

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**C.R.P(PD).No.967 of 2021
and C.M.P.No.7795 of 2021**

V.Damodharan ...Petitioner

Vs

1.R.Shankar

2.M/s.Balajee & Co., Auctioneers
& Estate Agents,

No.160, II Floor, Thambu Chetty Street,
Chennai – 600 001.

3.P.Rajendran

...Respondents

Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the order dated 25.01.2021 made in I.A.No.13133 of 2018 in O.S.No.1383 of 2018 on the file of the XVII Additional City Civil Court, Chennai.

For Petitioner : Mr.R.Ravindran

For Respondents : Mr.Muralikrishnan [For R1]

ORDER

The first defendant in O.S.No.1383 of 2018, now pending on the file of the XVII Additional Court, City Civil Court, Chennai is the revision petitioner herein.

2.The revision petition has been filed questioning the order dated 25.01.2021 in I.A.No.13133 of 2018 passed in the said suit.

3.O.S.No.1383 of 2018 had been filed by the first respondent herein against three defendants. The second defendant is the auctioneer. The first defendant is the revision petitioner herein. In the said suit, the first respondent/plaintiff had sought for a judgment and decree to declare a sale deed executed by the third defendant on 21.09.2017 and registered as Document No.4484 of 2017 in the office of the Sub Registrar, Kodambakkam in favour of the first defendant as null and void and for a permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff and for costs of the suit.

4.It must be mentioned that the plaintiff in O.S.No.1383 of 2018 was a mortgagor of the schedule mentioned property and the third defendant was the mortgagee. Pursuant to the terms of the mortgage, the second defendant having been appointed as an auctioneer had brought the property for sale and the first defendant in the suit had purchased the said property. At that stage, the plaintiff had filed O.S.No.1383 of 2018 seeking the relief as stated above, namely, to set aside the particular sale deed as null and void. Pending the said suit, the plaintiff had also filed I.A.No.13133 of 2018 under Order VI Rule 17 of CPC seeking to amend the plaint by incorporating the prayer for redemption of mortgage to determine the amount payable to the third defendant under the mortgage dated 22.04.2008 which was registered as Document No.1445 of 2008 in the office of the Sub Registrar, Kodambakkam. It must also be mentioned that the revision petitioner/first defendant had also instituted O.S.No.4776 of 2019 subsequent to the sale deed executed in his favour, seeking a judgment and decree against the defendants particularly the first respondent herein to deliver vacant possession of the very same property and also seeking future

damages for occupation and for costs. That suit is also pending. This application in I.A.No.13133 of 2018 came up for consideration before the learned Judge on 25.01.2021. By judgment of even date, the application was allowed permitting amendment of the prayer by including the relief of redemption of the mortgage. Questioning that order, the first defendant/auction purchaser had filed the revision petition.

5.I had the benefit of hearing Mr.R.Ravindran, learned counsel for the revision petitioner and Mr.C.Muralikrishnan, learned counsel for the first respondent.

6.Mr.C.Muralikrishnan, learned counsel for the first respondent pointed out the order of the learned Judge, wherein in paragraph No.17, the learned Judge had indicated the probable questions which have to be answered in the suit. It was also stated that the said application had been filed only under Order VI Rule 17 of CPC and that the mortgage had been challenged in another suit by the plaintiff/first respondent herein and that the said suit had also attained finality. It is however, very very fairly

admitted by Mr.C.Muralikrishnan, that the said statement of the learned Judge that the mortgage had been challenged in another suit and such challenge had attained finality is not a correct statement and it is not based on any records.

