsel for the Administrator and endeavoured to distinguish the same. As regards **Ashok Madhavrao Inamke**, it was pointed out that the title of Maxworth was not in dispute in that case. As regards **Chetan Arvind Bhagat**, it was contended that the link between Maxworth and the agents under the PoAs was established in that case. A reference was made to **B. Ramesh Babu** in which Mr. Justice Vinod K. Sharma referred the matter to the Division Bench of this Court for an authoritative pronouncement.

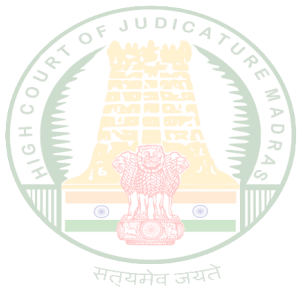
13. By way of rejoinder, learned counsel for the Administrator submitted that all the Alleged Purchasers entered the picture after the winding up commenced in terms of Section 441(2) of the Companies Act 1956 (CA 1956). The agents under the PoAs were parties to Company Application No.740 of 2003. By drawing reference to the documents at pages 174 to 183 of the typed set of papers filed by the Administrator, it was



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contended that there is sufficient proof that the agents were employees of

Maxworth. Upon execution of the MoU and the PoAs, possession was given to Maxworth. Even otherwise, it was contended that upon commencement of winding up, the Court is deemed to be in custody of the assets of the company in liquidation as per Section 456 of CA 1956. The next contention was that the sale deeds in favour of the Alleged Purchasers were executed by persons arrayed as respondents in C.A.Nos.434 & 435 of 2009. In spite of orders of injunction being granted in C.A.No.434 of 2009, it was contended that the original land owners did not apply to the court to discharge the said interim order. In response to this contention, learned counsel for the Alleged Purchasers submitted that a counter affidavit was filed in 2012 by the Alleged Purchasers, but no headway could be made because of the Division Bench proceedings. In addition, it was contended that both the sale deed and patta are in favour of the Alleged Purchasers, and that they are in possession. By relying on the judgment of the Hon'ble Supreme Court in *Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656 (Suraj Lamp)*, the submissions were concluded by contending that title cannot be claimed over an immovable asset on the basis of PoAs.



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14. In light of the rival contentions, two aspects should be examined: whether the Alleged Purchasers are entitled to an order for the deletion of the relevant properties from the auction sale process; and whether the sale deeds in favour of T. Mohan and D. Thirumagal are liable to be set aside or declared void. As pointed out by learned counsel for the Administrator, C.A.Nos.434 & 435 of 2009 were filed as early as in 2009. Pursuant thereto, orders dated 06.04.2009 and 24.02.2011 were issued by this Court to restrain the respondents therein from alienating or encumbering the schedule mentioned assets. In spite of the interim injunction order being passed against the respondents on 06.04.2009, the Alleged Purchasers did not file an application to vacate the interim order. The admitted position is that the winding up petition was presented on or about 24.02.1998. Therefore, upon appointment of the Official Liquidator as Provisional Liquidator on 17.09.2010, the winding up is deemed to have commenced on 24.02.1998. Any disposition of the assets of Maxworth thereafter would be void unless validated by Court.

15. This leads to the question whether the relevant assets are assets of Maxworth. The Official Liquidator and the learned Administrator placed reliance on the MoU under which Maxworth agreed to purchase the



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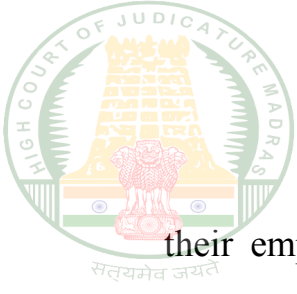
relevant assets of around 120 acres in Malayapatti village, No. 3, Gandarvakottai Taluk, Pudukottai District (Maxworth Achampatti project), at an agreed price of about Rs.9750/- per acre. The relevant clauses of the MoU are set out below:

*“2. The possession will be delivered from the date of getting the General power of Attorney in favour of Maxworth Orchards (India) Limited.*

.....

