

---

**(1997) 03 MAD CK 0096**  
**In the Madras High Court**

State of Tamil Nadu and Another

APPELLANT

Vs

Subramaniam Servai

RESPONDENT

---

**Date of Decision :** 21-03-1997

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 80

**Citation :** (1998) 1 CivCC 356 : (1997) 2 LW 177 : (1997) 2 MLJ 211

**Hon'ble Judges :** S.S. Subramani, J

**Bench :** Division Bench

---

## Judgement

S.S. Subramani, J.—Second Appeal No. 183 8 of 1989 arises from O.S. No. 643 of 1982, on the file of District Munsif's Court, Manamadurai. Second Appeal No. 1189 of 1996 arises from O.S. No. 212 of 1985, on the file of the same court.

2. Parties herein will be referred to in this judgment according to their rank in O.S. No. 643 of 1982, out of which S.A. No. 1838 of 1989 arises.

3. Material facts which arise for consideration in both these second appeals may be stated as follows:

Plaintiff filed the suit for an injunction restraining the defendants from conducting re-sale of the prosopis trees in the schedule property. It is the case of the plaintiff that those trees belong to the State-1st defendant in the suit. It was duly proclaimed in the District Gazette and in dailies that the prosopis trees will be sold in public auction on 13.8.1982 by the Tahsildar, Manamadurai, at the Taluk Office premises at Manamadurai. Wide publicity was also given regarding the sale, and the sale was conducted on 13.8.1982 as published by the Tahsildar, Manamadurai. There were various bidders, and plaintiff was the highest and successful bidder for Rs. 15,120. As per conditions of sale, he paid a sum of Rs. 5,040 to the Tahsildar, being one-third of Rs. 15,120, and obtained receipt therefor. It is said that as per Board Standing Orders and as per law, the sale should be confirmed within a reasonable time. Plaintiff did not receive any confirmation order. It is said that confirmation is only a routine matter, and

plaintiff made arrangements for cutting down the trees and for transporting the logs. For the said purpose, he spent nearly Rs. 5,000. It is said that due to some interference by persons who are inimically disposed towards plaintiff, confirmation in favour of plaintiff was postponed indefinitely and on 11.1.1982, plaintiff came to know that the Authorities concerned were thinking of conducting re-sale of the said trees. It is said that the auction held on 13.8.1982 was a fair one and, therefore, there cannot be a question of any fresh sale. It was prayed that the defendant should be restrained from conducting a resale of the property. The suit was instituted without complying with the provision of Section 80, C.P.C. Notice since urgent relief sought for.

4. In the written statement filed by the first defendant, they admit that the plaintiff was the highest bidder. But the same was subject to confirmation by higher authorities. Unless the sale is confirmed, plaintiff cannot claim any right over the trees. The sale was never confirmed. It is further averred in the written statement that the confirming authorities have every right either to confirm the sale or order re-sale if there is any irregularity in the conduct of the sale. It is said that one of the conditions is that the publication of the auction sale should be made in a daily consecutively for two days. The sale was conducted by the Tahsildar without complying with the above conditions and, therefore, the sale is invalid and incomplete for want of compliance of the directions and conditions laid down by first defendant State. It is further said that while the sale itself was not complete, the State received telegraphic communication from several persons on 21.8.1982 that they are prepared to purchase the trees for Rs. 20,000, and one among them was one Seetharaman (appellant in S.A. NO. 1189 of 1996) who paid Rs. 20,000 as security deposit on 21.9.1982. It is further said that as per Board Standing Order, the sale will be complete only if it is confirmed by the defendant State. It is further said that the plaintiff has admitted that the sale has not been confirmed and, therefore, the suit is not maintainable. The allegation that the confirmation is only a routine matter is contrary to facts. Confirmation procedure is a mandatory one and binding on the plaintiff. They further deny that the plaintiff has made arrangements for cutting of trees and removal of logs. The expenditure incurred was also disputed. It is further stated that long before the institution of the suit, the auction conducted was cancelled by an order dated 7.10.1982 and the same was also served on the plaintiff. It is thereafter the present suit was filed. The suit, according to the defendant State, is therefore not maintainable, and they further state that for conduct of re-sale on 5.11.1982, they have already spent a sum of Rs. 200. According to them, the suit is also bad for want of Section 80, C.P.C. notice.

