

NELLIKOTTU KOLLERIYIL MADHAVI

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v.

KAVAKKALATHIL KALIKUTTY AND ORS.

NOVEMBER 29, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

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*Auction sale—Respondents purchased the property in execution of decrees—Sale certificate issued to them and possession of property also given to them—Thereafter respondents assigned the schedule property to plaintiff—Respondents seeking perpetual injunction restraining appellant from interfering with possession—Trial Court and Appellate Court accepted the case of appellant—High Court held that there was non-consideration of material evidence by Courts below—Appeal before Supreme Court—Held, non-consideration of the material evidence is a substantial question of law—The perpetual injunction granted by the High Court in the second appeal is not vitiated by any error of law much less substantial question of law warranting interference.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15612 of 1996.

From the Judgment and Order dated 24.5.93 of the Kerala High Court in S.A. No. 368 of 1989.

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K. Sukumaran, Ms. Baby Krishnan and N. Sudhakaran, for the appellant.

M.P. Vinod for the Respondents.

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The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

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This appeal by special leave arises from the judgment and decree of the Kerala High Court dated May 24, 1993, made in SA No. 368 of 1989. The respondents had purchased the Plaintiff Schedule property in execution of the decrees in OS No.262/1955 on the file of the Court of the District Munsiff, Parappanangadi. The sale certificate, Exh. A-2 dated January 28,

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- A 1958 was given to the respondents. They had also filed an application for delivery of possession of the property which had come to be delivered under Ex. A-3 dated 21.7.1961. After taking delivery of the possession on October 20, 1961, they assigned the plaint Schedule property to the plaintiff. Under those circumstances, the question arises: whether they are entitled to a decree of perpetual injunction restraining the appellant from interfering with his possession? Though the trial Court and the appellate Court had accepted the case of the appellant, the High Court has pointed out that aforesaid documents are material for deciding the controversy and the courts below had not considered those documents in proper perspective. Accordingly, in second appeal, the High Court has gone into that question. It is settled law that the person who purchases the property in a court auction sale, gets title to the property by sale certificate issued by the court as true owner and after confirmation of the sale, he gets possession thereof. In view of the fact that Plaint Schedule property was delivered to Sankaran under Ex. A-3 on July 21, 1961, he lawfully came into possession and the same was delivered in turn to the plaintiffs. Non-consideration of the material evidence is a substantial question of law.
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Under these circumstances, the perpetual injunction granted by the High Court in the second appeal is not vitiated by any error of law much less substantial question of law warranting interference. The appeal is accordingly dismissed. If the appellant has got any title independent of this, it is open to him to have the right established in accordance with law.

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Appeal dismissed.