

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.12.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Application No.5580 of 2014

&

C.S.No.304 of 2007

The Kumbakonam Mutual Benefit Fund Ltd.,
Rep. By its Chief General Manager
L.Balasubramanian
145, Big Street, Kumbakonam

... Applicant / Plaintiff

vs.

P.Velraj
Defendant

...Respondent/

Prayer in C.S.No.304 of 2007: Plaint filed under Order VII Rule 1 CPC read with Order XXXVII Rule 1 of the Code of Civil Procedure, 1908 to direct the defendant to pay the sum of Rs.46,45,157.85 together with further interest at 23% per annum compounded with quarterly rests with in the twice fixed by this Court, in the event of failure as the past of the defendant pass a final decree directing sale of the schedule mentioned properties and a personal decree against the defendant for the deficiency as may be found after adjusting the sale proceeds of the scheduled mentioned properties and for costs of the suit.

Prayer in A.No. 5580 of 2016: Judges summons filed under Order XIV Rule 8 of O.S Rules read with Order XXXIV R5 of CPC to pass a final decree

directing the mortgaged property morefully described in the schedule hereunder for sale for the unpaid preliminary decree amount of Rs.84,89,002.73 together with interest @ 12% per annum on the principal sum of Rs.12,50,000/-

For Plaintiffs : Mr.Abdul Majid
for Ms.G.Sumitra

For Defendant : Mr.M.Sriram

JUDGMENT

Sole plaintiff in the main suit has taken out the instant application with a prayer for passing final decree as the main suit is on the foot of a mortgage.

2. Lone defendant in the main suit is the sole respondent in the instant application.

3.Mr.Abdul Majid, learned counsel for applicant/mortgagee and Mr.M.Sriram, learned counsel for respondent/mortgagor are before this Court. Both the learned counsel submit without any dispute on facts that four other similar suits being O.S.No.303 of 2007, O.S.No.305 of 2007, O.S.No.306 of 2007 and O.S.No.307 of 2007 were filed by the same mortgagee Benefit Fund albeit against 4 different mortgagors. It is also submitted that preliminary decrees were passed in the other four suits and

thereafter final decrees have also been passed in final decree applications in the other suits. It is submitted that the final decree in the other four suits are identical and that this case is no different. For convenience, final decree passed by Hon'ble single Judge dated 26.04.2018 in A.No.5581 of 2014 in C.S.No.305 of 2007 is placed before this Court and the same reads as follows:

'The plaintiff applicant herein had taken out an application for passing a final decree, pursuant to the preliminary decree passed on 04.04.2013. Though the notice to the respondent/defendant was served and the proof of service along with acknowledgment card was filed, there is no representation for the respondent/defendant.

2. A perusal of the judgment passed by this Court on 04.04.2007 indicates that the respondent/defendant had borrowed money against the pro-note and created an equitable mortgage of the suit property in favour of the plaintiff/applicant.

3. Having failed to discharge the deed, the suit has been filed by the plaintiff after contesting the preliminary decree passed to the effect that the defendant/respondent has given liberty to pay the decree amount and granted three months time for payment from the date of decree. However, the respondent/defendant has not paid the decretal amount and redeem the mortgage. Hence, the plaintiff is entitled for a final decree as prayed for.

4. Accordingly, the Application No.5581 of 2014 is allowed in terms of the prayer mentioned in the Clause (ii) of Judge's summons with costs.'

4. It is pointed out by both the learned counsel that differences between the aforesaid order and instant matter are three in number and they are as follows:

a) In the aforesaid order, the mortgagor has not contested the final decree proceedings and filed a counter, whereas in the instant case, counter affidavit has been filed by the respondent;

b) In the aforesaid case, the mortgagor/respondent is different, namely S.Ravi, son of Subbiah Naidu, whereas instant case it is P.Velraj, son of Pandian Nadar; and

c) The quantum qua preliminary decree and final decree proceedings are different.

5. One other significant aspect which is common to all the five suits (including this suit) is that the property, which is subject matter of mortgage, is also subject matter of land acquisition under Central Act i.e., the Land Acquisition Act, 1894. The acquisition proceedings have been challenged by the noticees, who are defendants in these five suits, vide W.P.No.16842 to 16847 of 2018 and interim orders have been passed by Hon'ble single Judge of this Court on 09.07.2018 and the interim orders are operating.