5. Trial court took both oral and documentary evidence in this case. It came to the conclusion that unless there is no confirmation of the auction, there is no concluded contract between the parties. If there is no concluded contract, plaintiff cannot seek either mandatory injunction or compel the State to confirm the same. According to trial court, the State is not obliged to accept the highest bid, if it is injurious or prejudicial to its interest. When the bid has not been

confirmed, the offer made by plaintiff stands rejected. It further came to the conclusion that the suit for mandatory injunction or prohibitory injunction also cannot be maintained, when effective reliefs are available to plaintiff in the nature of damages.

6. Against the judgment, an appeal was filed by plaintiff as A.S. No. 149 of 1985, on the file of Subordinate Judge's Court, Sivaganga. The lower appellate court reversed the decision. The lower appellate court was of the view that a duty is cast on the State to confirm the sale within a reasonable time, and having not take any decision for a long time, it amounts to confirmation by silence. The lower appellate court was of the view that the sale stands confirmed in view of the conduct and, therefore, the injunction sought for was granted. The suit was decreed.

7. While narrating the facts, I said that one of the contentions of the defendants is that the State received telegraphic Communications from persons offering to pay a higher amount and one such person was Seetharaman (appellant in S.A. No. 1189 of 1996) who deposited Rs. 20,000. That person filed O.S. No. 212 of 1985, to compel the State to conduct re-sale of the trees, by mandatory injunction. In that suit, plaintiff in O.S. No. 643 of 1982 was also impleaded as a party defendant. In the plaint, it was averred that there was no procedural infirmity in the conduct of the auction, and so long as there is not confirmation, plaintiff in O.S. No. 643 of 1982 has no right over the trees and, therefore, the State must be directed to conduct a resale of the trees. A decree for mandatory injunction was sought for against the State.

8. A similar contention was taken by the State as well as the plaintiff in O.S. No. 643 of 1982 in accordance with their respective stand in the earlier suit. By the time the suit was taken up for trial, plaintiff in the suit O.S. No. 643 of 1982 obtained an injunction. Even though O.S. No. 643 of 1982 was dismissed by the trial court, plaintiff therein filed A.S. No. 149 of 1985 and obtained a further order of injunction. That injunction order was in force when the subsequent suit was taken up for trial. In that view of the matter, the trial court did not think it proper to grant a relief to the plaintiff in O.S. No. 212 of 1985. That suit was dismissed. Plaintiff therein filed A.S. No. 26 of 1992, on the file of Sub Judge, Sivaganga. By the time the appeal was disposed of A.S. No. 149 of 1985 was allowed and a decree was granted. In view of the decree, no relief could be granted in O.S. No. 212 of 1985. The decision of the trial court was affirmed by dismissing the appeal. The main reason for dismissal was that A.S. No. 149 of 1985 was allowed. That is how both the suits are connected. Even though the judgments are separate, they relate to the same auction, and common question arises in both the appeals, namely, whether the plaintiff in O.S. No. 643 of 1982 is entitled to an injunction as prayed for.

9. At the time of admission of the second appeals, namely, S.A. No. 1838 of 1989, the following substantial question of law was raised for consideration:

Whether the order of the District Collector in not confirming the sale, taking resort to Board's Standing Order, is proper and valid?

Substantial question of law in S.A. No. 1189 of 1996:

Whether the courts below were correct in holding that the suit is bad for non-joinder of the District Collector, when the appellant/plaintiff wanted to implement the order passed by the Collector?

10. When the matter was being heard, a doubt arose as to whether O.S. No. 643 of 1982 itself is maintainable and, therefore, by way of abundant caution, plaintiff therein has filed C.M.P. No. 3 596 of 1997 to amend the plaint. In that petition, plaintiff in O.S. No. 643 of 1982 has asked for a mandatory injunction, directing the State to confirm the auction in his favour. The said C.M.P. was also heard along with the appeals.

11. According to me, all these questions of law can be decided together. The finding on the question of law will be the result in the C.M.P. as well.

