

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.63 of 2015 & 4083 of 2012
and M.P.Nos.1 of 2015 & 1 of 2012

A.Prabhakaran

.. Petitioner
in both CRPs.

Vs.

1.K.Kumarasamy

2.K.Saravanan

3.Balajee & Company

Govt. Auctioneers

"Hussain Plaza"

No.160, Thambu Chetty Street,

2nd Floor, Opp. High Court,

Chennai.

4.G.Sampath

.. Respondents
in both CRPs.

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and decretal order dated 30.10.2014 and 25.06.2012 made in I.A.Nos.16013 of 2013 and 18086 of 2011 respectively in O.S.No.6472 of 2010 on the file of the learned XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Balasubramanian
in CRP.(PD).No.63 of 2015

: Mr.K.M.Balaji
in CRP(PD)No.4083 of 2012

For R2 :Mr.B.Thanikachalam
in C.R.P.(PD)No.63 of 2012

For R3 : No Appearance
in C.R.P.(PD)No.63 of 2015

R3 : Given up
in C.R.P.(PD)No.4083 of 2012

For R4 : Mr.S.Vijay
in C.R.P.(PD)No.63 of 2015

For R1, R2 & 4 : Mr.S.Vijay
in C.R.P.(PD)No.4083 of 2012

COMMON ORDER

These two Civil Revision Petitions are filed against the fair and decretal order dated 30.10.2014 and 25.06.2012 made in I.A.Nos.16013 of 2013 and 18086 of 2011 respectively in O.S.No.6472 of 2010 on the file of the learned XV Assistant Judge, City Civil Court, Chennai.

2. The issues involved in both the Civil Revision Petitions are inter linked and therefore, they are disposed of by this common order.

3. The petitioner in both the Civil Revision Petitions is the plaintiff, respondents 1 to 3 are the defendants in O.S.No.6472 of 2010 on the file of the learned XV Assistant Judge, City Civil Court, Chennai. The petitioner filed the said suit for accounts and redemption of mortgage. The original suit was filed on 09.07.2010. The respondents 1 and 2 brought the mortgaged suit property for sale by public sale through third respondent. The public auction was held on 24.08.2010 and fourth respondent was the successful bidder. The respondents 1 and 2 executed the sale deed in favour of the fourth respondent. The petitioner filed I.A.No.18086 of 2011 under Order I Rule 10(2) of C.P.C., to implead the proposed fourth respondent as the fourth defendant in the suit.

4. According to the petitioner, the respondents 1 to 3 conducted public auction, after suit was filed, the said auction sale is hit by lis-pendens. In the circumstances, the petitioner is necessary and proper party to the suit as fourth defendant to avoid multiplicity of proceedings.

5. The respondents 1, 2 and 4 have filed separate counter affidavits and opposed the said application. According to the

respondents 1, 2 and 4, the petitioner borrowed a sum of Rs.2,00,000/- agreeing to repay the said amount with interest at 24% per annum and executed a registered mortgage in favour of respondents 1 and 2. The respondents 1 and 2 issued notice to the petitioner on 20.02.2006. The petitioner filed O.S.No.2606 of 2007 for injunction. The said suit was partly decreed directing the petitioner to pay the amounts and restraining the respondents 1 to 3 from bringing the suit property to auction only in respect of the loan amount of Rs.75,000/- and the suit was dismissed in respect of registered mortgage with regard to other reliefs. The respondents 1 and 2 issued notice to the petitioner to pay the amounts due and he did not pay the amounts to them. The respondents 1 and 2 brought the property for sale by public auction through third respondent. The petitioner filed O.S.No.6472 of 2010 for injunction and no interim order was granted. On the date of public auction, family members of the petitioner tried to prevent conducting public auction. In spite of the same, auction was conducted and fourth respondent was the highest bidder and property was sold to him on 24.08.2010. In view of the sale, the petitioner lost the right of redemption.

6. The fourth respondent filed counter affidavit and took the same stand as that of the respondents 1 and 2. He further submitted that the sale was confirmed and sale deed was executed in his favour by the respondents 1 and 2. Hence, he prayed for dismissal of the application.

7. The learned Judge considering all the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application.

8. Against the said order of dismissal dated 25.06.2012 made in I.A.No.18086 of 2011, C.R.P.(PD).No.4083 of 2012 is filed by the petitioner.

