

(ORDINARY ORIGINAL CIVIL JURISDICTION)

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 03RD DAY OF MARCH 2017

THE HON'BLE MR.JUSTICE P.VELMURUGAN

A.NO.5398 of 2016

in

Pro.No.5 of 2012

in

C.S. No.1102 of 2007

Dr.V.Sudarsanan
S/o.Late Sri S.Vitoba,
No.26/16-C, Sripuram Ist Street,
Royapettah,
Chennai-600 014. ..Plaintiff

VS

1.Mrs.K.Ramamirtham
W/o.Late.Dr.V.Kathaperumal

2.Mr.K.Kumanan
S/o.Late Dr.V.Kathaperumal

3.Mrs.N.Malathi
D/o.Late Dr.V.Kathaperumal

4.Mr.K.Thayalan
S/o.Late Dr.V.Kathaperumal

5 Mr.K.Mohanalingam
S/o.Late Dr.V.Kathaperumal

Rep. by Power of Attorney
Mrs.K.Ramamirtham

1 to 5 are residing at
No.2027, "H" Block, Anna Nagar (West)
Chennai-600 040. ..Defendants

Pro.No.5 of 2012:

Dr.V.Sudarsanan
S/o.Late Sri S.Vitoba,
No.26/16-C, Sripuram Ist Street,

Royapettah,
Chennai-600 014.

..Decree Holder/Plaintiff

VS

1.Mrs.K.Ramamirtham
W/o.Late.Dr.V.Kathaperumal

2.Mr.K.Kumanan
S/o.Late Dr.V.Kathaperumal

3.Mrs.N.Malathi
D/o.Late Dr.V.Kathaperumal

4.Mr.K.Thayalan
S/o.Late Dr.V.Kathaperumal

5 Mr.K.Mohanalingam
S/o.Late Dr.V.Kathaperumal

Rep. by Power of Attorney
Mrs.K.Ramamirtham

1 to 5 are residing at
No.2027, "H" Block, Anna Nagar (West)
Chennai-600 040. ..Judgment Debtors/Defendants

*6.Mr.Umedraj Jain
S/O.Shohanlal
No.14, H-Block, 1922, 12th Main Road
Anna Nagar,
Chennai-40

*Presently residing at
No.2027, H-Block, 4th street
12th Main Road,
Anna Nagar, Chennai-40. .6th respondent/third party

*The 6th respondent impleaded as per order dated 20.07.2015
in A.No.4714 of 2015.

A.No.5398 of 2016:-

1.Dr.V.Sudarsanan
S/o.Late Sri S.Vitoba,
No.26/16-C, Sripuram Ist Street,
Royapettah,
Chennai-600 014.

Presently residing at

No.143, Shivmani Geriatric Home
Taleti, Abu Road,
Sirohi District
Rajasthan State-307 510

..Applicant

VS

1.Mrs.K.Ramamirtham
W/o.Late.Dr.V.Kathaperumal
2.Mr.K.Kumanan
S/o.Late Dr.V.Kathaperumal

3.Mrs.N.Malathi
D/o.Late Dr.V.Kathaperumal

4.Mr.K.Thayalan
S/o.Late Dr.V.Kathaperumal

5. Mr.K.Mohanalingam
S/o.Late Dr.V.Kathaperumal

Represented by his Power of Attorney
Agent Mrs.K.Ramamirtham
No.2027, "H" Block, Anna Nagar (West)
Chennai-600 040.

Respondents 1 to 5 presently residing at
No.AP-422, First Block, Twentieth Street
Thiruvalluvar Kudiyruppu
Anna Nagar, Chennai-40. ..1st to 5th Respondents

6.Mr.Umedraj Jain
S/O.Shohanlal
No.14, H-Block, 1922, 12th Main Road
Anna Nagar,
Chennai-40

Presently residing at
No.2027, H-Block, 4th street
12th Main Road,
Anna Nagar, Chennai-40. ..6th respondent/third party

Application praying that this Hon'ble Court be pleased

to set aside the Orders of the Learned Master dated

12.08.2016 in Proclamation No.5 of 2012 in C.S.No.1102 of 2007.

This Application coming on this day before this court for hearing the court made the following order:

This application is filed by the applicant/plaintiff to set aside the order of the learned Master dated 12.08.2016 made in Proclamation No.5 of 2012 in CS.No.1102 of 2007.

2. On perusal of the records, this Court by an order dated 05.10.2010, passed preliminary decree wherein paragraphs 4 to 6 it is held as follows :-

4. That the defendant shall be at liberty on or before the said 5th day of January 2011, to pay into Court the said sum of Rs.95,83,673.18 and the said taxed costs of the plaintiff of this suit as taxed by the Taxing Office and noted in the margin hereof as aforesaid.

