

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.154 of 2006

Life Insurance Corporation of India
having its Divisional Office
No.102, Anna Salai, Chennai-2.
Reptd. By its Manager, Legal & HPF Department
of Divisional Office-I,
Chennai-2.

...Appellant/Plaintiff/Petitioner

- Vs -

1. P.K.Jayakumar
2. P.J.Srikanth
3. Ganeswari Jayakumar
4. T.M.P.Griffin Kagro,
53/2, Soundarya Colony,
Anna Nagar, Chennai-101.
5. Padam Chand
6. Ujwala Jain

... Respondents/Respondents/Defendants

PRAYER: First Appeal filed under Section 96 of Civil Procedure Code, against the Judgment and decree dated 27.08.2003 made in I.A.No.2066 of 2000 in O.S.No.951 of 1997 on the file of the II Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.M.B.Gopalan

For Respondents: Mr.M.Muthappan for RR1 & 2
R3 to R6 - No Appearance.

JUDGMENT

The Appeal suit is filed against the judgment and decree passed in IA.No.2066 of 2000 in OS.No.951 of 1997 dated 27.08.2003.

2. The appellant is the plaintiff in the Original Suit and the appellant, being a mortgagee, instituted a suit for recovery of the loan amount due from the defendants. The Trial Court decreed the suit in favour of the plaintiff and the preliminary

decree was passed on 26.12.1998 in O.S.No.951 of 1997. As per the preliminary decree, the defendants 1 to 3 are liable to pay a sum of Rs.9,43,056.75/- together with interest on Rs.6,82,741/- at 15.5% interest per annum from the date of decree i.e., 26.12.1998 till the date of realization.

3. The learned counsel appearing on behalf of the appellant made a submission that the preliminary decree became final and no appeal was preferred.

4. The Interlocutory Application in IA.No.2066 of 2000 was filed for passing of final decree for sale of the mortgaged property, which is situated in Kilpauk, Chennai and the counter affidavit was also filed by the respondents. The contention of the learned counsel appearing on behalf of the appellant is that the Trial Court exceeded its jurisdiction, by interfering with the preliminary decree passed after adjudication, wherein, the rights of the parties are crystallized. The Trial Court has no jurisdiction or power to interfere with the preliminary decree, which was passed on 26.12.1998 and became final.

5. The Interlocutory Application filed for passing of final decree was entertained by the Trial Court and the loan amount to be repaid by the defendants are modified and reduced to Rs.35,000/-, which is impermissible in law. The other facts regarding the loan and mortgage are not disputed by the parties. Thus, this Court is not inclined to state all those facts, which were adjudicated before the Trial Court at the time of trial as a preliminary decree itself had already been passed in the year 1998.

6. With reference to the final decree passed in IA.No.2066 of 2000, this Court is of the considered opinion that the trial Court cannot modify, alter or set aside the preliminary decree, wherein, the rights of the parties are crystallized and no further appeal had been preferred. While passing final decree, the Trial Court has to only consider the mode of execution and under these circumstances, the judgment passed by the Trial Court modifying the preliminary decree is against the settled principles of law. In the final decree, which is under challenge in the present appeal suit, the Trial Court reduced the preliminary decree amount to Rs.35,000/- towards the principle. Such a reduction is not only in violation of the principles, but amounts to an invasion into the preliminary decree, which was passed after full-fledged trial and adjudication.

7. The learned counsel for the appellant relied on the judgment of the Hon'ble Apex Court in the case of Sital Parshad Vs. Kishorilal reported in (1967) 3 SCR 101, wherein, the Apex Court observed as follows:-

"9. To determine this question we have to look to the provisions of Order XXXIV of the Code of Civil Procedure providing for preliminary and final decrees. Preliminary decree in a suit for sale with which we are concerned in the present case is prepared under Order XXXIV Rule 4 read with Order XXXIV Rule 1. It provides (a) for an account to be taken of what was due to the plaintiff at the date of such decree for principal and interest on the mortgage, the costs of the suit, if any, awarded to him, and other costs, charges and expenses properly incurred by him upto that date in respect of his mortgage security, together with interest thereon, (b) for declaring the amount so due at that date, and (c) for directing that, if the defendant pays into court the amount so found or declared on or before such date as the court may fix within six months from the date on which the court confirms and countersigns the account taken under clause (a) or from the date on which such amount is declared in court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in Rule 10, together with subsequent interest on such sums respectively as provided in Rule 11, the plaintiff shall deliver up to the defendant or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant at his cost free from the mortgage and from all encumbrances, and shall also, if necessary, put the defendant in possession of the property. According to the rule, the decree shall further provide that in default of the payment by the defendant as directed the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and proceeds of the same (after deduction therefrom of the expenses of the sale) be paid into court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest,

and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

10. It will thus be seen that the preliminary decree in a suit for sale determines the amount due on the date thereof after accounting if necessary and directs the defendant to pay that amount together with interest and subsequent costs, charges and expenses as provided in Rules 10 and 11. Thus the preliminary decree is complete in itself and the amount due to the decree-holder right upto the time that the execution is complete is either provided therein or worked out from the directions contained therein."

8. The learned counsel appearing on behalf of the respondents 1 and 2 made a submission that the appellant is charging exorbitant interest and the respondents are willing to settle the loan amount in the event of waiver of interest. The approach made by the respondents to reduce the interest amount went in vain.

9. This Court is of the considered opinion that these all are the merits of the matter, which cannot be adjudicated during the final decree proceedings. Charging of interest, finalisation of decree amount all had been completed in the year 1998. If at all any concession or modification of interest is to be considered, the said consideration must have done at the time of conducting trial and before passing the preliminary decree and certainly, not after passing the preliminary decree and more specifically, during the passing of final decree. This being the principles to be followed, the very submission made by the learned counsel for the appellant deserves no merit consideration. Neither the Trial Court, nor the Appellate Court have any jurisdiction to alter the concluded preliminary decree and moreover, the quantum of loan amount dues is to be settled in favour of the appellant in this case. Thus, the respondents are liable to pay the amount as per the preliminary decree and the Trial Court has to proceed based on the preliminary decree and pass final decree without causing any undue delay as the civil litigation is pending for the past 22 years.

10. Under these circumstances, the judgment and decree dated 27.08.2003 passed in I.A.No.2066 of 2000 in O.S.No.951 of 1997 on the file of the II Additional Judge, City Civil Court, Chennai, is hereby quashed. The final decree proceedings are remanded back to the Trial Court for consideration and passing a

fresh final decree, which is to be passed based on the preliminary decree. Such an exercise is directed to be done by the Trial Court, within a period of three (3) months from the date of receipt of a copy of this judgment. Accordingly, this First Appeal stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmi
To

The II Additional Judge,
City Civil Court,
Chennai.

+1cc to Mr.Muthappan, Advocate Sr.7518

A.S.No.154 of 2006

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