*6. All the original documents related to the original land owners will be handed over at the time of getting General Power of Attorney in favour of Maxworth Orchards (India) Limited.”*

16. The fifty two PoAs executed in the year 1995 in favour of A.Venkatesan or M.Shankar by the owners of the property are on record and these documents were also relied on as evidence of title. The employment applications and salary revision certificates of A.Venkatesan and M.Shankar are also on record, and these documents clearly indicate that A.Venkatesan and M.Shankar were employees of Maxworth. Therefore, there is basis to draw the inference that the PoAs were executed in their favour in course of

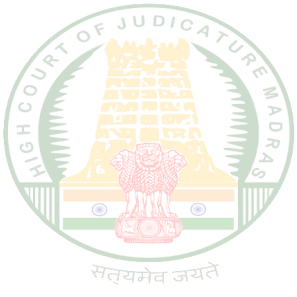


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their employment by Maxworth. While on this issue, it should also be noticed that Company Application No.740 of 2003 was filed against the agents/ PoAs under all the Maxworth projects, including A. Venkatesan and M. Shankar, and all these agents were restrained by orders dated 24.04.2003 and 18.11.2003 from using the PoAs to alienate these assets on the basis that Maxworth had paid for these assets. None of the PoAs contested this application. Indeed, even the original land owners and the Alleged Purchasers did not do so on the basis that the PoAs had been cancelled and that the lands had been sold thereafter to the Alleged Purchasers. These PoAs set out the rights and obligations of the agent, *inter alia*, in the following terms:

“எங்களுக்குப் பூர்வீகப் பாத்தியப்பட்டு, எங்கள் அனுபவத்திலும் சுவாதீனத்திலும் இருந்து வருகிற இதனடியில் கண்ட சொத்துக்களை பொருத்து, தங்களால் நேரில் இருந்து பராமரிக்க இயலாத காரணத்தினால், தாங்கள், தங்களை எங்கள் பவர் ஏஜெண்டாக நியமனம் செய்து கீழ்க்கண்ட காரியங்களை செய்வதற்கு இதன் மூலம் அதிகாரம் அளித்து இந்த ஜெனரல் பவர் பத்திரம் எழுதிக்கொடுத்துள்ளோம்.

அதன்படி, தாங்கள் இதனடியில் கண்ட சொத்தை பராமரித்து, பரிபாலனம் செய்துவரவும், மேற்படி சொத்தை விற்பனை செய்ய நேர்ந்தால், மொத்தமாகவோ, பகுதி, பகுதிகளாகப் பிரித்து விற்பனை செய்யவும், விலை நிர்ணயிக்கவும், கிரயதாரர்களை தேர்ந்தெடுக்கவும், கிரய

