

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1328 of 2017
& C.M.P.No.6195 of 2017

1.Sivakumar
2.P.R.Siva Shanmugam
Petitioners

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Vs.

1.Dhanalakshmi Srinivasan Chit Funds Pvt Ltd.,
Represented by its Managing Director Srinivasen
S/o.Arunachalam Reddiyar
No.274-C, Thuraiyur Road
Perambalaur District.

2.Sathya Narayanan

3.The Sub Registrar
Office of the Sub Registrar
Mannargudi Town
Tiruvarur District.

4.The District Collector
Office of the District Collector Tiruvarur
Tiruvarur.

5.Kudbudeen
Respondents

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.11.2016 passed in I.A.No.230 of 2016 in O.S.No.129 of 2015 on

the file of the learned District Munsif, Mannargudi.

For Petitioner : Mr. Om Sai Ram

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 30.11.2016 passed in I.A.No.230 of 2016 in O.S.No.129 of 2015 on the file of the learned District Munsif, Mannargudi.

2. The plaintiffs are the petitioners and the defendants are the respondents in O.S.No.129 of 2015 on the file of the learned District Munsif, Mannargudi. The suit is one for declaration that the mortgage deed dated 28.11.2013, which was created by the second respondent in favour of the first respondent registered with the third respondent, is null and void. The second defendant has filed the written statement and contested the suit. The petitioners filed I.A.No.230 of 2015 to implead the fifth respondent as fifth defendant in the suit stating that they came to know about the sale by the fifth respondent in favour of the second respondent only when the second respondent mentioned the same in the written statement. In such circumstances, fifth respondent is a necessary

and proper party to the suit.

3. The second and fifth respondents filed separate counter affidavits denying the averments mentioned in the affidavit and submitted that the fifth respondent is not a necessary and proper party to decide the issue in the suit. Because the petitioners sought for declaration that the mortgage deed executed by the second respondent in favour of the first respondent is null and void. The second respondent purchased the property from the fifth respondent by the deed of sale dated 09.04.2008 and executed the mortgage deed in favour of the first respondent. At the time of filing the suit itself, the petitioners knew about the sale deed executed by the fifth respondent in favour of the second respondent and hence, he prayed for dismissal of the application.

4. The learned trial Judge after considering the averments in the affidavit, counter affidavit and the materials placed on record, dismissed the application taking note of the fact that in the copy of the mortgage deed filed by the petitioner along with the plaint itself, the sale by the fifth respondent in favour of the second respondent has been mentioned and the fifth respondent, who is not a party to the mortgage deed, is not a necessary and proper

property to the suit and that the petition has been filed only to drag on the proceedings, against which, the present civil revision petition has been filed by the plaintiffs/petitioners.

5. Learned counsel for the petitioners has submitted the following points for consideration:

(i) The petitioners came to know about the sale by the fifth respondent in favour of the second respondent only from the written statement filed by the second respondent.

(ii) The petitioners seeking for implead the fifth respondent with a view to seek relief that the sale by the fifth respondent in favour of the second respondent is null and void.

(iii) The learned trial Judge has not properly appreciated the provision with regard to implead the third party as defendant in the suit.

6. I have heard the submissions made by the learned counsel for the petitioners and perused the materials available on record.

7. It is seen from the order of the learned trial Judge that the petitioners have filed a copy of the mortgage deed executed by the second respondent in favour of the first respondent and in the said

mortgage deed, it is stated that the second respondent has purchased the property from the fifth respondent on 09.04.2008. From this, it is clear that the petitioners knew about the sale by the fifth respondent at the time of filing the suit itself. Further, the petitioners have not disputed the fact that in the mortgage deed, sale by the fifth respondent in favour of the second respondent has been mentioned. In such circumstances, the contention of the petitioners that the petitioners came to know about the same only from the written statement filed by the second respondent is untenable. The learned trial Judge has rightly dismissed the application by giving cogent and valid reasons. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 30.11.2016.

8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

11.04.2017

Index : Yes

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V.M.VELUMANI, J.

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To

- 1.The Sub Registrar,
Office of the Sub Registrar,
Manargudi Town,
Tiruvarur District.
- 2.The District Collector,
Office of the District Collector Tiruvarur,
Tiruvarur.

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