9. Subsequently, the petitioner filed I.A.No.16013 of 2013 under Order VI Rule 16 and 17 of C.P.C., for amendment to include the relief of declaration to declare the public auction relating to the suit property conducted on 24.08.2010 by third respondent is illegal and in violation of the provision of the Transfer of Property Act and to declare the sale deed dated 10.12.2010 registered as Document No.4365 of 2010 on the file of the SRO., Anna Nagar, Chennai,

executed by the respondents 1 and 2 in favour of the fourth respondent is illegal, void and not binding on the petitioner. The property is worth more than Rs.75,00,000/- and it was sold for the meagre amount of Rs.11,05,000/-. The sale was conducted in violation of the provisions of the Transfer of Property Act and prayed for amendment to include the above relief.

10. The respondents 1 and 2 filed counter affidavit in the said application and submitted that if amendment sought for by the petitioner is allowed, it will change the entire character of the suit and new cause of action is introduced by the petitioner. The present suit filed by the petitioner was dismissed for default on 01.03.2013 and subsequently restored. The present application is liable to be dismissed on the ground of delay.

11. The learned Judge, considering all the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application on the ground that if the petitioner succeeds in getting decree of accounts and redemption of mortgage, the sale in favour of the fourth respondent would become automatically null and void.

12. Against the said order of dismissal dated 30.10.2014 made in I.A.No.16013 of 2013, C.R.P.(PD)No.63 of 2015 is filed by the petitioner/plaintiff.

13. From the materials available on record, it is seen that the petitioner borrowed money from the respondents 1 and 2 and created a mortgage in favour of the respondents 1 and 2. The petitioner did not repay the amounts borrowed. The respondents 1 and 2 filed suit for recovery of money and also for decree in respect of registered mortgage. The suit was decreed in respect of recovery of money and dismissed the application in respect of registered mortgage. The respondents 1 and 2 called upon the petitioner to pay the amounts as per the decree. On the failure of the petitioner to pay the amounts, the respondents 1 and 2 invoked the right of private sale as per the registered mortgage through third respondent. The third respondent conducted public auction. The petitioner filed suit, before auction was conducted and the said suit was dismissed. The petitioner then filed present suit for accounts and redemption of mortgage.

14. Whiles, the public auction was conducted by third respondent and fourth respondent was the highest bidder and he

purchased the suit property in the public auction. The petitioner filed I.A.No.16013 of 2013 for amendment to include the relief of declaration to declare the public auction relating to the suit property conducted on 24.08.2010 by third respondent is illegal and in violation of the provision of the Transfer of Property Act and to declare the sale deed dated 10.12.2010 executed by the respondents 1 and 2 in favour of the fourth respondent is illegal, void and not binding on the petitioner. The said I.A. was also dismissed by order dated 30.10.2014.

15. Against the dismissal of both the orders dated 30.10.2014 and 25.06.2012 made in I.A.Nos.16013 of 2013 and 18086 of 2011, the present two Civil Revision Petitions are filed by the petitioner/plaintiff.

16. Heard the learned counsel for the petitioner as well as respondents 1 to 4 and perused the materials available on record.

17. The issue in the Civil Revision Petition is whether the petitioner is entitled to decree of accounts and redemption of mortgage or whether the petitioner lost the right of redemption in

view of the private sale by the respondents 1 and 2. In addition to this issue, the Court has to decide whether the public auction conducted by third respondent and purchased by fourth respondent are hit by principles of lis-pendens. Once the petitioner succeeds and gets decree for accounts and redemption of mortgage, the public auction conducted by third respondent and purchased by fourth respondent becomes void and will be set aside. The respondents 1, 2 and 4 have taken a stand that the petitioner having failed to pay the amounts as per the decree has lost his right of redemption. In the circumstances, the learned Judge has considered all the above facts in proper perspective and dismissed both the applications. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 30.10.2014 and 25.06.2012 respectively.

18. In the result, these Civil Revision Petitions are dismissed.

No costs. Consequently, connected miscellaneous petitions are closed.

13.11.2017

Index : Yes/No
dm/kj

V.M.VELUMANI, J.

dm/kj

To

The XV Assistant Judge,
City Civil Court, Chennai.



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