

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

C.R.P. (PD) No.2766 of 2015 and
M.P.No.1 of 2015

1.U.Chitra
W/o.L.Udayakumar

2.U.Praveenkumar,
S/o.L.Udayakumar

3.L.Udayakumar
S/o.S.Lakshmanan

All are residing at:
No.124A. Fourth Street,
Secretariat Colony,
Kilpauk,
Chennai 600 010.

..Petitioners/ Defendants

Vs

K.N.Bhaskar,
S/o.T.M.Nagalinga Mudaliar,
No.120, Big Street,
Thirunageswaram Village,
Kundrathur,
Chennai 600 069.

..Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to strike off the plaint in O.S.No.258 of 2015, on the file of the District Munsif Court, Sriperumbudur.

For Petitioners : Mr.P.Valliappan

For Respondent : No appearance

ORDER

This civil revision petition has been filed to strike off the plaint in O.S.No.258 of 2015, on the file of the District Munsif Court, Sriperumbudur.

2. The learned counsel appearing for the petitioners would submit that the petitioners have purchased the property from the respondent through the power of attorney. Subsequently, the Indian Bank filed the original application before the Debts Recovery Tribunal, Chennai in O.A.No.1134 of 1998, against the respondent herein and two others for recovery of money. In the said recovery proceedings, the property was brought on sale and the public auction was held. Therefore, challenging the said order, the first petitioner herein filed a writ petition before this Court in W.P.No.31185 of 2013 and the auction purchaser also filed a writ petition in W.P.No.27807 of

2012, before this Court. The Hon'ble Division bench of this Court has taken both the writ petitions for hearing and dismissed the writ petition filed by the auction purchaser and allowed the writ petition filed by the first petitioner on 26.06.2014. The auction held in the debts recovery proceedings was canceled and the sale in favour of the petitioners was confirmed.

3. The learned counsel appearing for the petitioners would also submit that the respondent herein has filed a suit in O.S.No.258 of 2015, for declaring the petitioners' sale is null and void. The respondent was also a party to the earlier proceedings before the Debts Recovery Tribunal and also he was a party to the above writ petitions before the Division Bench of this Court. Therefore, he know very well about the outcome of the debts recovery proceedings as well as the writ proceedings. But, he has not whispered anything in the plaint. Therefore, he suppressed the entire materials regarding the Debts Recovery Tribunal proceedings as well as the writ proceedings.

4. The learned counsel appearing for the petitioners would rely on the judgments of the Hon'ble Supreme Court of India, reported in **2011 3 CTC 650, 2012 1 CTC 659, 2013 1 CTC 180, 2013 6 CTC 809**. Therefore, he

would submit that the plaint has to be struck off on the ground of suppression of material fact and also the abuse of process of Court.

5. Heard the learned counsel for the petitioners and no representation on behalf of the respondent. Though when the matter came up for hearing on 06.07.2020, at request, the matter was adjourned to 13.07.2020. On that day, this Court heard the submissions of the learned counsel for the petitioner and there was no representation on the side of the respondent. Therefore, it was directed to be listed today i.e., on 27.07.2020, for hearing the submissions of the respondent and for orders. Today also, when the matter is taken up for hearing, there is no representation on behalf of the respondent.

6. It is to be noted that the respondent has filed the suit against the petitioners before the District Munsif, Sriperumbudur in O.S.No.258 of 2015. After serving notice, the petitioners/defendants have filed the present petition before this Court under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.258 of 2015, on the file of the District Munsif Court, Sriperumbudur, on the ground that in the earlier proceedings in writ petition Nos.27807 of 2012 and 31185 of 2013 dated 26.06.2014, the sale of the

petitioners was already confirmed and the mortgage and the auction held by the Bank was also set aside and this is a third round of litigation. In the earlier litigations, i.e., one was before the Debt Recovery Tribunal and another one was before the writ proceedings before this Court, it was held and decided in favour of the petitioners and the said facts have been suppressed by respondent.

7. A careful reading of the entire materials indicates that the respondent filed the suit in O.S.No.258 of 2015 against the petitioners and before that, there was a debt recovery proceedings and writ proceedings. There was an auction sale, in that auction sale, the property was sold by public auction and the petitioner in W.P.No.27807 of 2012 was the auction purchaser and the said sale by public auction was set aside and the sale in favour of the petitioners herein was confirmed in writ No.31185 of 2013. In all the proceedings, the respondent herein was also a party and he know very well about the outcome of the above proceedings. The respondent filed the suit by suppressing the material, is nothing but abuse of process of Court.

8. Therefore, as stated by the learned counsel for the petitioners that since the respondent has not come forward before this Court with clean hands and suppressed the material fact and further it is a third round of litigation, this Court has no hesitation in allowing the revision petition and hence, the revision petition is allowed and the plaint in O.S.No.258 of 2015, on the file of the District Munsif Court, Sriperumbudur is directed to be struck off.

9. In the result, the revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

27.07.2020

Index: Yes/No
Internet: Yes/No
gsk

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To

1.The District Munsif Court, Sriperumbudur.

2.The Section Officer, V.R. Section, High Court, Madras

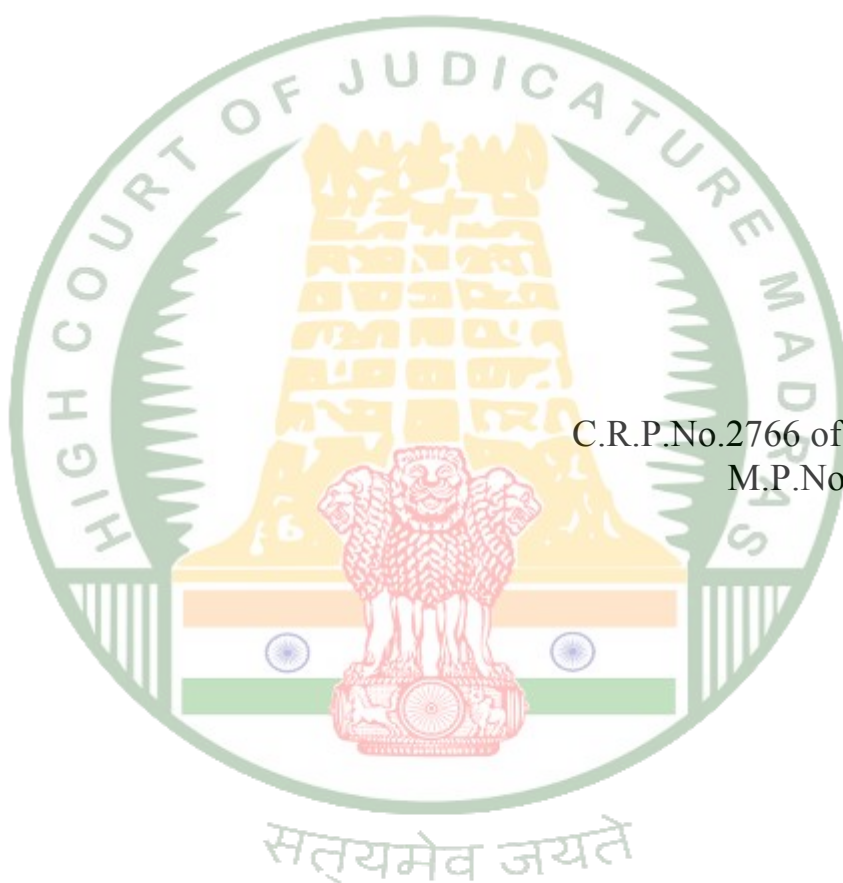


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