

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD) No.4845 of 2013
and M.P.No. 1 of 2013

1. Sanjay Kumar S.Jain
 2. Uttamchand Shanthi Lal G,
Represented by its Karta,
Ashwin Kumar
- ... Petitioners

Vs.

1. M/s.Shyam Foundation and Housing (P) Ltd.,
Rep. by its Managing Director,
S.Sundararaman,
Old No.9, New No.30,
Dr.Ambedkar Street,
Kodambakkam, Chennai - 600 024.
 2. M/s.Varma & Co.,
Auctioners and Estate Agents,
New No.25, Old No.13,
3rd Floor, Flowers Road,
Chennai - 600 084.
- ... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 12.08.2013 passed by the VI Assistant Judge, City Civil Court, Chennai, in I.A.No.4726 of 2013 in O.S.No.3261 of 2012.

For Petitioners : Mr.Prakash Goklaney

For Respondents : Mr.S.Ramesh

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ORDER

The present Civil Revision Petition has been filed as against the fair and decreetal order dated 12.08.2013 passed by the VI Assistant Judge, City Civil Court, Chennai, in I.A.No.4726 of 2013 in O.S.No.3261 of 2012 filed for amendment by including a mandatory injunction directing the defendants to execute a receipt for discharge of mortgage deed.

2. The suit was originally, filed for permanent injunction restraining the defendants 1 and 2 from enforcing the mortgage on the ground that entire amount has been discharged by the plaintiff in the year 2006. Pending suit, the application has been filed to amend the plaint to include a mandatory injunction on the ground that the entire amount has already been paid and therefore, to direct the defendants to execute a receipt for discharge of mortgage. The trial Court, after considering entire aspects, allowed the application, against which, the present revision has been filed.

3. The learned counsel appearing for the revision petitioners submitted that the amendment can change the entire character of the suit. In fact, if the case of the plaintiff as to the discharge is correct, then he ought to have filed a suit for redemption and he has no right to seek mandatory injunction. Hence, amendment itself is changing the character of the suit. Such an amendment cannot be allowed by the trial Court. Hence, he submitted that order of the trial Court is required to be interfered with.

4. The learned counsel appearing for the respondents would contend that even in the plaint, the nature of payment made by the plaintiff has been pleaded and also produced a statement of bank account to prove the discharge. According to him, payment has been made through bank. Therefore, merely because he is seeking a mandatory injunction, it will not change the character of the suit. In fact, the entire dispute is involved in the same suit.

5. The learned counsel for the respondents further submitted that amendment was already ordered and amended plaint has also been filed and only the matter is pending for framing issues. Therefore, he submitted that the present revision has to be dismissed.

6. Heard the learned counsel appearing on both sides and perused the materials placed before this Court.

7. The entire lis between the parties is with regard to the loan amount having been paid by the plaintiff on the basis of the mortgage and alleged discharge of the entire amount, but, the defendants have disputed the discharge. The plaintiff has placed the statement of account to show that the payment has been made in the year 2006 itself. Deciding the above issue in the same suit, it would not change the character of the suit. In fact, it would avoid multiplicity of proceedings. The revision petitioners can very well agitate the issue by taking appropriate defence and no prejudice will be caused.

8. I do not find any irregularity or infirmity in the order passed by the trial Court allowing the application and hence, the Civil Revision Petition is dismissed. The trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.02.2019

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Index : Yes/No
Internet : Yes/No
Speaking Order : Yes/No

To

The VI Assistant Judge,
City Civil Court,
Chennai,

WEB COPY

N. SATHISH KUMAR, J.

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