12. Even in the plaint, in O.S. No. 643 of 1982, it is admitted by the Plaintiff therein that even though he was the highest bidder and he deposited one-third of the bid amount, the bid or the auction will have to be confirmed by the higher authorities. Reference may be made to Roc. No. 25264/82, dated 5.7.1982 containing the proceedings of the Additional Collector, Ramanathapuram District at Madurai. As per the said proceedings, the auction was directed to be held in the Taluk Office, after due publication in the District Gazette as well as publication in of the auction in a daily consequently for two days. It is not disputed by either party that the auction will have to be confirmed by higher authorities, and in this case, by the District Collector, Admittedly, no such confirmation order has been passed in this case. It is in the meanwhile, defendant received various telegraphic Communications offering a higher amount, and one or two persons even offered to pay the entire amount as a condition for acceptance of their bid. Taking into consideration the higher offer, the State thought that it will be more advantageous for it to have a reauction than to accept that highest bid offered by the plaintiff. It was that time, the present suit was filed for an injunction seeking a permanent prohibitory injunction restraining the State from holding the auction. The plaintiff has not asked for any positive relief in his favour, nor has he any case that the auction has been confirmed in his favour. Unless there is a confirmation, it means that the bid is not accepted. That is, the offer of the plaintiff stands without acceptance. If the offer has not been accepted, there cannot be any question of concluded contract and the ownership of the trees also will continue to be only with the State. Unless, the ownership vests in the plaintiff, he cannot seek any injunction restraining the State from holding a re-sale. The property belongs to the State and it is entitled to auction it as it pleases.

13. In one of the earliest decisions of the Supreme Court reported in Haridwar Singh Vs. Bagun Sumbrui and Others, , their Lordships were considering

"conditional acceptance" of a bid, subject to confirmation by State, and the legal consequences if the same is not confirmed by the Government. In that case, it was held thus:

At an auction for settlement of a coup the highest bid of H was accepted by the Divisional Forest Officer subject to confirmation by Government. The D.F.O. reported about the auction sale to the conservator of forest who forwarded the papers to the State Government for confirmation of the acceptance. During the pendency of the matter before the Government, the highest bidder communicated his willingness to take the settlement at the reserve price which has higher than the bid. Thereafter he applied for the settlement of the coup on the basis of the highest bid. The Government by a telegram to the conservator of forests confirmed the auction sale with H at the reserve price. As no intimation was received by the D.F.O. he did not communicate it to H. Later on the Government cancelled the settlement of the coup with H and settled the same with another person for an amount higher than the reserve price.

Held, that there was no concluded contract between the Government and the highest bidder H. There was no confirmation of the acceptance of the bid to take the coup in settlement for the highest amount of bid. What the Government did was not to confirm the acceptance made by the Divisional Forest Officer, but to accept the offer made by H in his communication that he would take the coup for the reserve price. The telegram sent to the conservator of forests could not be considered as a communication of the acceptance of that offer to H. The acceptance of the offer was not even put in the course of the transmission to H and so even assuming that an acceptance need not come to the knowledge of the offerer. He could not contend that there was a concluded contract on the basis of his offer contained in his communication to take the settlement at reserve price as the acceptance of that offer was not put in the course of transmission. Quite apart from that, H himself revoked that offer later on by applying for the settlement of the coup at the highest bid made by him in the auction....

14. In *Linga Gowder v. State* (1970) 1 M.L.J. 563 : AIR 1971 Mad. 28, this Court held thus:

To conclude a contract and to bring about contractual relationship between the parties, the acceptance must be communicated in some perceptible form. A mere resolve on the part of offeree to accept an offer, when there is no external manifestation by speech, writing or other act, of the intention to do so, cannot result in an enforceable or a concluded contract. Both offer and acceptance must be absolute, unqualified and unconditional. If it is conditional, parties can withdraw at any moment until absolute acceptance takes place.

15. In *The State of Madras and Another Vs. R. Ranganatham Chettiar*, , a Division Bench of this Court held thus:

The plaintiff was declared to be the highest bidder at an auction sale of a lease of