5. That, on payment as aforesaid, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property set out in the schedule hereto and all such documents shall be delivered over to the defendant or such person

as he appoints, and the plaintiff shall if so required reconvey or retransfer the said property free from the said mortgage, and clear of and from all encumbrances created by the plaintiff or any person, claiming under him or any person under whom he claims, and thereupon the plaintiff shall be at liberty to apply for payment out to this Court of the said memo.

6. That, in default of payment in as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property morefully set out in the schedule hereunder and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold and the sale proceeds shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the said sus due to the plaintiff as aforesaid together with subsequent interest at the rate of 9%p.a. and such further costs as may be allowed to the plaintiff by the Court, and the balance, if

any, shall be paid to the defendant or other person entitled to receive the same.

3. Subsequently, Application in A.No.3208 of 2011 was filed for passing final decree, this Court by an order dated 29.08.2011 passed final decree wherein the mortgaged properties mentioned in the preliminary decree and more particularly described in the schedule hereunder be sold, the sale appropriated towards the decree amount and the interest of 9%p.a. thereon less the payments already made on three occasion to the tune of Rs.15,00,000/- along with its proportionate interest for such payment and to bring into court two copies of a proclamation of sale, the affidavits and certificates prescribed by Rule 3 Order XXXVIII of the OS Rules.

4. It is averred in the counter affidavit filed by the 6th respondent that before passing the decree, the 6th respondent paid a sum of Rs.15,00,000/- in favour of the plaintiff on 09.08.2010. The 6th respondent has paid the principal amount of Rs.58,50,000/- and interest of Rs.56,91,573/-, totally a sum of Rs.1,15,41,573/- has been paid. As directed by this Court, the 6th defendant has also paid the cost of Rs.1,98,372/- to the plaintiff and the Master agreed with the calculation given by the 6th

respondent closed the proclamation proceedings. This Court passed the decree on 05.10.2010 and stated that till 05.01.2011, the principal as well as interest put together a sum of Rs.95,83,673.18 within five instalments basis the decree was passed. Thereafter, the plaintiff filed final decree application in A.No.3208 of 2011 and the final decree has been passed. On the basis of the final decree, the plaintiff brought the property into public auction. At that time, settlement talk was going on between the parties as well as through counsel, hence, this defendant filed the entire amount to the plaintiff.

5. Heard the rival submissions made on both sides and perused the records.

6. Admittedly decree has been passed for a sum of Rs.95,83,673.18 with subsequent interest at the rate of 9% p.a. and such further costs, but either of the party has not filed any appeal against the above said decree. During the course of arguments, both the counsel representing the parties admitted that a sum of Rs.15,00,000/- has been paid by the 6th defendant to the plaintiff. This Court, suggested the decree holder to deduct the said amount and file a fresh calculation memo to that effect. Accordingly, the applicant/decreed holder after deducting a sum of Rs.15,00,000/- paid by the 6th respondent on 10.08.2010 and

29.08.2010, finally arrived at a net outstanding amount as on 31.01.2017 at Rs.19,54,946/-.

7. The 6th respondent filed objection to the calculation memo filed by the applicant/deGREE holder. It is settled proposition that only prior to suit, the interest has to be calculated on the principal amount of Rs.58,50,000/-, but after passing the decree, the decree amount of Rs.95,83,673.18 and deducted Rs.15,00,000/- and interest for that amount which has been paid prior to the decree. Therefore, the interest has to be calculated on the decree amount of Rs.81,00,973/-.

8. The applicant calculated that the decree amount as on 05.01.2011 is Rs.81,00,973/-, the interest has to be calculated for the decree amount at Rs.81,00,973/- and as and when any payment is made the same has to be deducted, the decree holder has filed the calculation memo as per the directions of this Court and in accordance with rules.

9. On careful consideration of the calculation memo filed by both the parties, it is found that the calculation memo filed by the 6th respondent is not legally acceptable and the calculation memo filed by the decree holder on 01.02.2017 is legally acceptable. This Court finds, there is no error in the calculation memo dated 01.02.2017, filed by the decree holder. Therefore, the balance amount due to

the decree holder is Rs.19,54,946/- and the order passed by the Master on 12.08.2016 is liable to be set aside.

10. In fine, this application is allowed, by setting aside the order dated 12.08.2016 passed by the Master in Pro.No.5 of 2012, with direction issued to the 6th respondent to pay the sum of Rs.19,54,946/- within thirty days to the decree holder i.e., on or before 03.04.2017, failing which the Master is directed to issue Proclamation for the said amount and to initiate action against the mortgaged property for redeeming the amount.

sd/.P.V.M.J
03.03.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/08.03.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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