

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 05.09.2018****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CRP(MD)No.1603 of 2016 (PD)****WEB COPY**

N.S.R.Sethu Ramachandran

... Petitioner

**Vs.**

1.C.Chandran  
2.P.S.Boobathy Manickam  
3.B.Dhanalakshmi  
4.Guruji Educational Trust,  
Rep.by its Trustees,  
5,6 Vanamamalai Nagar,  
Bye-pass road, Madurai.

... Respondents

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India, to reverse and set aside the order made in the suit in O.S No.144 of 2012 dated 29.04.2016, II Additional Subordinate Judge, Madurai and to direct the lower court to decide the suit on merits recording the findings of all the issues framed in the suit.

For Petitioner  
For Respondent 1

: Mr.Balasubramaniya Iyer  
: Mr.G.Prabhurajadurai

**ORDER**

The plaintiff in O.S No.144 of 2012 on the file of the II Additional Sub Judge, Madurai is the revision petitioner herein. The court below on its own returned the plaint by order dated 29.04.2016. Questioning the same, this civil revision petition has been filed.

2.Heard the learned counsel on either side.

3.The plaintiff is the mortgager of the suit property. The suit has been laid for redemption of the mortgages and for other reliefs. According to the plaintiff, the mortgage amount payable as per the mortgage deeds would come to Rs.23.00 lakhs. The plaintiff had also computed the amount payable by the defendants at Rs.22,83,566/-. Therefore, according to the plaintiff, he is entitled to redeem the mortgage on payment of the balance amount of Rs.16,434/-. It is seen that the defendants had also filed I.A No.141 of 2014 calling upon the Trial Court to take up the issue of pecuniary jurisdiction as a preliminary issue. The said I.A was dismissed by order dated 20.06.2014. The defendants unsuccessfully challenged the same by filing CRP PD(MD)No.1425 of 2015. The revision petitioner had enclosed the said order dated 02.02.2015 in the typed set of papers. While dismissing the civil revision petition, it was observed as under :



"33.As envisaged under sub-section 8 of Section 33, the plaintiff has stated that the actual amount due is Rs.16,434/- and this amount appears to have been deposited before the trial Court. The plaintiff has valued the relief sought for at Rs.1,32,434/- and he has also paid the appropriate court fee of Rs.9,935.50.

34.Under these circumstances, it cannot be heard to say that the plaintiff has not properly valued the suit claim. It must be borne in mind that under sub-section 8 of Section 33, the value of the suit for redemption of a mortgage is, the amount due on the mortgage and hence, the plaintiff is at liberty to pay the Court fee on such amount when the suit is instituted."

4.It appears that the defendants had filed S.L.P before the Hon'ble Supreme Court questioning the order dated 02.02.2015. But, the same was dismissed. It is only thereafter that the order impugned in this civil revision petition has been passed.

5.I am of the view that in view of the specific findings rendered in the said civil revision petition, the court below could not have returned the plaint. That apart, as rightly pointed out by the learned counsel appearing for the revision petitioner, the suit was numbered way back in the year 2012 and the trial was substantially over and that he had also completed his arguments. Therefore, at this stage, the impugned order could not have been passed by the court below. The learned counsel appearing for the revision petitioner drew the attention of this Court to Order 8 Rule 6 of Civil Procedure Code. The said provision deals with set off and its effect. But then, this provision cannot be imported or invoked while considering the plaint and that is exactly what the learned Trial Judge has done in this case.

6.The order impugned in this civil revision petition is patently unsustainable and it stands set aside. This Civil Revision Petition is allowed. At this stage, the learned counsel appearing for the respondents submits that due to reasons beyond their control, they had not taken an effective part in the trial. Therefore, exercising the supervisory jurisdiction of this court, the trial court is directed to re-open the proceedings. The defendants are given one more opportunity to cross-examine the witnesses appearing for the plaintiff. The defendants are at liberty to adduce their evidence. Of course, taking note of the fact that the suit is of the year 2012, the entire proceedings shall be disposed of finally within a period of four months from the date of receipt of a copy of this order. It is needless to mention that all the defences available to the defendants are left



open. No costs. Consequently, connected miscellaneous petition is closed.

7. The Registry is directed to return the original plaint after the revision petitioner substitutes the same with a photo copy. The revision petitioner shall re-present the same before the court below and thereupon, the suit proceedings shall be restored to file with the original case number.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The II Additional Subordinate Judge,  
II Additional Subordinate court,  
Madurai.

Copy to

The Section Officer, (2 copies)  
VR Section,  
Madurai Bench of Madras High Court,  
Madruai.

+1cc to Mr.Balasubramaniya Iyer, Advocate Sr.No.82612  
+1cc to Mr.G.Prabhurajadurai, Advocate Sr.No.82656

SKM

VB/PM/SAR1/05.10.2018/3P/6C

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