

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P (NPD). No.1995 of 2018 and

C.M.P. No.11697 of 2018

Salim Ibrahim Firdouse (Deceased)

- 1.Fahim Ismail Sabry
- 2.Farhat Omar Rabbani
- 3.Aarif Nayeem Nihar
- 4.Roshanara Firdouse
- 5.Salima Hurrath Penker
- 6.Salima Yasser Firdouse
- 7.M.K.C.Sharifa

.. Petitioners

Vs.

T.S.Balaji

... Respondent

Prayer: The Civil Revision petition filed under Article 227 of Constitution of India against the order and decreetal order dated 12.03.2018 made in I.A.No.196 of 2017 in O.S.No.12607 of 2010 on the file of the XIX Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.R.Thiagarajan

For Respondent : Mr.R.Amardeep
for M/s.Tamil Law Firm

ORDER

The defendants in O.S.No.12607 of 2010, whose application, for issuing *subpoena* to M/s.Park Town Benefit Fund Ltd. and M/s.Vamana Auctioneers and one PNA Mani Sundhar, directing them to produce the documents relating to the alleged auction sale conducted on 02.05.2005, was dismissed by the Trial Court, have come up with this Civil Revision Petition.

2. I heard Mr.Thiyagarajan, learned counsel appearing for the petitioners and Mr.Amardeep, learned counsel appearing for the respondent.

3. The suit in O.S.No.12607 of 2010 has been filed by the respondent seeking mandatory injunction directing the defendants to deliver vacant possession of the suit property, consequential permanent injunction

and damages for use and occupation.

4. The case of the plaintiff is that the defendants had borrowed monies from M/s.Park Town Benefit Fund Ltd. and had created a mortgage. The said mortgage instrument authorizes the mortgagee, namely, M/s.Park Town Benefit Fund Ltd. to sell the property without intervention of Court under Section 69(A) of the Transfer of Property Act. It is claimed that M/s.Park Town Benefit Fund Ltd. exercising the power, conducted an auction on 02.05.2005, in which one PNA Mani Sundhar was declared as highest bidder. It is the further the claim of the plaintiff, the said Mani Sundhar nominated the plaintiff and his mother Mrs.T.Saraswathi Sampath as his nominees to get the sale deed pursuant to the said auction. In view of the said nomination, the Park Town Benefit Fund executed the sale deed in favour of the plaintiff on 31.10.2005. Contending that as a purchaser in the auction he is entitled to possession the plaintiff has filed the above suit.

5. The suit is resisted by the defendants contending that there was no such sale held on 02.05.2005. It is also contended that the so called successful bidder Mani Sundhar is only an agent to M/s.Park Town Benefit Fund Ltd. and he is used by the said Park Town Benefit Fund to purchase properties mortgaged with them. The very sale and the nomination were denied. Apart from this suit, the defendants also filed a suit in O.S.No.7823 of 2010 for redemption. The said suit, which is originally filed as C.S.No.68 of 2009 in this court was transferred to the City Civil Court and renumbered as above. That suit came to be dismissed for default and it is now stated that it has been restored on 17.07.2018.

6. After the examination of P.W.1 in the present suit, the defendants came up with an application to issue *subpoena* to the mortgagee, auctioneer and so called successful bidder and require them to produce documents relating to the auction. The application was resisted on the ground of delay. The learned Trial Judge, who heard the application had concluded

that the application is highly belated and it has been filed only in the intention to drag on the proceedings. Upon such conclusion, the learned Trial Judge dismissed the application. Aggrieved, the defendants have come with this Civil Revision Petition.

7. I heard Mr.R.Thiagarajan, learned counsel appearing for the petitioners and Mr.Amardeep, learned counsel appearing for the respondent.

