

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.Nos.352 and 471 of 2018

S.A.No.352 of 2018

B.Mohanraj

.. Appellant /Plaintiff

Vs.

P.Parasmal Jain (Deceased)

1.The Muthialpet Benefit Fund Ltd.,
Rep. by its Chief General Manager
Having their Office at
No.199, Thambuchetty Street,
Chennai- 600 001.

2. Sri Raj & Co.,
Government Auctioneers
No.7, Sunkurama Chetty Street,
Chennai- 600 001.

3. Smt. Badmay

4. P.Ashok

5. P.Suresh

6. P.Nowrathan

.. Respondents /Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 19.04.2017 made in A.S.No.188 of 2011 on the file of the IV Additional City Civil Court, Chennai, confirming the judgment and decree dated 22.01.2010 made in O.S.No.660 of 2005 on the file of the IV Assistant City Civil Court, Chennai.
S.A.No.471 of 2018

B.Mohanraj

.. Appellant /Plaintiff

Vs.

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PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 19.04.2017 made in A.S.No.187 of 2011 on the file of the IV Additional City Civil Court, Chennai confirming the judgment and decree dated 22.01.2010 made in O.S.No.5212 of 2006 on the file of the IV Assistant City Civil Court, Chennai.

For Appellant : Mr.S.V.Jayaraman
Senior Counsel
for Mr.Sivagnanasambandan

COMMON JUDGMENT

Second Appeals are filed against the judgment and decree dated 19.04.2017 made in A.S.Nos.188 and 187 of 2011 on the file of the IV Additional City Civil Court, Chennai confirming the judgment and decree dated 22.01.2010 made in O.S.Nos.660 of 2005 and 5212 of 2006 on the file of the IV Assistant City Civil Court, Chennai.

2. These appeals are filed by the appellant, who is the third defendant in O.S. No. 660 of 2005 and Plaintiff in O.S. No. 5212 of 2006.

3. In both the appeals, the parties are one and the same and therefore, they are disposed of by this common Judgment. For the sake of convenience, the parties are referred to as per their ranks in S.A.No.352 of 2018.

4. The suit in O.S. No. No.660 of 2005 was filed by the deceased P.Parasmal Jain against respondents 1,2 and appellant for declaration to declare the public auction held on 08.11.2004 as null and void and for consequential declaration to declare the alleged sale deed dated 22.11.2004 executed by the respondents 1 and 2 herein in favour of the appellant herein as null and void and for costs.

5. The averments in O.S. No. 660 of 2005 are as follows:-

The deceased Parasmal Jain filed a suit in O.S.No.3018/04, before the IV Assistant City Civil Court, Chennai for permanent injunction along with I.A.No.10591 of 2004 for interim injunction. Pending suit, he had obtained an interim injunction restraining the defendants therein who are respondents 1 and 2 herein from bringing the property bearing Door No.4, Marimuthu

Lane, Chennai for public auction. In the meanwhile, the respondents 1 and 2 attempted to sell the suit property through a public auction for non payment of the loan amount, had set up the appellant as bidder and sold the suit property in the auction held on 8.11.2004 in favour of appellant, which is against the order of injunction granted in O.S. No. 3018 of 2004. It is contended that the respondents 1 and 2 sold the property worth about Rs.40,00,000/-for a very meagre amount of Rs.10,00,000/- to the appellant. The respondents 1 and 2 have not followed the procedure and did not issue notice to the deceased Parasmal Jain. Hence the suit.