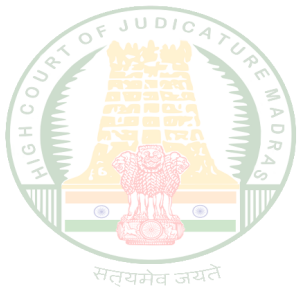


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அட்வான்ஸ் தொகை நிர்ணயிக்கவும், கிரய தொகைகளை முழுமையாக பெற்றுக்கொள்ளவும் கிரயதாரர்களுக்கு எக்ரிமெண்ட் பத்திரம் மற்றும் கிரயப் பத்திரங்கள் எழுதிக் கொடுக்கவும், அதில் தாங்களே பவர் ஏஜெண்ட் ஸ்தானத்தில் கையொப்பம் செய்து முறையாக பதிவு செய்து கொடுக்கவும், பதிவு சம்மந்தமான சகல எண்டார்ஸ்மெண்டுகளிலும் கையொப்பம் செய்யவும், பதிவாளர் கேட்கும் கேள்விகளுக்கு பதில் அளிக்கவும், சொத்தை சுவாதீனம் கொடுக்கவும், மற்றும் பிழைதிருத்தல், துணை ஆணவங்கள் தேவைப்பட்டால் எழுதி பதிவு செய்து கொடுக்கவும், மற்றும் இந்த சொத்து சம்பந்தமாக பஞ்சாயத்து அலுவலகம் தாலுகா அலுவலகம் மற்றும் இதர அலுவலகங்களில் ஏற்படும் விசாரணைகளுக்கு எங்களுக்காக தாங்களே நேரில் ஆஜராகவும், தபால் மூலம் பதில் அளிக்கவும், மற்றும் மேற்படி நிலத்தை பகுதிகளாகப் பிரிக்கும் பட்சத்தில் விடப்படும் ரோடுகளை சம்பந்தப்பட்ட பஞ்சாயத்திற்கு ஒப்படைக்கவும், அதற்கான ஆவணங்களை எழுதி பதிவு செய்து கொடுக்கவும், மற்றும் இந்த சொத்து சம்பந்தமாக ஏதாவது வில்லங்க விவகாரங்கள் ஏற்பட்டால் அதை பேசி தீர்க்கவும் பேசி தீர்க்க முடியாத பட்சத்தில் கோர்ட்டில் தாவா தொடரவும், வக்கீல் வைக்கவும், வழக்காடாவும், ஸ்டேட்மெண்ட், அபிடவிட் கவுண்டர் தாக்கல் செய்யவும் மற்றும் இந்த சொத்து சம்பந்தமாக ஓர் பவர் ஏஜெண்ட் ஸ்தானத்தில் இருந்து அனைத்துக் காரியங்களை செய்வதற்கும் இதன்மூலம் அதிகாரம் அளித்துள்ளோம். அதன்படி தாங்கள் எங்கள் பவர் ஏஜெண்ட் ஸ்தானத்தில் செய்யும் அனைத்துக் காரியங்களையும் நாங்களே நேரில் இருந்து செய்வதாக ஒப்புக் கொள்வோமாகவும், இதற்கு சரியாக கணக்குகள் பராமரித்து தாங்கள் கோரும் போது சமர்ப்பிக்கவேண்டியது.



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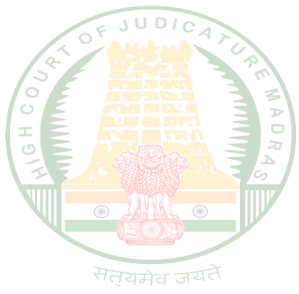


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இந்தப் பத்திரம் திருச்சிராப்பள்ளி மாவட்டம் பதிவாளர் அலுவலக வளாகத்தில் தயார் செய்யப்பட்டு, எங்களால் கையொப்பம் செய்யப்பட்டுள்ளது. ”

17. From the PoAs, it is evident that the agent was authorised to sell the lands and receive consideration. A few receipts in respect of payment of consideration are also on record. Pursuant thereto, two sale deeds dated 17.07.1996 are on record, which indicate that the lands were sold by Maxworth through the PoAs to its customers. The Alleged Purchasers relied on the Supreme Court judgment in ***Suraj Lamp*** to contend that title cannot be claimed on the basis of PoAs. However, in the said judgment, the Supreme Court carved out an exception for *bona fide* and genuine transactions by holding as under:

*“27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development*

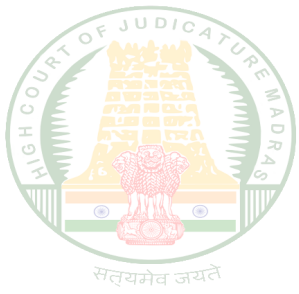


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*agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers....”*

18. In this context, it is pertinent to refer to earlier judgments of this Court with regard to other Maxworth projects. In **Ashok Madhavrao Inamke**, the learned single judge set aside the sale deeds executed after the winding up petition was filed on the basis of a decree in a suit. In the original side appeals against the said order, in **Chetan Arvind Bhagat**, the Division Bench of this Court upheld the single judge's decision by holding as under:

*“11.... it is crystal clear that any attachment, distress or execution put in force, without leave of the Court against the estate or effects of the company or*

