

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE M.S.RAMESH

A.S.No.462 of 2014
and
M.P.Nos.1 & 2 of 2014
and
C.M.P.No.523 of 2017

S.Saraswathy Appellant / Defendant

Vs.

1.K.Sakkubai
2.K.Satyanarayana Respondents / Plaintiffs

Prayer: Appeal Suit has been filed under Section 96 r/w Order 41 Rule 1 of C.P.C., against the judgment and decree made in O.S.No.12191 of 2010 dated 06.01.2014 on the file of the learned Vth Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.V.P.Rajendran
for Mr.G.Mutharasu

For Respondent : Mr.R.Pavankumar Dhanuka

JUDGMENT

(Judgment of the Court was delivered by R.Subbiah, J.)

The appellant herein is the owner of the suit subject property situated at Plot No.15, Sundaram Nagar, Kolathur, Chennai. Being the owner of the property, she obtained loan of Rs.3 lakhs from one M/s.Thiru-vi-ka Nagar Benefit Fund Ltd., on mortgage of the said property. Subsequently, she defaulted in repaying the loan amount. Hence, the mortgagee brought the property for public auction on 28.05.1999 through the auctioneers M/s.Murray & Co, in which the 1st respondent herein was declared as highest bidder and sale was confirmed in her favour. On the request of the 1st respondent, her husband 2nd respondent was also joined as a joint purchaser of the property.

Subsequently, on 14.07.1999, the mortgagee M/s.Thiru-vi-ka Nagar Benefit Fund Ltd., executed a sale deed in favour of the respondents which was registered as Doc.No.5217 of 1999 at the Office of the Sub-Registrar of Sembium, Chennai.

2.But, the appellant herein filed a suit in O.S.No.4115 of 1999 before the XV Assistant Judge, City Civil Court, Chennai, against the mortgagee and the 1st respondent herein praying for redemption of the mortgage and to set aside the auction sale dated 28.05.1999. However, the said suit was dismissed on 07.11.2003 holding that the auction conducted by the mortgagee was legally valid. Against the dismissal of the suit, the appellant filed an appeal in A.S.No.69 of 2004 before the learned II Additional Judge, City Civil Court, Chennai, but the said appeal was dismissed for default on 25.06.2004.

3.While so, the respondents herein filed a suit in C.S.No.988 of 2009 before this Court for delivery possession of the property and also for damages. Subsequently, the said suit was transferred to the City Civil Court and renumbered as O.S.No.12191 of 2010 on the file of the I Additional District Judge, City Civil Court, Chennai. In the said suit, the appellant herein filed a written statement, making counter claims under Order V Rules 1 & 2 of OS Rules r/w Order 8 Rull of CPC and Order 8 Rule 6-A of C.P.C., to declare that the sale deed dated 14.07.1999 under Doc.No.5217/1999 executed by M/s.Thiru-vi-ka Nagar Benefit Fund Ltd, in favour of the respondents herein as null and void and not binding on the appellant herein and for permanent injunction against the respondents herein.

4.But, the Trial Court has decreed the suit filed by the respondents as against the appellant herein, directing the appellant to hand over the vacant possession of the property to the respondents herein and to pay the damages of Rs.5,82,500/- for the period from 14.07.1999 to March 2009 and Subsequently, at Rs.5,000/- per month till the date of handing over the vacant possession of the property; thus, the counter claim made by the appellant herein was dismissed. Aggrieved over the same, the present appeal in A.S.No.462 of 2014 has been filed by the appellant.

5.Now, the learned counsel appearing on either side represented that the matter has been amicably settled between the parties and they have arrived at a compromise.

6.Heard both sides. This matter was referred to the Mediation and Conciliation Centre for amicable settlement. In the Mediation Centre, the parties have arrived at a compromise. The report of the Mediation Centre dated 26.09.2016 has also been produced before this Court. The terms and conditions in

the compromise entered into between the parties are extracted hereunder

1.The respondent/appellant paid a sum of Rs.55,00,000/- (Rupees fifty five lakhs only) towards full and final settlement to the petitioners/respondents and the petitioners/respondents have also agreed to accept the same.

2.Respondent/Appellant paid the above said amount as mentioned hereunder:-

(i)The respondent/Appellant paid a sum of Rs.5,00,000/- (Rupees five lakhs only) by way of D.D.No.579786, dated 20.10.2015 drawn on Indian Bank, infavour of 1st petitioner/K.Sakkubhai and the 1st petitioner/K.Sakkubai do hereby admit and acknowledge the receipt of the said sum.

(ii)Further the respondent/Appellant paid a sum of Rs.25,00,000/- (Rupees twenty five lakhs only) towards part payment of the abovesaid sum of Rs.50,00,000/- being the balance amount, by way of D.D.No.580956 drawn on Indian Bank, Kolathur, dated 23.02.2016 in favour of 1st petitioner/K.Sakkubhai, the receipt of the said sum of Rs.25,00,000/- (Rupees twenty five lakhs only) by the said 1st petitioner/K.Sakkubai do hereby admit and acknowledge the same.

