

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 31st DAY OF JANUARY 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

O.A. No.1154 of 2017
in
C.S. No.903 of 2017

A.Elumalai,
S/o.Arumugam,
No.32, 2nd Street,
Dhanalakshmi Nagar,
Nerkundram, Chennai-600 107. ... Applicant/Plaintiff

-Versus-

1. Padamchand,
S/o.Manackchand,
No.123, Jawaharlal Nehru Salai,
Koyambedu, Chennai-600 107.
2. M/s.Sri Raj & Co.,
rep. by its Manager,
No.7, 1st Floor,
Sunkuraman Chetty Street,
Chennai-600 001. ... Respondents/Defendants

Original Application praying that this Hon'ble Court be pleased to grant an ad-interim injunction restraining the 1st respondent/defendant, or his agents, subordinates, or anybody acting on his behalf from bringing the property bearing Shop No.T/E-28, Phase-II Fruit, in Koyambedu Wholesale Market Complex-Perishable Market, known as "Anna Fruit Market" morefully described in the schedule hereunder for public auction through the 2nd respondent/defendant or anybody either on 18.11.2017 at 5.00 p.m. or any other subsequent dates during the pendency of the suit.

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

CS.No.903 of 2017 has been filed, seeking redemption of the mortgage deed, dated 19.9.2014, in respect of the suit property, namely, Shop No.T/E-28, Phase II, Fruit, Koyambedu Wholesale Market Complex, Chennai, Perishable Market, known as Anna Fruit Market, measuring 357.28 sq.ft. of land and 309.41 sq.ft. of building, in Koyambedu, Chennai.

2. The Plaintiff, A.Ellumalai had purchased the suit property, by a sale deed, dated 23.6.2008, registered as Document No. 2276 of 2008 in the Office of the Sub Registrar, Anna Nagar, Chennai. The 1st Defendant had lent a sum of Rs.25 lakhs and the Plaintiff had executed a mortgage deed dated 19.9.2014, registered as Document No. 4055 of 2014 in the Office of the Sub Registrar, Anna Nagar. The 1st Defendant had issued a notice dated 28.5.2015, demanding repayment of the mortgage money. A reply was sent on 2.7.2015. Subsequently, on 8.12.2015, the Plaintiff received a notice from the 2nd Defendant, namely, M/s.Sri Raj & Co., who are auctioneers, stating that the suit property would be sold in public auction. The Plaintiff then had filed a suit for injunction in OS.No.703 of 2015 before the City Civil Court, Chennai.

During the pendency of the said suit, the Plaintiff had paid a sum of Rs.8,25,000/-. The suit was dismissed after contest on 25.4.2017. Subsequently, the Plaintiff received another notice dated 26.9.2017 from the 2nd Defendant. It was stated that the property would be sold in public auction on 18.11.2017. It was under these circumstances that the present suit had been filed, seeking redemption of the mortgage.

3. According to the Plaintiff, he is due and liable for a sum of Rs.34,75,000/-. The Plaintiff has also sought the relief of permanent injunction, from bringing the property in auction. In the suit, the Plaintiff has also filed OA.No.1154 of 2017, seeking an order of ad-interim injunction, restraining the Defendants from bringing the property in public auction, pending disposal of the suit.

4. This Court had directed the Plaintiff to deposit a sum of Rs.17,37,500/- which was 50% of the value of the suit. The Plaintiff then filed an affidavit, stating that he will make the said deposit in the following manner:-

S.No.	Date	Amount
1.	31.01.2018	Rs.3,00,000/-
2.	28.02.2018	Rs.3,00,000/-
3.	30.03.2018	Rs.3,00,000/-
4.	30.04.2018	Rs.3,00,000/-

5. 30.05.2018 Rs.3,00,000/-
6. 29.06.2018 Rs.2,37,500/-

5. The 1st Defendant had entered appearance and the learned counsel for the 1st Defendant strongly objected to the Schedule given by the Plaintiff. According to the 1st Defendant, the Plaintiff has to pay a sum of Rs.47,41,000/- and the Plaintiff had paid only a sum of Rs.6,75,000/- in the City Civil Court though the conditional order was for Rs.12,50,000/-. The 1st Defendant insisted that the Plaintiff must be called upon to pay the amount as directed by the Court in the following Schedule:-

S.No.	Amount	Period Between
1.	Rs.5,00,000/-	08.01.2018 to 12.01.2018
2.	Rs.5,00,000/-	14.01.2018 to 25.01.2018
3.	Rs.7,50,000/-	01.02.2018 to 09.02.2018

6. The facts are not disputed. The Plaintiff had mortgaged the suit property, namely, Shop No.T/E-28, Phase II, Fruit, Koyambedu Wholesale Market Complex, Chennai, Perishable Market, known as Anna Fruit Market, measuring 357.28 sq.ft. of land and 309.41 sq.ft. of building, in Koyambedu, Chennai, with the 1st Defendant by a registered mortgage deed dated 19.9.2014 and registered as Document No. 4055 of 2014.

7. According to the Plaintiff, he is due and liable

for a sum of Rs.34,75,000/- as on the date of the institution of the suit. He had filed the suit, seeking redemption of mortgage. Proprietary requires that the Plaintiff deposits the entire amount since he wants to redeem the mortgage. Non payment would only attract interest and that would only go against the interest of the Plaintiff. This Court had directed the Plaintiff, since it was represented that the Plaintiff did not have any money, to deposit a sum of Rs.17,37,500/-, which was 50% of the value of the suit. That amount was not deposited.

8. On the other hand, the Plaintiff had sought to pay the amount in instalments. This has been objected to by the learned counsel for the 1st Defendant. I see much force in the arguments of the learned counsel for the 1st Defendant. According to the 1st Defendant, the amount actually due is Rs.47,41,000/-. Actual amount due has to be worked out during the course of the trial. But, the Plaintiff cannot escape from non payment by claiming that he cannot pay the amount. Having received Rs.25 lakhs from the 1st Defendant and having mortgaged the property, the Plaintiff is under an obligation to make good the loan advanced by the 1st Defendant. The 1st Defendant was required when the Plaintiff required money and when the 1st Defendant seeks the amount back, he is no longer

required by the Plaintiff. This cannot be permitted.

9. I have also given careful consideration to the Schedule given by both sides. Accordingly, the Plaintiff is directed to comply with the following payment Schedule, so that both the parties are evenly balanced:-

1. Rs.7,37,500,- (Rupees seven lakhs thirty seven thousand and five hundred only) has to be paid on or before 10.2.2018.
2. Rs.5,00,000/- (Rupees five lakhs only) has to be paid on or before 28.02.2018.
3. Rs.5,00,000/- (Rupees five lakhs only) has to be paid on or before 28.03.2018.

10. If the Plaintiff defaults in making payment of any one of the above instalments, it is made clear that pendency of the suit would not be a bar to the 1st Defendant from bringing the suit property for sale in terms of the mortgage deed and under the provisions of Section 69 (a) of the Transfer of Property Act.

11. With the above directions, this Original Application is closed. No costs.

Sd/-C.V.K.J
31.01.2018

//Certified to be a true copy//

Dated this the day of 2018
JJ 8/2/18

COURT OFFICER

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