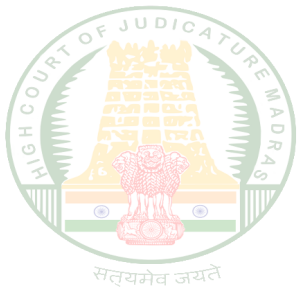


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*any sale held, without leave of the Court, of any of the properties or effects of the company after such commencement of the winding up proceeding would become void. When the company is in liquidation, no sale can be made without the leave of the Court. The next question that arises here is as to when the winding up proceeding commences. Section 441(2) deals with the same. It is a deeming provision. It states that the winding up of the company shall be deemed to commence at the time of the presentation of the petition for winding up. From a reading of Section 537 read with Section 441 of the Act, no doubt, it is clear that after commencement means only at the time of presentation of the petition after winding up. In the present case, one M/s EPC Industries Limited filed C.P.No.57 of 1998 on 14.02.1998 for winding up and it commences on the same day. Even though the suit was filed on 19.01.1998, which is before the date the commencement of the winding up, the Court has passed a decree only on 12.10.1999. Subsequently, on 05.12.2001, there was a sale by public auction. On 24.12.2002, sales certificate was issued by the Court. There is no dispute that these proceedings were without the leave of the Company court. Mere fact that ex-parte decree was passed by the Court and public auction was*



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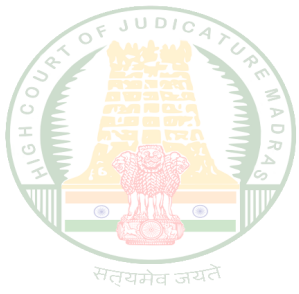
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*held after wide publicity and also before appointment of official liquidator, would not certainly treat the sale as valid in law. It is also clear that even bona fide, genuine and valid transaction are also considered to be void if they are without the leave of the Court....”*

It is relevant to state that the Special Leave Petition was dismissed by the Hon'ble Supreme Court by order dated 31.08.2009 in Special Leave to Appeal (C) No.20710 – 20712/2009.

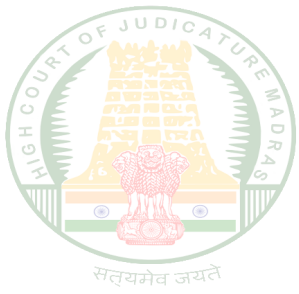
19. In ***P. Ananthalakshmi***, this Court dealt with three batches of applications relating to various lands of Maxworth situated in Medak District, Andhra Pradesh. By the said order, the relevant sale deeds were set aside and it was held, in paragraph 48, as follows:

*“The third respondent, who is stated to have purchased the property without knowing the extent of lands and without verifying the authenticity and right of the second respondent in selling such properties, cannot claim any better title...”*



20. By contrast, in **B. Ravi Babu**, while dealing with properties in the district of Cudappah, in an application in which only the agents but not the owners were parties, this Court dealt with the facts of the applications concerned and referred the matter to the Division Bench for an authoritative pronouncement after framing six questions. Paragraph 25 of **B. Ravi Babu** is extracted below:

*“25. In view of the respective pleadings, the question, which arises for consideration is whether in absence of a conveyance deed, can the property be said to have been purchased by the company, and whether an order of injunction can be operative against power of attorney holder of true owner, in absence of true owner, being a party to proceedings. The question also arises as to whether a transaction can be said to be fraudulent, in absence of pleadings and evidence, in view of settled law that the plea of fraud is required to be specifically pleaded and proved, like in a criminal case. Whether a property standing in name of true owner, and sold by company would also attract provisions of Section 446 of the Companies Act, to challenge the sale. Whether this Court can take note of criminal proceedings, which have been stayed by the Hon'ble High Court of Andhra Pradesh. The question*



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*also arises as to whether a person can be said to be trustee of property of the company in absence of any title in favour of the company, or person acting as attorney of the Company, but true owner. It also requires consideration as to whether findings can be recorded on pleadings, which is contrary to record maintained in ordinary course of business by Government department, i.e. showing that the true owners continued to be the owner of property. The one important question would be whether sale on ground of fraud can be challenged merely by filing a Company application, without filing a regular suit with permission of the company Court....”*

