

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

A.S.Nos.152 & 153 of 2017

A.S. No. 152 of 2017

Dayanand P.Seshan
Rep. by Power Agent,
P.L.Seshasayanam.
No.280, Kilpauk Garden Road,
Chennai-600 010.

... Appellant/Plaintiff

Vs.

M.Dhanasekaran (Deceased)
1.M.Loganathan
2.Mrs.Aruna
3.D.Periyameena
4.D.Pavithra Devi

... Respondents/Defendants

A.S.No. 153 of 2017

Dayanand P.Seshan
Rep. by Power Agent,
P.L.Seshasayanam.
No.280, Kilpauk Garden Road,
Chennai-600 010.

... Appellant/2nd Defendant

Vs.

M.Dhanasekaran (Deceased)

1.D.Aruna

2.D.Periyameena

3.D.Pavithra Devi

(RR 1 to 3 are rep.by their power Agent Mr.A.Rajaraman)

4.Park Town Benefit Fund Ltd,
Rep. by its Chairman
No.223, Mint Street, 1st floor,
Chennai-600 003.

.. Respondents/Plaintiffs &
1st Defendant

Prayer in A.S.No. 152 of 2017: Appeal suit filed under Under order XLI Rule 1 and Sec.96 of CPC of the Constitution of India to set aside the Judgment and Decree dated 17.06.2016 in O.S.No.12036 of 2010 on the file of III Additional City Civil Court, Chennai.

Prayer in A.S.No. 153 of 2017: Appeal suit filed under Under order XLI Rule 1 and Sec.96 of CPC of the Constitution of India to set aside the Judgment and Decree dated 17.06.2016 in O.S.No.12109 of 2010 on the file of III Additional City Civil Court, Chennai.

For Appellant :: Mr.PL.Narayanan in both
Appeal Suits

For Respondents:: Mr.PV.Balasubramaniam for Mr.T.Mahendran
for R2 to R4 in A.S. No.152/2016
& R1 to R3 in A.S.No.153/2016
Ms.M.Christella for R4

COMMON JUDGMENT

The appellant, having suffered dismissal of the suit in O.S.No.12036 of 2010, filed by him seeking delivery of vacant possession of suit property and for damages and also having suffered another decree passed in O.S.No.12109 of 2010 (filed before this Court in C.S.No.601/2006) decreeing the sale deed dated 21.07.2004, executed by the above Park Town Benefit Fund Ltd., in favour of the appellant as null and void and permanent Injunction, has preferred the above appeals.

2. One M. Dhanasekaran, since deceased, who is the owner of the suit property, had mortgaged the suit property in favour of Park Town Benefit Fund Limited., who is the 4th respondent in A.S.No.153 of 2017, and failed to discharge the obligations under the mortgage deed resulting in selling of the suit property in auction by the 4th respondent in favour of the appellant by sale deed dated 21.07.2004.

3. Aggrieved over that, the borrower Mr.M.Dhanasekaran, filed a suit in C.S.No.601/2006, before this Court seeking a declaration that the sale deed dated 21.07.2004, registered in favour of the appellant by the 4th respondent Park Town Benefit Fund Limited as null and void and for permanent injunction. Subsequently, the said suit was transferred to City Civil Court on pecuniary jurisdiction and renumbered as O.S.No.12109 of 2010. The appellant filed a suit in O.S.No.12036 of 2010, seeking a decree against the borrower M. Dhanasekaran to deliver vacant possession of the suit property

and for damages before the III Additional City Civil Court, Chennai. Both the suits were jointly tried by the City Civil Court, Chennai. Before that, the borrower Mr.M.Dhanasekaran died and thereafter, his legal representatives were brought on record and that is how respondents 1 to 4 in A.S. No. 152 of 2017 were made as parties in the said suit.

4. After contest, O.S.No. 12036 of 2010 filed by the appellant was dismissed and the suit filed, originally, by Mr.M. Dhanasekaran and thereafter, contested by his legal representatives in O.S. No. 12109 of 2010, was decreed. Aggrieved over the dismissal of O.S.No.12036 of 2010 and decreeing of O.S.No.12109 of 2010, as already stated, the present appeals have been preferred by the subsequent purchaser.

1. When the matters came up on earlier occasions, this Court suggested to both the parties to settle the matter and after prolonged discussions with the active co-operation of both counsel, today, when the matters are taken up, a memo of compromise has been filed before this Court.

2.

6. All the parties are present before this Court except the appellant, who is represented by his father Mr.P.L.Seshasayanam. Both the parties would categorically state before this Court that the matter has been settled and a Joint Memorandum of Compromise dated 30.06.2017 signed by the appellant and respondents 2 to 4 in A.S. No.152/2017/respondents 1 to 3 in A.S. No. 153/2017 and countersigned by the respective counsel has been filed.

7. Though one Mr. Loganathan was made as a second defendant in O.S.No.12036 of 2010, filed by the appellant, it is categorically stated by Mrs.D.Aruna, wife of Mr.M.Dhanasekaran/the original defendant (since deceased), that the said Mr.Loganathan has got no connection with the property and he was also set ex parte on 12.04.2016 before the trial court itself.