7.I am more concerned with the further observations made by the learned Judge with respect to “well settled proposition of law”, when actually this settled proposition had not been pointed out by the learned Judge. Further the learned Judge had also stated the “various judgments of our Apex Court and Madras High Court”, but unfortunately, had not indicated what the said judgments are. It would only be appropriate that the learned Judge re-applies his/her mind to the averments made in the affidavit and in the counter affidavit and thereafter takes a considered a considered decision whether to allow the relief of amendment or not. There must be clarity in the order in the sense that if any reference is made to any precedents, those precedents must be set out and there must be a discussion whether the facts in that precedent and the law laid down apply to the facts of the present case. The law always follows the facts. It is the

responsibility of the Court of first instance to establish facts and then examine the law on those facts in the first instance set out the proposition of law and if there is a precedent on the said proposition, state that precedent and then spell out how it is applicable to the facts of the case.

8. Therefore, it would only be prudent that the matter is remitted back to the learned XVII Additional Judge, City Civil Court, Chennai for re-appreciation of the averments made by both the parties in their respective affidavit/counter affidavit and thereafter pass necessary orders. The order under revision is therefore set aside and a request is placed on the learned XVII Additional Judge, City Civil Court, Chennai to hear again I.A.No.13133 of 2018, provide opportunity to both the learned counsels to advance arguments, examine all issues and then pass a considered order. The said exercise should be completed by the learned Judge on or before 13.08.2021. Thereafter, further progress in the suit may be taken up.

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9.The Civil Revision Petition is disposed of accordingly. No order as to costs. Consequently, connected miscellaneous petition is closed.

30.06.2021

cse

Index:Yes/No

Internet: Yes/No

Note: The Registry is directed to upload the order on 02.07.2021.

To

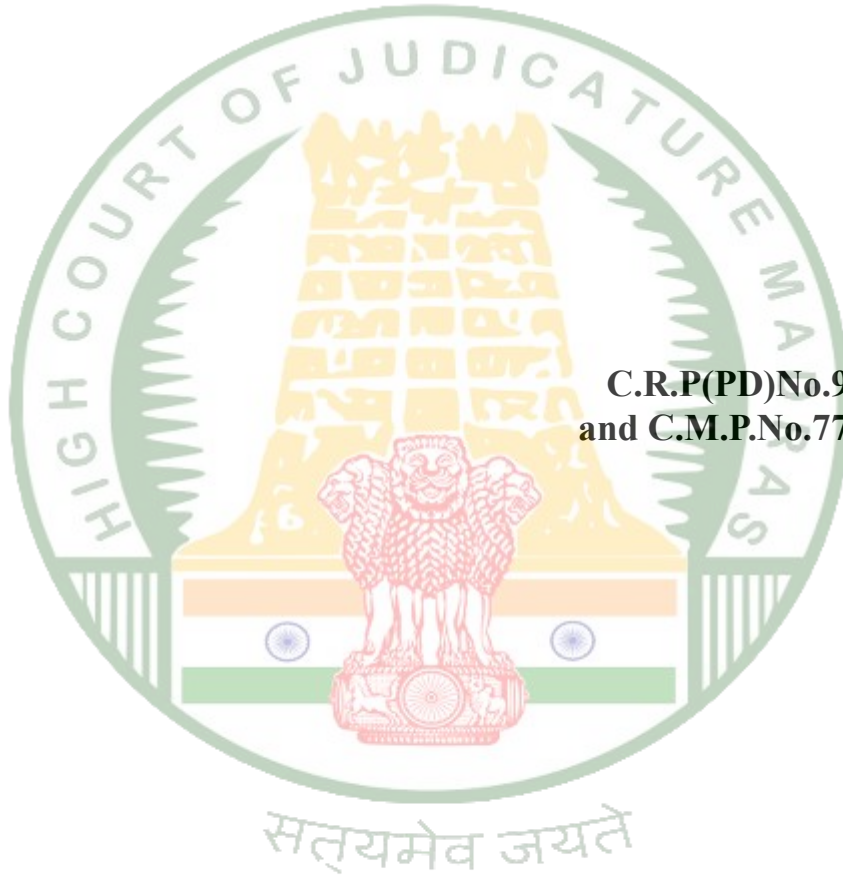
The XVII Additional Judge,
City Civil Court, Chennai.



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C.V.KARTHIKEYAN, J,

cse



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