the right to cut and remove casuarina trees in two forest coupes held by the District Forest Officer. The terms and conditions of the sale notification as advertised were to form part and parcel of an agreement to be executed by the purchaser in the sample form attached to the notification. Clause 13 of the Notification inter alia provided that the sale was subject to confirmation by the District Forest Officer or the Conservator of Forests who reserved his right to reject any bid including the highest bid without assigning any reason. Under Clause 19 the successful bidder was bound to deposit in addition to the sale amount, a security deposit and had to execute an agreement in the prescribed form within 10 days of the receipt of the order confirming the sale in his favour. The plaintiff had also deposited the entire sale price together with the security deposit. The District Forest Officer, however, did not confirm the sale in favour of the plaintiff, ordered a refund of the sale amount and the security deposit and a second auction sale through Court Receiver was held and the amount was deposited in court. The plaintiff brought suit for declaration against the State that he was entitled to the amount in court deposit on second sale and also to a refund of the security deposit. Held, that according to the terms and conditions of auction sale a "successful bidder" would be one who was not only the highest bidder, but also one who has paid the sale amount and the security deposit and a person to whom an intimation as to confirmation of the sale has been sent and who is ready and willing to execute an agreement as provided in Clause 19 within ten days of the receipt of the order of confirmation. In the absence of any evidence to show that the plaintiff had received any communication about the written acceptance of the bid or its confirmation or that he had executed any agreement as required or that he had executed any agreement as required by Clause 19 there was no concluded contract between the parties which could be legally enforced.

[Italics supplied]

16. In view of this settled position of law, it cannot be doubted that there is no concluded contract between the parties and the trees continued to be owned by the State. If that be so, the relief sought for in plaint for a prohibitory injunction restraining the State from conducting resale is not maintainable.

17. It is here, the argument of learned Counsel for plaintiff/respondent deserves consideration. According to learned Counsel for plaintiff/respondent, according to the Rules, confirmation must be within a reasonable time, and if there is no positive response from the State, it can be considered as acceptance by silence. In this case, according to learned Counsel, more than two months have elapsed and in spite of repeated reminders issued by plaintiff, the State Government did not care to reply, and only when the suit was about to be instituted, the State issued a notice informing about the cancellation. In fact, in the suit filed for injunction, there is no reference to the cancellation order. Plaintiff only pleads that when he expects the confirmation order, the defendants are only attempting to conduct re-sale, which cannot be permitted. How far such an argument could

be accepted is to be seen. If a confirmation is required, the same must be communicated to the party in some form as in the cases referred to above.

18. In "Pollock & Mulla - Indian Contract and Specific Relief Acts" - 11th Edition (1994), at page 105, Commenting on Section 4 of the Indian Contract Act, the learned Author says thus:

Acceptance by Silence and Conduct : A contract being the result of an offer made by one party and acceptance of that very offer by the other, acceptance of offer and intimation of acceptance by some external manifestation which the law regards as sufficient is necessary. The Supreme Court in the following case has considered the question of acceptance of an offer by silence reinforced by conduct. It has observed that the general rule is that an offer is not accepted by mere silence on the part of the offeree. But in the facts of a given case acceptance of a suggestion may be sub silentio reinforced by subsequent conduct. There may be further facts which taken with the offeree's silence, may constitute acceptance. One such case is where at the negotiation stage the offeree disputed a part of the offer and the offeree communicated that fact to the offeror showing that he understood the offer in a particular sense, which would probably be a counter offer and which in the case of the offeror will constitute his acceptance. Acceptance cannot be inferred from silence alone save in the most exceptional cases where it seems better to say that the offer had been accepted by conduct such as of reciprocal inactivity in abandoning the arbitration proceedings, or by closing, or disposing of the relevant files.

19. The Supreme Court has also considered this question in the decision reported in Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, , their Lordships said that acceptance can be inferred by silence. But, for drawing such an inference, there must be further facts which then together with the offeree's silence will constitute acceptance. It is an extension of the principle of estoppel. In paragraph 17 of the judgment, their Lordships held thus:

It was, however, contended that once sub-contract Ex. A was admittedly signed and executed by Managing Director of the appellant - company, subsequent attempt on behalf of the appellant to repudiate a part of the contract would be of no avail and the court cannot give effect to it except if the novatio suggested by the appellant is unreservedly accepted and agreed to by the respondent. In the facts of a given case acceptance of a suggestion may be sub silentio reinforced by the subsequent conduct. True it is that the general rule is that an offer is not accepted by mere silence on the part of the offeree. There may, however, be further facts which taken together with the offeree's silence constitute an acceptance. One such case is where a part of the offer was disputed at the negotiation stage and the original offeree communicated that fact to the offeror showing that he understood the offer in a particular sense. This communication probably amount to a counter offer in which case it may be that mere silence of the original offeror will constitute his acceptance (See Halsbury's Laws of England, 4th Edn., vol. 9, para 251). Where there is a mistake as to terms of a

