

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2018

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

C.S.No.824 of 2007

1.Tmt.Mala Devarajan

2.N.Devarajan

... Plaintiffs

..Vs..

M.Jagannathan

... Defendant

Plaint filed under Order IV Rule 1 of O.S. Rules under Order VII Rule 1 of C.P.C. praying to pass a judgment and decree:-

a) directing the defendant and his men or the person claiming on behalf of the defendant to hand over the vacant possession of the suit property.

b) to pay the damages at the rate of Rs.50,000/- per month from the date of the plaint to till the date of the delivery of the suit property for illegal occupation and usage of property belongs to plaintiff.

c) to award the cost of the suit.

For Plaintiffs : Mr.V.Manohar

For Defendant : No appearance

J U D G M E N T

It is seen from the records, the suit was decreed ex-parte on 30.07.2010 and an application filed by the defendant, the ex-parte decree was set aside, subject to certain conditions in A.No.3709 of 2013 vide order dated 22.08.2013, the said order was challenged by the defendant in O.S.A.No.335 of 2013. The Hon'ble Division Bench by an order dated 26.11.2013, is allowed in part by reducing the amount directed to be deposited as a condition precedent for setting aside the ex-parte decree from Rs.14,50,000/- to Rs.5,00,000/-. Thereafter, the suit was listed for hearing on several occasions. Registry has made a note that a sum of Rs.5,00,000/- has been deposited to the credit of the suit as per the order in O.S.A.No.335 of 2013. However since there was no appearance, when the matter was listed before the Court on 08.06.2017, the matter was directed to be listed on 12.06.2017 for setting the defendant set ex-parte. On 12.06.2017, the defendant has been set ex-parte, again ex-parte evidence has been recorded.

2The suit is filed by the auction purchaser who purchased the property in a sale effected under Section 69 of the Transfer of Property Act. It is seen from the evidence of PW-1 that the suit property was put up for auction by M/s.Park Town Benefit Fund Limited, Chennai

exercising their right under Section 69 of the Transfer of Property Act on 15.05.2006, after complying the formalities through a licensed auctioneer Mr.A.Sasikanth was declared as highest bidder for a sum of Rs.37,55,000/-. Mr.A.Sasikanth has nominated the 1st plaintiff herein as his nominee, and requested the M/s.Park Town Benefit Fund Limited, Chennai to execute a sale deed in favour of the 1st plaintiff. Pursuant to the said nomination, the registered sale deed came to be executed on 13.11.2006. Therefore, the 1st plaintiff has established her title in the suit property. In view of the same, the defendant has lost his right of redemption and he is liable to hand over possession of the property to the plaintiff.

3.Considering the evidence of PW-1 and the documentary evidence produced particularly a copy of the sale deed dated 13.11.2006 executed by M/s.Park Town Benefit Fund Limited, Chennai in favour of the 1st plaintiff.

4.The suit is decreed with costs and two months time is granted for the defendant to hand over the possession. It is also seen from the evidence of PW-1 that the suit property would fetch a rent of Rs.25,000/- per month. Once it is found that the defendant is not

entitled to continue in possession he is also liable for damages. Hence, the suit is decreed as prayed for possession as well as damages at the rate of Rs.25,000/- per month from the date of plaint till the date of the delivery of possession. The defendant is granted two months time to hand over the vacant possession of the suit property.

03.01.2018

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Index : Yes/ No

Internet : Yes/ No

Speaking Order/ Non-speaking Order

To

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

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List of the witnesses examined on the side of the plaintiff:

P.W.1 - N.Devarajan

List of Exhibits marked on the side of the plaintiff:

<u>S.No.</u>	<u>Exhibits</u>	<u>Date</u>	<u>Description of Documents</u>
1.	Ex.P-1	13.11.2006	Certified copy of the sale deed.
2.	Ex.P-2	13.11.2006	Certified copy of the sale deed.
3.	Ex.P-3	23.07.2010	Letter issued by Sundaram BNP PARIBAS along with the statement of accounts for the period 03.11.2006 to 16.06.2017.
4.	Ex.P-4	--	Photocopy of the plaint in C.S.No.469 of 2007.
5.	Ex.P-5	--	Certified copy of the order dated 22.08.2013 in A.No.3709 of 2013 passed by this Hon'ble Court.
6.	Ex.P-6	--	Certified copy of the order dated 26.11.2013 in Original Side Appeal No.335 of 2013 and M.P.Nos.1 and 2 of 2013 passed by this Hon'ble Court.

List of the witnesses examined on the side of the defendant: NilList of Exhibits marked on the side of the defendant: Nil.

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R.SUBRAMANIAN, J.

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