

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1460 of 2015 &
M.P.No.1 of 2015

D.Saravanan

... Petitioner

v.

1.Thajun
2.Salima Kathu
3.Munvar
4.Asifa
5.Arifa
6.Dawlath Kathu
7.Mommula kathu
8.Mani

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 28.10.2014 made in I.A.No.5536 of 2013 in O.S.No. 2637 of 2007 on the file of the XVII Assistant City Civil Court, Chennai.

For Petitioner : Mr.G.Justin

For Respondents : Mr.A.M.Krishnamoorthy
for Caveators

ORDER

Heard Mr.G.Justin, learned counsel appearing for the petitioner and Mr.A.M.Krishnamoorthy, learned counsel for the caveators. By consent of both the counsels, the Civil Revision Petition itself is taken up for final hearing at the admission stage itself.

2. Aggrieved over the fair and final order passed in I.A.No.5536 of 2013 in O.S.No. 2637 of 2007 on the file of XVII Assistant City Civil Court, Chennai, the 4th defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No. 2637 of 2007 for declaration, for redemption of the suit property holding that the balance due amount payable towards mortgage loan as Rs.1,21,500/- and for consequential other reliefs.

3. Since the defendants remained ex parte, the trial court passed ex parte decree on 3.11.2009 declaring that a sum of Rs.1,21,500/- is due to the 4th defendant towards mortgage of the suit property. Pursuant to the decree passed by the trial court, the plaintiffs filed an application in I.A.No.5536 of 2013 to direct the defendants 3 and 4 to receive the balance amount payable towards mortgage loan amount to the tune of Rs.1,64,025/-.

The said application was opposed by the defendants 3 and 4 stating that the other legal heirs of the deceased Duraiswamy were not impleaded and therefore, the present application deserves to be dismissed. The trial court, after taking into consideration the case of both the parties, allowed the application. Aggrieved over the same, the 4th defendant has filed the above Civil Revision Petition.

4. Learned counsel appearing for the petitioner submitted that out of the six legal heirs of the deceased-2nd defendant, viz., Duraiswamy, the 4th defendant (revision petitioner) alone has been impleaded as a party omitting the other five legal heirs and hence, without the knowledge of the other legal heirs, an ex parte decree has been passed on 3.11.2009. Hence, the application ought to have been dismissed by the trial court.

5. Learned counsel appearing for the caveators submitted that the contention raised by the learned counsel for the petitioner cannot stand for the reason that the proposed defendants 5 to 9 filed an application in I.A.No.15137 of 2013 under section 5 of the Limitation Act to condone the delay of 1396 days to get themselves impleaded in the suit, which was dismissed by the trial court on 30.01.2014.

6. When the application filed by the legal heirs was dismissed by the trial court, I do not find any force in the argument put forth by the learned

counsel for the petitioner. The present application has been filed by the plaintiffs pursuant to the decree passed by the trial court. Moreover, as rightly pointed out by the trial court, section 83 of the Transfer of Property Act clearly envisages that when there is refusal to receive the mortgage amount, the procedure of receiving the same by court is ministerial in nature and detailed enquiry is not necessary for permitting deposit of mortgage amount into court. In the case on hand, it was pointed out by the learned counsel for the respondents that the defendants refused to receive the mortgage amount to the plaintiffs. When the decree passed by the trial court has become final, the trial court has rightly allowed the application.

7. In these circumstances, I do not find any error or irregularity in the order passed by the trial court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

07.04.2015

Index : No
Internet : Yes

Rj

To

The XVII Assistant City Civil Court,
Chennai.

M. DURAISWAMY,J.,

Rj

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