document as in this case, amendment to the draft was suggested and a counter offer was made, the signatory to the original contract is not estopped by his signature from denying that he intended to make an offer in the terms set out in the document, to wit, the letter and the cable (ibid, para 295). It can, therefore, be stated that where the contract is in a number of parts it is essential to the validity of the contract that the contracting party should either have assented to or taken to have assented to the same thing in the same sense or as it is sometimes put, there should be consensus ad idem. And from this it follows that a party may be taken to have assented if he has so conducted himself as to be estopped from denying that he has to assented (ibid, para 288). Even apart from this, it would still be open to the party contending novatio to prove that he had not accepted apart of the original agreement though it has signed the agreement containing that apart.

[Italics supplied]

20. In this case, plaintiff has no case that subsequent to the bid, there was any further act on the part of the State which made him believe that the auction has been confirmed. When the Notification of auction itself says that there will be a concluded contract only on confirmation, an inference can be drawn that the confirmation must be by express words. There cannot be any acceptance by silence. Specific instances must be shown by the plaintiff to have such inference. In this case, absolutely there is no pleading or evidence in that regard. It goes without saying that even though a duty is cast on the State to reject or confirm the auction within a reasonable time, silence can never be treated as confirmation. Even if the State did not act within a reasonable time, an inference of confirmation cannot be drawn. If there is no concluded contract between the parties, the decision of the trial court in dismissing the suit has to be restored and that of the lower appellate court has to be set aside.

21. In Second Appeal No. 1189 of 1996, the dismissal of the suit was only for the reason that there was injunction in the earlier suit and subsequent that was made a decree by the appellate court. In that case, plaintiff only wanted a direction to be given to the State to have a re-sale. Nothing prevents the court from granting that relief in Second Appeal No. 1189 of 1996. Accordingly a decree of mandatory injunction is granted to the State to hold a reauction on such terms and conditions as it may deem fit. By granting the decree, it should not be understood that the plaintiff in O.S. No. 643 of 1982 is entitled to a decree of accepting his offer for Rs. 20,000. I am directing only for reauctioning the trees which are subject-matter of the suit.

22. In the C.M.P. the plaintiff in the earlier suit claims a relief of mandatory injunction to confirm the auction in his favour. The State has already rejected the offer. When the offer is not acceptable to the owner of the property, (in this case the State) no Court can compel the owner to accept the offer. u/s 14 of the Specific Relief Act read with Section 39 of the same Act, I do not think that a mandatory injunction can be granted. There must be an obligation on the part of

the State to perform certain acts which the court is capable of enforcing. When there is no obligation on the part of the State to accept the offer, there cannot be any question of granting a mandatory injunction. Section 14 also bars the granting of such a remedy when award of damages is the appropriate remedy. For contracts which could not be enforced specifically, there cannot be any question of mandatory injunction also. The question of obligation will arise only if there is a contract. In-view of my earlier finding, there is no duty case on the part of the State which could be specifically enforced. The C.M.P. is only to convert the suit which is one for prohibitory injunction not one for mandatory injunction. I do not think the plaintiff has got a case which could be specifically enforced, If that be so, the C.M.P. also cannot be allowed.

23. In the result, both the second appeals are allowed. In S.A. No. 1838 of 1989, the decree of the trial court is restored, i.e., the suit O.S. No. 643 of 1982 will stand dismissed. In S.A. No. 1189 of 1996, there will be a decree of mandatory injunction, directing the State to re-plant the trees which are the subject-matter of the suit on such terms and conditions as they deem fit and proper. In both the second appeals, the parties are directed to suffer their respective costs. C.M.P. No. 3596 of 1997 in S.A. No. 1838 of 1989 will stand dismissed. In that C.M.P. also, parties are directed to suffer their respective costs. C.M.P. No. 16534 of 1989 in S.A. No. 2838 of 1989 and C.M.P. No. 13938 of 1995 and C.M.P. No. 11627 of 1996 in S.A. No. 1189 of 1996 are also dismissed consequently. The amount of Rs. 5,040 deposited by plaintiff, respondent in S.A. No. 1838 of 1989 will be refunded to him by appellants therein, without any delay.