8. As per the Memorandum of Compromise, respondents 1 to 3 in A.S.No.153 of 2017/respondents 2 to 4 in A.S.No.152 of 2017, as the legal heirs of the mortgagor Mr.M.Dhanasekaran, since deceased, have agreed to pay a sum of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only) within 10 weeks from today i.e., on or before 08.09.2017 and on such payment, the appeals would stand dismissed automatically and the judgment and decree dated 17.06.2016 passed in O.S.No.12036 of 2010 and O.S.No.12109 of 2010, would become final and binding on the parties. The appellant has also agreed and undertaken to deliver the sale deed dated 21.07.2004, registered as Document No.871/2004 and other original documents available with him to Mrs.D.Aruna, the

second respondent in A.S. No. 152 of 2017/1st respondent in A.S. No. 153 of 2017 upon receipt of Rs.1,50,00,000/- .

9. It has been further agreed that on payment of Rs.1,50,00,000/- to the appellant, the Park Town Benefit Fund Limited, the 4th respondent in A.S.No.153 of 2017 would declare that it would have no right or lien or claim against respondents 2 to 4 in A.S. No. 152/2017/respondents 1 to 3 in A.S. No. 153 of 2017, in respect of the mortgage created by the original borrower, Mr.M.Dhanasekaran, since deceased and confirming the same, Park Town Benefit Fund Limited would execute a Document of Receipt before District Registrar, Central Chennai to discharge the mortgage dated 01.08.1994 registered as Document No.712 of 1994 with regard to the suit property. A separate consent memo has also been filed by the 4th respondent, Park Town Benefit Fund Limited, signed by the Chairman of the 4th respondent and countersigned by the counsel in this regard.

10. The District Registrar, Central Chennai, shall make an entry of the common judgment and decree dated 17.06.2016 passed in the Original Suits in O.S. Nos. 12109 of 2010 & 12036 of 2010 by the III Additional City Civil Court, Chennai, by which the sale deed dated 21.07.2004 executed by Park Town Benefit Fund Limited in favour of appellant (Dayanand P. Seshan represented by Power Agent P.L.Seshasayanam) was declared null and void and permanent injunction was granted in favour of respondents 2 to 4 in A.S. No. 152/2017 in the book of register relating to the schedule mentioned property.

11. The Joint Memorandum of Compromise dated 30.06.2017 is hereby recorded and the same shall form part of the decree. The appeal suits are disposed of in terms of the Joint Memorandum of Compromise. Consequently, CMP.Nos.6781&6782/2017 are closed.

12. Call the matter for reporting compliance on 15.09.2017.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The III Additional Judge,
City Civil Court, Chennai.

2.The District Registrar,
Central Chennai.

Copy to

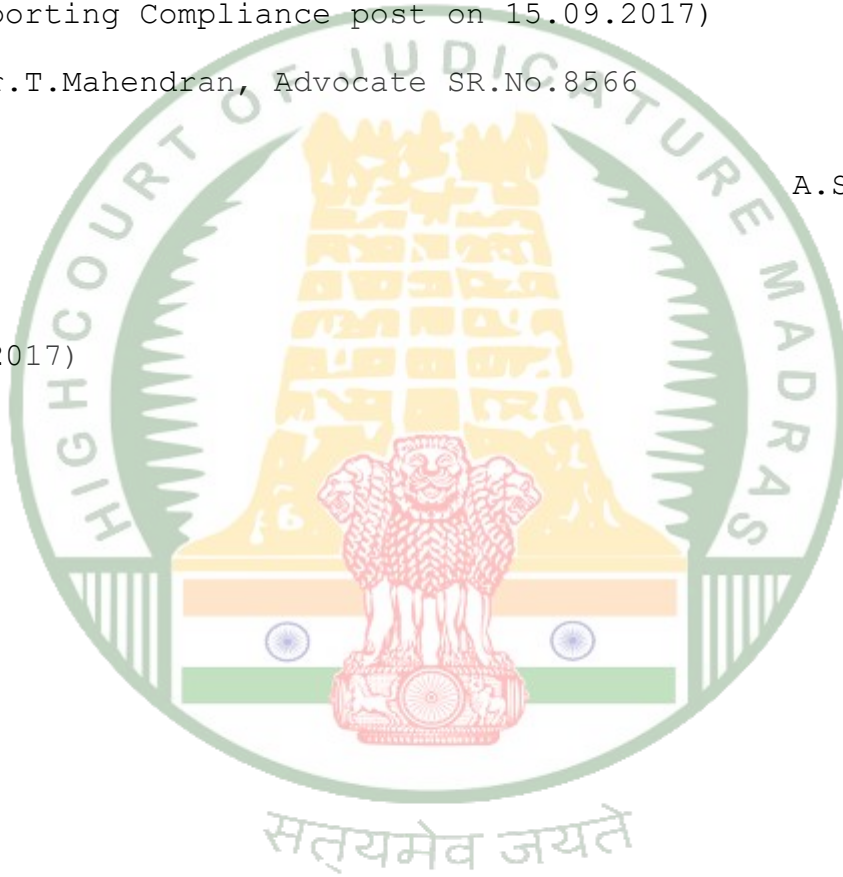
1.The Section Officer,
VR Section, High Court,
Madras.

2.The Section Officer,
Judicial Section, High Court, Madras
(for reporting Compliance post on 15.09.2017)

+2cc to Mr.T.Mahendran, Advocate SR.No.8566

A.S.Nos.152 &
153 of 2017

PA (CO)
GN(20/07/2017)



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