(iii)The balance amount of Rs.25,00,000/- (Rupees twenty five lakhs only) paid in the following manner:-

(a)D.D. bearing No.641731, dated 22.08.2016, for a sum of Rs.8,00,000/- (Rupees eight lakhs only) drawn on State Bank of India, Park Town, Chennai-3, infavour of 2nd petitioner/K.Satyanarayanan.

(b)D.D. bearing No.060216, dated 09.09.2016, for a sum of Rs.11,00,000/- (Rupees eleven lakhs only) drawn on Indian Bank, Kolathur, Chennai-600 099 in favour of 2nd petitioner/K.Satyanarayanan.

(c)D.D. bearing No.060317, dated 22.09.2016 for a sum of Rs.6,00,000/- (Rupees six lakhs only) drawn on Indian Bank, Kolathur, Chennai-600 099 infavour of 2nd petitioner/K.Satyanarayanan.

As the Respondent/Appellant has paid the entire agreed amount of Rs.55,00,000/- (Rupees fifty five lakhs only) towards full and final settlement to the Petitioners/Respondents, both parties have mutually agreed to consent to pass a Compromise Decree.

In view of the above said payment, it is humbly prayed to pass a Compromise Decree in the following manner:-

(a) Declaring that the Auction Sale held on 28.05.1999 in respect of the property, house and ground bearing Plot No.15, Sundaram Nagar, Kolathur, Chennai-600 099 Registration District: Chennai, Registration Sub-District SRO Sembium, Chennai Corporation Division 62, Survey Old Paimash No.144 and 147 Survey No.66/3, Village, Kolathur, bounded on the North by: lands belonging to Pattabiraman and P.K.Padmanaban; South by 24 Feet Road, East by land in Survey No.65/1 and West by 24 Feet Road, measuring an extent of 1420 sq.ft, as null and void.

(b) Setting aside the sale and Cancel the sale Deed executed by the Thiru-ViKa Benefit Fund Ltd in favour of Sakkubai and K.Satyanarayanan vide Document No.5217/1999 dated 14.07.1999 pertaining to the property of house and ground bearing Plot No.15, Sundaram Nagar, Kolathur, Chennai-600 099 Registration District: Chennai, Registration Sub-District SRO Sembium, Chennai Corporation Division 62, Survey Old Paimash No.144 and 147 Survey No.66/3, Village, Kolathur, bounded on the North by: lands belonging to Pattabiraman and P.K.Padmanaban; South by 24 Feet Road, East by land in Survey No.65/1 and West by 24 Feet Road, measuring an extent of 1420 sq.ft.

(c) Declaring that the Mortgage Deed bearing Document No.3246/1994 dated 22.06.1994 executed by the respondent/Appellant in respect of the property, house and ground bearing Plot No.15, Sundram Nagar, Kolathur, Chennai-600 099 Registration District: Chennai, Registration Sub-District SRO Sembium, Chennai Corporation Division 62, Survey Old Paimash No.144 and 147 Survey No.66/3, Village, Kolathur, bounded on the North by: lands belonging to Pattabiraman and P.K.Padmanaban; South by 24 Feet Road, East by land in Survey No.65/1 and West by 24 Feet Road, measuring an extent of 1420 sq.ft stands cancelled.

(d) The petitioners/respondents returned original sale deeds to the respondent/appellant bearing Document No.4575/1982 and 5217 of 1999 on the file of S.R.O. Sembium, Chennai and it is acknowledged.

(e) The respondent/Appellant agrees for the petitioners/Respondents to withdraw the cost of Rs.27,600/- deposited in O.S.No.12191/2010 by the respondent/Appellant on the file of Vth Additional City Civil Court.

(f) Both parties agree that the CRP.No.886/2008 and CRP.No.1872/2014 filed by respondent/Appellant may

beclosed as per the Mediation Agreement entered in A.S.No.462/2014 before the Mediation Centre.

(g)The Petitioners/Respondents agree to withdraw the E.P.No.1478 of 2014 and E.P.No.1826/2014 pending on the file X Assistant Judge City Civil Court, Chennai."

The compromise entered into between the parties on 26.09.2016 is recorded.

7.In view of the above compromise entered into between the parties, the appeal is disposed of, in terms of the compromise, which shall form part of the order. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

ssv

To,

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

+1 CC Mr.R.Pawan kumar Dhanuka , Advocate SR.No.17151

A.S.No.462 of 2014
and

M.P.Nos.1 & 2 of 2014
and

C.M.P.No.523 of 2017

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rmp(11/04/17)

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