(b) The first respondent filed the written statement, denying the allegations contained in the Plaint. The first respondent contended that public auction was conducted as per the procedure following mandatory provisions laid down under Section 69 of Transfer of Property Act. It was stated that the deceased Parasmal Jain borrowed a sum of Rs.65,000/- by way of executing three different registered mortgage deeds in favour of the first respondent on various dates. The deceased Parasmal Jain defaulted in payment of monthly instalments even after issuing several letters and reminders, hence, the property was brought for sale on many dates. After following the procedure, the property was brought for auction on 26.08.2004. Subsequently, auction notices were sent to the deceased Parasmal Jain fixing the auction on 08.11.2004. The plaintiff was made aware of the auction date 08.11.2004 in advance and due paper advertisement and handbills were published and printed and circulated to the general public and the auction was conducted. Thiru. Mohanraj, the appellant, was the successful bidder in the said auction. After auction, notice dated 13.11.2004 was sent to the deceased Parasmal Jain informing about the auction. He was called to execute the sale deed by giving advance notice dated 13.11.2004 and deceased Parasmal Jain has not replied to the said notice. Therefore, a registered sale deed was executed on 22.11.2004 in favour of appellant who is the successful bidder. It is further stated that as on date of sale namely, 08.11.2004 there was no order of ad-interim injunction preventing the 1st respondent from bringing the property for sale. After sale on 08.11.2004, the deceased Parasmal Jain manipulated the Court records and produced certified copy showing that interim order was extended and filed suit on false allegations. It is further stated that the property was sold for Rs.10,00,000/- which price was quoted by the highest bidder in the auction held on 8.11.2004. Hence the property which is being in occupation by the tenant at the time of sale and which was sold without vacant possession has fetched Rs.10,00,000/- which is the market price and prayed for dismissal of the suit.

(c)The appellant filed the written statement denying the

averments made in the plaint. He stated that the public auction was conducted on 08.11.2004 and it is valid in law and the sale deed executed by the respondents 1 and 2 in favour of the appellant is valid. The appellant purchased the property by Sale dated 22.11.2004. The injunction was vacated on 25.01.2005 and I.A. was dismissed with cost. There is no collusion. Rs.10,00,000/- is the correct market price. Auction was conducted after due notice to first respondent. There is no cause of action for this suit and the valuation of the suit is not correct. Court fee paid is also deficit one. Hence, the suit is liable to be dismissed.

6. The Appellant filed O.S.No.5212 of 2006 against the deceased Parasmal Jain and first respondent for delivery of vacant possession of the suit 'B' Schedule property and for past and future mesne profits and for costs.

7. The averments in O.S. No. 5212 of 2006 are as follows:-

(a) According to the appellant, he is the absolute owner of the land comprised in R.S.No.626/7 CC No.4808 measuring 1440 sq.ft. along with the superstructure bearing Door No.4, Marimuthu Lane, George Town, Chennai the suit property and purchased the same vide Sale Deed dated 22.11.2004 from the first respondent. The suit 'A' Schedule property originally belonged to the deceased Parasmal Jain. Subsequently, the deceased Parasmal Jain borrowed a sum of Rs.65,000/- from the first respondent and executed three mortgage deeds dated 15.09.1979, 31.03.1980 and 26.07.1980 creating equitable mortgage on the suit 'A' Schedule property. The deceased Parasmal Jain committed default in making payments of loan amount and consequently, the 1st respondent brought the suit 'A' Schedule property for sale under Section 69 of the Transfer of Property Act by public Auction. The auction was conducted by second respondent on 08.11.2004. As the highest bidder, the said property was sold to the appellant for a sum of Rs.10,00,000/-. The first respondent had executed a Sale Deed dated 22.11.2004 in favour of the appellant. Thus the appellant became the absolute owner of the 'A' Schedule Property. After purchasing the property, name transfer was effected in the revenue records in favour of the Appellant in these appeals in respect of 'A' Schedule property. The Appellant has filed RCOP.Nos.1359 of 2005 to 1369 of 2005 for eviction against 11 tenants who are residing in the 'A' Schedule Property. The deceased Parasmal Jain has no right or title over the suit A Schedule property from 22.11.2004 onwards. The deceased Parasmal Jain is still illegally occupying a portion on the ground floor. The entire portion of fifth floor of 'A' Schedule property is morefully described in 'B' Schedule property. The deceased Parasmal Jain continues to be in wrongful possession of

the above said portion. If the portions are let out, the appellant can easily get the rental value of Rs.5000/-. As such the appellant is entitled for damages to the tune of Rs.93,123/- for 18 months and 19 days for the portions in occupation of deceased Parasmal Jain. However, the deceased Parasmal Jain neither vacated the premises nor paid compensation to the appellant. Hence, the suit.