21. Subsequent thereto, in **R. Ramesh Babu**, by order dated 18.01.2021 in Company Application Nos. 7, 8 of 2021, the learned single judge dismissed the applications on the basis that the applicants have come to Court to derail the liquidation process. The facts regarding the actual knowledge of the applicants about the auction process, the unavailability of averments on the execution of the powers of attorney and subsequent cancellation, and non-submission of encumbrance certificates on record to prove due diligence were set out as the reasons to dismiss the said

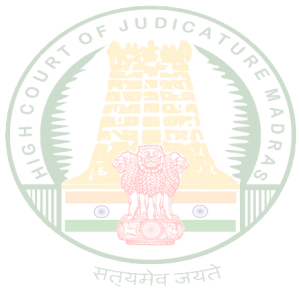


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applications. It was also held that the remedy of the so-called *bona fide* purchaser lies against the vendors for wrongful representation. It was held as under therein:

*“....Suffice to say that this does not cross the prima facie threshold barrier and the applicant has not made out a prima facie case that he is a bona fide purchaser. This Court is making this position clear as this Court is deciding captioned applications on affidavits and counter affidavits (report of OL) and it is not a judgment post trial, which involves oral and documentary evidence.”*

22. With this backdrop, turning to the facts of this case, C.A.Nos. 354 & 355 were filed in December 2021 after taking cognizance of the sale notice released on 03.12.2021 pursuant to the order dated 26.11.2021 in C.A.No.297 of 2021 of this Court. The Alleged Purchasers rely on three cancellation of PoA documents, about 21 sale deeds, patta transfer orders, encumbrance certificates from 01.09.1989 to 21.11.2005 and pattas in favour of the Alleged Purchasers.



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23. Can it be said on the basis of the documents on record that the relevant immovable assets may be treated as the assets of Maxworth? If so, Sections 536 and 537 of CA 1956 would be triggered and all dispositions after 24.02.1998, which is the date of commencement of winding up, would be void unless validated by the Court on application. This was the basis of the decision of the Division Bench in **Chetan Arvind Bhagat** as is evident from the extract *supra*. As stated earlier, only a MoU coupled with PoAs are on record. Thus, there is *prima facie* evidence that Maxworth has rights over the relevant immovable assets. If Maxworth's title was not under challenge, subject to the disclaimer that no warranty on title is being offered, either with regard to patent or latent defects, as was done in the sale notice, it would be possible to conclude the sale. But, bearing in mind the fact that the Alleged Purchasers have mounted a challenge to Maxworth's title, the evidence is insufficient to conclude that these are assets of Maxworth so as to apply Sections 536 and 537 of CA 1956. The consequences of this conclusion should be addressed next.

24. The Alleged Purchasers contended that there are sale deeds in their favour and that the pattas are also in their favour. On such basis, it was

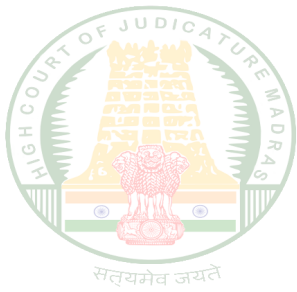


contended that the sale deeds cannot be set aside in an application by the

Official Liquidator or Administrator. Given the conclusion that the evidence on record is insufficient to apply Sections 536 and 537 of CA 1956, there is merit in the contention that registered sale deeds cannot be set aside in summary proceedings. It should, nonetheless, be borne in mind that the powers of the Companies Court under Section 446 of CA 1956, and, in particular sub-section (2) thereof, are of extremely wide amplitude, which includes the power to transfer and decide suits against a company in liquidation or to decide claims and, indeed, any question arising in course of winding up. Section 446(2) of the CA 1956 is set out, in relevant part, below:

*“The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of -*

*(a) any suit or proceeding by or against the company;*



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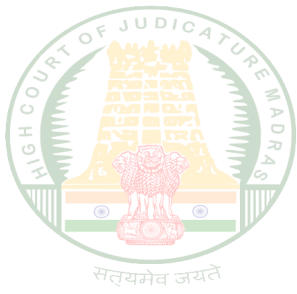
(b) *any claim made by or against the company (including claims by or against any of its branches in India)*

(c) ...

