

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2016

CORAM

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE R.MAHADEVAN

O.S.A.No.357 of 2012

1. N.Shayamala
2. N.Venkatesh
3. N.Mahesh
4. N.Durga
5. N.Suresh

... Appellants

Vs.

Suriyan Benefit Fund (Madras) Ltd.
Rep. by its Secretary, J.Radhakrishnan
No.487, Mint Street
Chennai - 600 079.

.. Respondent

PRAYER: Appeal against the order and decretal order dated 20.6.2012 in Tr.A.No.4616 of 2006 in C.S.No.222 of 2004.

For Appellants : Mr.M.Rajaraman

For Respondent : Mr.V.Bhiman
for M/s.Sampathkumar
Associates

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The dispute pertains to claim for recovery of money by respondent against the appellants. The suit filed before the Court is for recovery, which is stated to be secured by equitable mortgage of the suit property.

2. The appellants filed two suits before the City Civil Court, Chennai - one for redemption of mortgage, where it was a simple mortgage in respect of the same property, and the second suit was for declaration that the auction notice is invalid. The appellants succeeded in both the suits and appeals are pending.

3. The learned Single Judge vide impugned order dated 20.6.2012, on the request of the respondent, deemed it appropriate in the aforesaid facts and circumstances of the case to transfer the appeals to this Court, so that at the stage of final hearing of the suit, the appeals be also taken up.

4. The submission of the learned counsel for the appellants is that the issue of simple mortgage cannot be decided in the trial, which has to take place in this Court qua equitable mortgage.

5. In our view, the aforesaid submission appears to be based on an apprehension arising from the impugned order as what the learned Single Judge has directed is that the appeals post transfer would be kept pending, trial in the suit based on equitable mortgage will take place and at the stage of final hearing of the suit, those appeals can also be taken up which relate to the same property. In such a situation, no prejudice can be said to be caused to the appellants and all defences of the appellants are available in the suit. Apart from this, it is always open for the appellants to contend that the suit decision should not impact the decisions which are impugned in appeals.

6. We are also inclined to issue additional directions as under:

- (a) The appellants will ensure that the written statement if filed is brought on record and if not filed is filed within four weeks from today along with documents to be filed by both the parties within the same period of time.
- (b) The suit be listed before the learned Single Judge for settlement of issues on 8.11.2016;
- (c) The suit be listed before the Master for exhibiting of documents on 21.11.2016, whereafter it will be set down for trial.

The appeal accordingly stands disposed of, leaving the parties to bear their own costs. Consequently, M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sasi

TO

The Sub Asst. Registrar
Original Side, High Court, Madras.

+ 1 cc to M/s. Sampathkumar, Advocate SR.56710
+ 1 cc to Mr.M. Rajaraman, Advocate SR.56147

O.S.A.No.357 of 2012

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