8. Mr.R.Thiagarajan, learned counsel appearing for the petitioner would contend that the suit in O.S.No.7823 of 2010 has been restored and the same is pending. He would also point out that he cannot expect the defendants in the said suit to produce the documents, since they have remained ex-parte. Since the present suit is one for possession on the basis of the sale, it is incumbent upon defendants to prove that there was no such sale as alleged in the plaint. He would also contend that the defendants have taken a specific plea that there was no provision for authorization of another person

by the highest bidder to purchase the property. Proof of these facts is vital to decide the issue as to whether the plaintiff would be entitled to decree for possession. The very purposes of summoning the documents is to establish that there was no sale on the date alleged by the plaintiff and there was no provision for transfer of the right of the successful bidder. The documents sought to be summoned will have a definite bearing on the issue raised in the suit.

9. The Trial Court had blamed the defendants for the delay. It is seen from the records that P.W.1 has been cross examined for over five years and that was due to the absence of Presiding Officer in the Trial Court for considerably long time. I do not think it will be proper or in the interest of justice to blame the defendants for the delay and dismiss the application. I am of the considered opinion that the defendants/petitioners should be given an opportunity to establish their contention. However, they are bound to compensate respondent for the delay. Hence, the order of the Trial Court is

set aside and the Civil Revision Petition is allowed. The application in I.A.No.196 of 2017 will stand allowed on condition that the petitioners pay a sum of Rs.10,000/- (Rupees Ten thousand only) towards cost to the counsel for the respondent appearing in this Court on or before 24.08.2020. On payment of cost and production of receipt, the Trial Court is directed to issue *Subpoena* to the witnesses mentioned in the application forthwith and proceed with the suit in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

29.07.2020

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Index: No
Speaking order

To

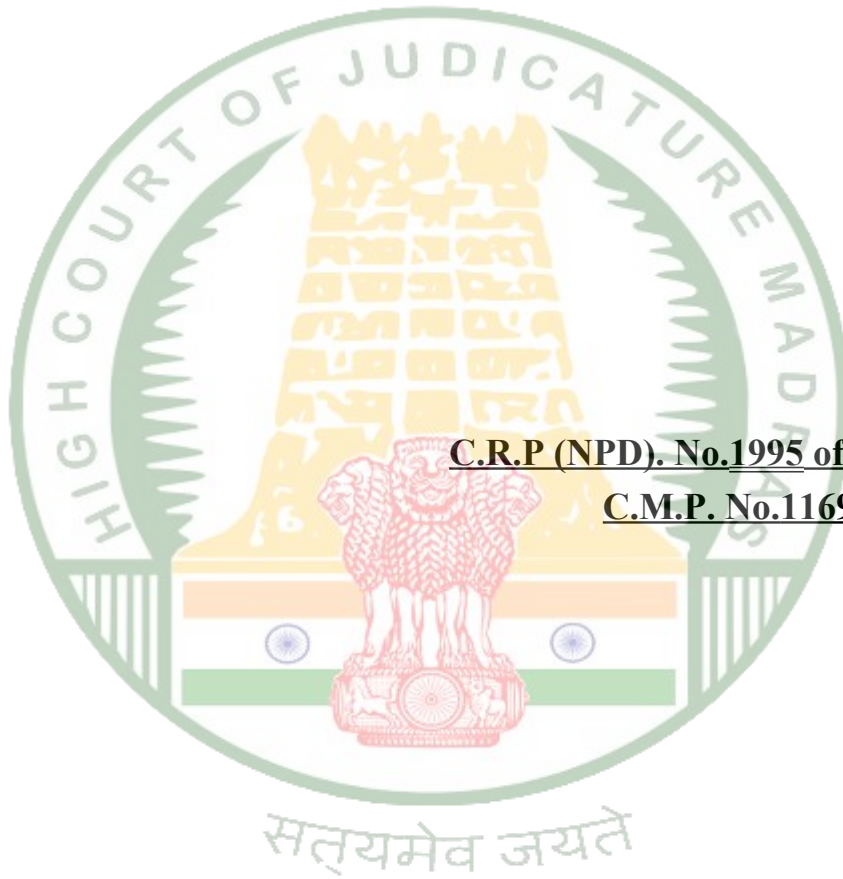
- 1.XIX Additional Judge,
City Civil Court, Chennai.
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

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