(b) The deceased Parasmal Jain filed the written statement, denying all the allegations made in the plaint and made similar contentions as made in the Plaint in O.S.No.660 of 2005. The deceased Parasmal Jain further contended that the appellant was the only bidder in auction and nobody was present at the time of auction. The deceased Parasmal Jain does not know that the RCOP cases were filed against the tenants. The deceased Parasmal Jain was forced to file another suit in O.S.No.660 of 2005 for declaration to declare the auction held on 08.11.2004 is null and void and for consequential declaration to declare that the sale deed dated 22.11.2004 executed by first respondent in favour of the appellant is null and void and the appellant is the 3rd defendant in O.S.No.660/2005 which is pending on the file of this Court. The deceased Parasmal Jain is in possession of the suit property. The cause of action is misconceived and created for the purpose of grabbing the deceased Parasmal Jain's property. The Court fee paid is very less. The value of the suit is suppressed and the appellant is not entitled for any relief and prayed for dismissal of the suit.

(c) The first respondent filed written statement and made similar averments made in written statement filed in O.S.No.660 of 2005.

8. Based on the above pleadings, the learned Trial Judge framed the necessary separate issues in both the suits.

9. In O.S.No.660 of 2005, before the learned Trial Judge, the deceased Parasmal Jain examined himself as P.W.1 and marked four documents as Exs.A1 to A4. The appellant examined himself as D.W.3 and two other witnesses as D.W.1 and D.W.2 and marked 11 documents as Exs.B1 to B11.

10. In O.S.No.5212 of 2006, before the learned Trial Judge, appellant examined himself as P.W.1 and marked 12 documents as Exs.A1 to A12. The deceased Parasmal Jain was examined as D.W.1 and no document was marked.

11. The learned IV Assistant Judge, City Civil Court, by separate Judgments both dated 22.01.2010, dismissed the suit in O.S.No.5212 of 2006 filed by the appellant and decreed the suit filed by the deceased Parasmal Jain in O.S.No.660 of 2005, after

considering the pleadings and oral and documentary evidence.

12. The appellant filed A.S.No.187 of 2011 against the dismissal of the suit filed by him in O.S.No.5212 of 2006 and A.S.No.188 of 2011 against the judgment and decree passed in O.S.No.660 of 2005 filed by deceased Parasmal Jain. The learned I Appellate Judge took both the appeals jointly for hearing and framed necessary points for consideration. Considering the materials on record the Judgments of trial Court, arguments of counsel for parties and Judgments of this Court dismissed both the Appeals filed by the appellant by common Judgement dated 19.04.2017.

13. Against the said judgments and decrees both dated 19.04.2017, made in A.S.Nos.187 and 188 of 2011, the appellant has come out with the present two Second Appeals.

14. The appellant has not raised any substantial questions of law in both S.A.No.352 of 2018 and in S.A.No.471 of 2018.

15. The learned Senior Counsel for the appellant contended that the Courts below erred in holding that the second respondent failed to prove that first respondent initiated auction proceedings under Section 69 of Transfer of Property Act within the limitation period as contemplated under Article 62 of the Limitation Act. The learned senior counsel referred to averments in the plaint as well as the stand taken by first respondent in the written statement and the date of auction and contended that public auction conducted by the first respondent was within the time prescribed by limitation Act. The learned Senior Counsel also relied upon Section 69 (3) of the Transfer of Property Act and contended that the title of the purchaser should not be impeached, due to the lack of due notice or power was improperly or irregularly exercised and there was no case arisen to set aside the sale by public auction. The only remedy available to the mortgagor is only for damages against mortgagor or against the person who illegally conducted auction.

16. Heard the learned senior counsel for the appellant and perused the materials on record.

17. From the materials available on record, it is seen that the deceased Parasmal Jain has borrowed a sum of Rs.65,000/- from the first respondent and executed three registered mortgage deeds. The first respondent has brought the property mortgaged for sale during 2004 and finally property was sold on 08.11.2004. The deceased Parasmal Jain filed O.S.No.660 of 2005 for declaration declaring the auction dated 08.11.2004 as null and void and the Sale Deed executed by the first respondent in favour of the appellant is null and void.