6. In this scenario, while both the learned counsel submit that a similar final decree can be passed in the instant suit as in A.No.5581 of 2014 in C.S.No.305 of 2007, learned counsel for mortgagee/benefit fund submits that the mortgagee / benefit fund would be filing writ petition challenging the acquisition proceedings so that the same could be carried to its local end. Therefore, there shall be a similar decree i.e., similar to 26.04.2018 decree in A.No.5581 of 2014 in C.S.No.305 of 2007, which reads as follows:

The plaintiff applicant herein had taken out an application for passing a final decree, pursuant to the preliminary decree passed on 04.04.2013.

2. A perusal of the judgment passed by this Court on 04.04.2007 indicates that the respondent/defendant had borrowed money against the pro-note and created a equitable mortgage of the suit property in favour of the plaintiff/applicant.

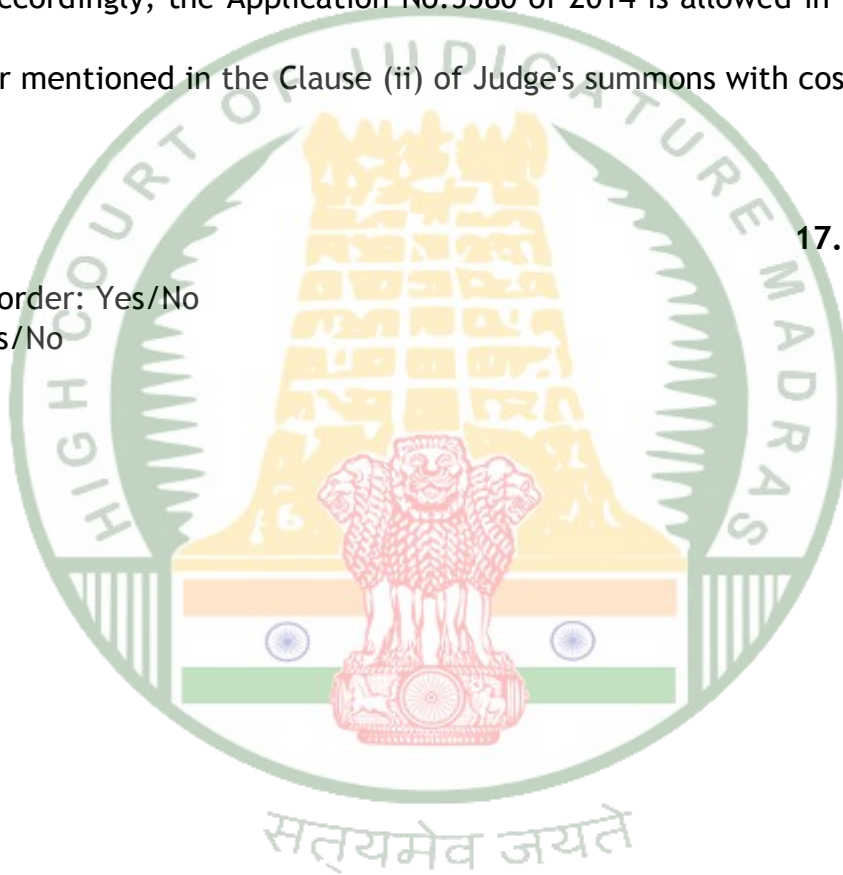
3. Having failed to discharge the deed, the suit has been filed by the plaintiff after contesting the preliminary decree passed to the effect that the defendant/respondent has given liberty to pay the decree amount and granted three months time for payment from the date of decree. However, the

respondent/defendant has not paid the decretal amount and redeem the mortgage. Hence, the plaintiff is entitled for a final decree as prayed for.

Accordingly, the Application No.5580 of 2014 is allowed in terms of the prayer mentioned in the Clause (ii) of Judge's summons with costs.

17.12.2019

Speaking order: Yes/No
Index: Yes/No
gpa



WEB COPY

C.S.No.304 of 2007

M.SUNDAR.J.,

gpa



Application No.5580 of 2014 &
C.S.No.304 of 2007

WEB COPY

17.12.2019