(d) *any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;*

*whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.”*

25. In *Sudarsan Chits v. O. Sukumaran Pillai* (1984) 4 SCC 657 (***Sudarsan Chits***), the Supreme Court, at paragraphs 8 and 13, recognised the wide jurisdiction under Section 446, adverted to the object and purpose thereof, and held that such power could be exercised at any time after the provisional liquidator is appointed. Paragraphs 8 and 13 are set out below:

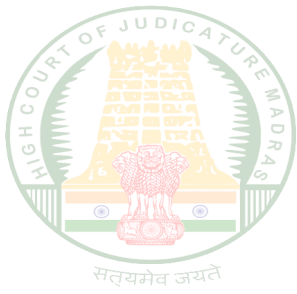


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*“8. Before we advert to the question of construction of Section 446(2)(b), it would be advantageous to notice the historical evolution of the provision as well as its present setting. Section 171 of the Indian Companies Act, 1913, the predecessor of Section 446(1) did not contain any provision similar or identical to that of Section 446(2). Section 171 only provided for stay of suits and proceedings pending at the commencement of winding-up proceeding, and embargo against the commencement of any suit or other legal proceedings against the company except by the leave of the court. This provision with little modification is re-enacted in Section 446(1). There was no specific provision conferring jurisdiction on the court winding up the company analogous to the one conferred by Section 446(2). Sub-section (2) was introduced to enlarge the jurisdiction of the court winding up the company so as to facilitate the disposal of winding-up proceedings. The provision so enacted probably did not meet with the requirement with the result that the Committee appointed for examining comprehensive amendment to the Companies Act in its report recommended that “a suit by or against a company in winding up should notwithstanding any provision in law for the time being be instituted in the court in which the winding-up proceedings are pending [ See para 207 of the Company Law Committee Report] ”. To give effect to these recommendations, sub-section (2) was suitably amended to bring it to its present form by Companies (Amendment) Act, 1960. The Committee noticed that on winding-up order being made and the Official Liquidator being appointed a Liquidator of the company, he has to take into his custody company property as required by Section*

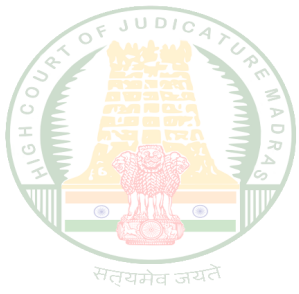


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456. Section 457 confers power on him to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company. Power is conferred upon him to sell the properties both movable and immovable of the company and to realise the assets of the company and this was to be done for the purpose of distributing the assets of the company amongst the claimants. Now at a stage when a winding-up order is made the company may as well have subsisting claims and to realise these claims the Liquidator will have to file suits. To avoid this eventuality and to keep all incidental proceedings in winding-up before the court which is winding up the company, its jurisdiction was enlarged to entertain petition amongst others for recovering the claims of the company. In the absence of a provision like Section 446(2) under the repealed Indian Companies Act, 1913, the Official Liquidator in order to realise and recover the claims and subsisting debts owed to the company had the unenviable fate of filing suits. These suits as is not unknown, dragged on through the trial court and courts of appeal resulting not only in multiplicity of proceedings but would hold up the progress of the winding up proceedings. To save the Company which is ordered to be wound up from this prolix and expensive litigation and to accelerate the disposal of winding up proceedings, the Parliament devised a cheap and summary remedy by conferring jurisdiction on the court winding up the company to entertain petitions in respect of claims for and against the company. This was the object behind enacting Section 446(2) and therefore, it must receive such construction at the hands of the court as would advance the object and at any rate not thwart it.”