18. In the said suit, the first respondent filed Statement of Accounts, but failed to prove that deceased Parasmal Jain acknowledged his liability to pay or he has made part payment. In view of the same, the First Appellate Court has held that the claim of the first respondent is barred by limitation and Auction sale is not within the period of limitation. Apart from this finding, Courts below also held that the first respondent has not followed the procedure as contemplated under Section 69 of Transfer of Property Act. It was further held that the appellant and the first respondent colluded together and committed fraud. The First Appellate Court considering the materials on record has held that respondents 2 and 3 in collusion with the appellant manipulated the auction records as though number of persons participated in the auction and committed fraud. Further in the auction notice, property was not correctly described. The appellant trying to take possession of the portion of property not mentioned in auction notice. In view of the above facts the contention of the learned senior counsel that remedy available to the first respondent is only damages and auction sale cannot be set aside and title of auction purchaser, the appellant herein cannot be impeached is without merits. In the facts of the case the appellant is not entitled to invoke Section 69 (3) of Transfer of Property Act. The learned First Appellate Judge has properly appreciated the facts and held that claim of second respondent is barred by limitation. The reason given by the learned First Appellate is valid and there is no reason to interfere with the same. All these findings are based on facts and the evidence let in by the parties.

19. From a reading of the judgments of the Trial Court as well as the I Appellate Court, it is clear that the learned I Appellate Judge has independently considered the issue while dismissing the Appeals. The Courts below have considered all the above facts in proper perspective and decreed the suit filed by the deceased Parasmal Jain and dismissed the suit filed by the appellant, which was also confirmed by the First Appellate Court, by giving cogent and valid reasons. There is no error in the said judgment warranting interference by this Court. No question of law much less than the substantial question of law has arisen in this Second Appeal.

20. In the result, these Second Appeals are dismissed as no substantial question of law has arisen. No costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

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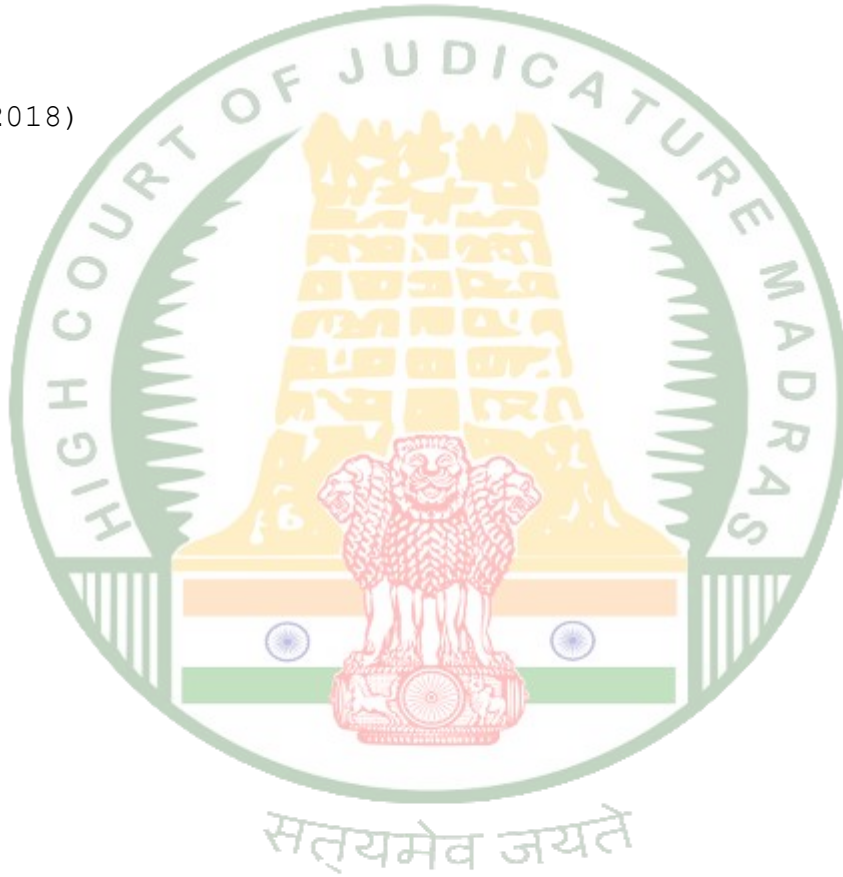
To

- 1.The IV Additional City civil Judge, Chennai.
- 2.The IV Additional City Civil Judge, Chennai.

+2cc to Mr.Sivagnana Sambandan Advocate, S.R.No. 50292, 50293

S.A.Nos.352 and 471 of 2018

SSI (CO)
GN(20/09/2018)



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