

.IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.71 of 2017

K.Anandhi

.. Appellant

Vs

1.Marathon Electric India Private Limited
having Subordinate and Branch Office at
No.6, Old No.37, Arcot Road,
Vadapalani, Chennai - 26.

2.Devie and Co.,
rep. by its Proprietor S.Kumar

3.S.Kumar

4.M/s.Rajeshwari Credits
rep. by its Partner S.Thiagarajan

5.M/s.Sree Lakshmi Devi Investments
rep. by its Partner S.Thiagarajan

6.M/s.Swarnalakshmi Credits
rep. by its Partner Kandasamy

.. Respondents

Appeal preferred under Order XXXIV Rule 1 of O.S. Rules r/w
Clause 15 of Letters Patent against the order dated 19.01.2017
made in A.No.6382 of 2016 in C.S.No.158 of 2004.

Prayer in A 6382/2016 in CS 158/04

Judges Summons filed under order XIV R(8) of OS Rules R/W
151 of CPC may be pleased to implead the applicant as a 6th
defendant in CS 158/2004.

For Appellant .. Mr.P.Saravana Sowmiyan

For Respondents.. Mr.G.Kalyan Jhabakh
for M/s.Surana and Surana for R1
Mr.M.Aravind Subramaniam
for R2 and R3

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal has been filed by the appellant pursuant to the dismissal of the application in which she sought to implead herself as a party defendant in the suit. The learned single Judge dismissed it on the ground that the application is belated and the appellant is not a bonafide purchaser.

2.Learned counsel appearing for the appellant would submit that the question as to whether the appellant is a bonafide purchaser or not is a matter to be decided in the suit. Admittedly, the appellant has purchased the property. Thee suit is only for recovery of money on a mortgage. Therefore, the appeal will have to be allowed. Incidentally, it is submitted that an affidavit has also been filed stating that the appellant will not alienate, create charge or encumber the schedule mentioned property till the disposal of the suit.

3.Learned counsel appearing for the plaintiffs/contesting respondents would submit that the sale has been effected after the mortgage. Therefore, the finding of the learned single Judge cannot be assailed.

4.Admittedly, the suit is one for recovery of money on a mortgage. The fact that the appellant has purchased the property after the execution of mortgage is not in dispute. Thus the dispute as to whether the appellant is a bonafide purchaser for value is a matter to be decided at the time of disposal of the suit. It would be also in the interest of respondents 1 and 2/plaintiffs to have the appellant as party defendant as any decree would bind her as well. Inasmuch as the appellant has also filed an affidavit of undertaking not to alienate, create charge or encumber the schedule mentioned property, it would be appropriate to implead her as a party defendant so that it will avoid multiplicity of proceedings.

5.In such view of the matter, the order of the learned single Judge stands set aside and the Original Side Appeal stands allowed. Consequently, the application in A.No.6382 of 2016 stands ordered. The appellant shall file written statement within a period of four weeks from the date of receipt of a copy

of this order.

6. Taking note of the fact that the suit is of the year 2004, we deem it appropriate to frame the following additional questions of law:

(1) Is the appellant a bonafide purchaser for value of the suit property?

(2) Whether the sale made in favour of the appellant will bind the respondents?

7. For filing written statement by the appellant, the plaintiffs including respondents 1 and 2 are given further period of four weeks to file reply statement.

8. After completion of the aforesaid process, the parties are directed to mark the documents within a period of four weeks. The learned Additional Master I is directed to conclude the trial within a period of six weeks thereafter. After conclusion of the trial, the matter shall be listed before the learned single Judge, who is dealing with suits.

9. In the result, the Original Side Appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

mmi

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr. P. Saravana Sowmiyan, Advocate, S.R.No.47698

+1cc to Mr. M. Aravind Sumbramaniam, Advocate, S.R.No.47336

O.S.A.No.71 of 2017

SJ(CO)
GSP(27/07/2018)