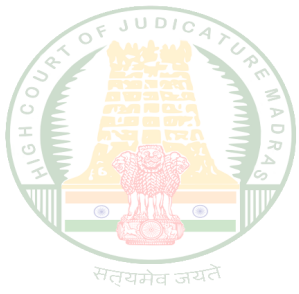


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*13. The approach of the High Court, with respect, overlooks the object and purpose sought to be achieved by introducing sub-section (2) in Section 446 by Amending Act 65 of 1960. As noted earlier, winding-up proceedings dragged on for decades with no end in sight and with no benefit to the creditors and contributories of the Company. To accelerate the process of winding up so as to bring them to an end, this sub-section was amended in its present form in 1960 conferring jurisdiction on the court winding up the company to entertain amongst others any suit or proceeding by or against the company or any claim made by or against the company. If therefore, a winding-up petition is pending meaning thereby that an Official Liquidator is appointed as Provisional Liquidator which is a stage in the process of winding up, the court before which such proceeding is pending can be styled as a court winding up of the company and ipso facto it would have jurisdiction to entertain the proceeding enumerated in clauses (a) to (d) of sub-section (2) of Section 446. The apprehension of the High Court that if such jurisdiction is conferred on the court at a stage anterior to the winding-up order being made but subsequently to the appointment of Official Liquidator as Provisional Liquidator an anomalous situation would arise has left us unimpressed. If the winding-up petition fails the proceedings pending in the court may have to be transferred to the court which can entertain the proceeding. But if the petition praying for winding up the company ends in a winding-up order the proceedings initiated under sub-section (2) will have to be proceeded with till they are finally disposed of because winding-up order will relate back to the date of the presentation of the*



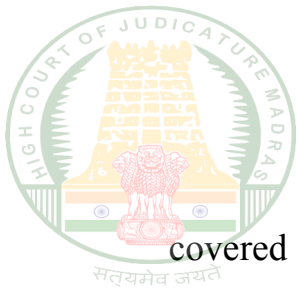
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*winding-up petition. In this view of the matter no anomalous situation can ever arise."*

26. In view of Section 446(2) of CA 1956 and the authoritative and binding construction it has received in ***Sudarsan Chits***, it is beyond doubt that the Companies Court has the jurisdiction to decide these issues. It is a separate matter that while exercising such power, in appropriate cases, it may be necessary to direct the parties concerned to go through a trial process. In the case at hand, the Alleged Purchasers have not filed a suit and the only pending proceedings are those before this Court. Whether such trial process is necessary to decide these applications is addressed next. It was concluded earlier that the evidence on record is insufficient to conclude, in summary proceedings, that Sections 536 and 537 of CA 1956 apply to the dispositions in favour of T. Mohan and D. Thirumagal. The sequitur thereof is that the dispositions cannot be treated as void. Hence, the rival title claims should be considered and determined. On the facts of this case, it is inappropriate to do so without putting the parties through a trial because a definitive conclusion on title cannot be drawn on the basis of the documents produced by the contesting parties. Consequently, there will be an interim stay of the confirmation of the sale of the items of property



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covered in the schedule to the Judge's summons in Comp.A.Nos.354 and 355 of 2021. Such stay shall operate for a period of eight weeks.

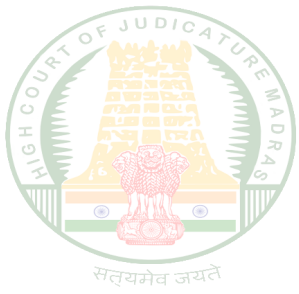
27. In light of ***Sudarsan Chits, Chetan Arvind Bhagat*** and the above conclusion, in my view, it is not necessary to await the decision of the Division Bench on the reference in ***B. Ravi Babu***, which did not notice ***Sudarsan Chits***. In order to conduct such trial, it is not necessary that a suit be filed. Instead, on the basis of the affidavits of contesting parties, both parties should file draft issues. After issues are framed, a time table can be fixed for recording evidence. Keeping in mind the public interest involved, it is just and necessary that the entire process be concluded expeditiously. The trial process would pose unique problems to the Administrator and the Official Liquidator because they are unlikely to be in possession of the originals of all documents in their possession, and certainly will not be in possession of all relevant documents. This problem was recognised by the Hon'ble Supreme Court in *United Bank of India v. The Official Liquidator*, (1994) 1 SCC 575, by holding that the Official Liquidator takes the company and its assets on as is where is basis and, therefore, the Official Liquidator cannot be expected to and should not give



a warranty on title when he disposes of assets. Paragraph 14 of the judgment is as follows:

*“14. When the Official Liquidator sells the property and assets of a company in liquidation under the orders of the Court he cannot and does not hold out any guarantee or warranty in respect thereof. This is because he must proceed upon the basis of what the records of the company in liquidation show. It is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable property that he proposes to purchase. He cannot after having purchased the property on such terms then claim diminution in the price on the ground of defect in title or description of the property. The case of the Official Liquidator selling the property of a company in liquidation under the orders of the Court is altogether different from the case of an individual selling immovable property belonging to himself. There is, therefore, no merit in the application made on behalf of Triputi that there should be a diminution in price or that it should not be made liable to pay interest on the sum of Rs 1 crore 98 lakhs.”*

Keeping in mind the above predicament, the Official Liquidator will be permitted to exhibit documents in its possession without insisting on the originals, albeit subject to recording objections, if any, from the Alleged Purchasers.



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28. It should, however, not be lost sight of that the alleged alienations in favour of the Alleged Purchasers are from the years 2002 to 2008, i.e. much later than the commencement of winding up in the year 1998. As stated earlier, the Administrator filed Company Application No.740 of 2003 and obtained orders of injunction on 24.04.2003 to restrain the agents under the PoAs from alienating the assets of Maxworth. The said order was extended until further orders on 18.11.2003 and remains in force. If the original land owners had been arrayed as parties therein, it is highly likely that the interim order would have extended to them, and the present imbroglio would have been averted. The Administrator and Official Liquidator filed C.A.Nos.434 and 435 of 2009 in the year 2009 and even obtained an interim order restraining further alienation on 06.04.2009. All the vendors and the Alleged Purchasers are respondents therein. None of the vendors entered appearance to contend that they cancelled the PoAs and executed sale deeds in favour of the Alleged Purchasers. Even the Alleged Purchasers filed a counter in November 2012, which is about three years after receiving notice, and did not take any steps to vacate the interim order. Significantly, only three cancellations of PoAs have been filed by the Alleged Purchasers. Therefore, the Alleged Purchasers have allegedly



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purchased the lands without insisting on the cancellation of all the relevant PoAs. These facts certainly justify making the interim injunction absolute pending disposal of these applications.

29. For reasons set out above, the following directions are issued:

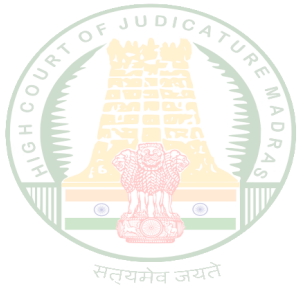
(i) Both parties are directed to file draft issues and a statement of admission/denial of documents filed by the counter party and submit a common proposed schedule for recording evidence. List on 28.03.2022 for the purpose of framing issues and fixing the schedule for further hearings.

(ii) Comp.A.No.435 of 2009 is disposed of by making the order of interim injunction absolute pending disposal of Comp.A.No.434 of 2009 and Comp.A.No.354 of 2021.

(iii) There shall be an interim stay of the confirmation of the sale in respect of the properties described in the schedule to the Judge's summons in Comp.A.Nos.354 & 355 of 2021 for a period of eight weeks from the date of receipt of a copy of this order.

16.03.2022

Index :Yes  
Internet :Yes  
rrg



WEB COPY



Comp.A.Nos.434 & 435 of 2009 batch

**SENTHILKUMAR RAMAMOORTHY J.,**

rrg

**Comp.A.Nos.434 and 435 of 2009**  
**and**  
**Comp.A.Nos.354 and 355 of 2021**  
**in**  
**C.P.No.57 of 1998**

16.03.2022