

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1573 of 2017
and C.M.P.No.7335 of 2017

S.Manivannan

.. Petitioner

Vs.

V.Parimalam

.. Respondent

Prayer: Civil Revision Petition filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 10.01.2017 made in I.A.No.3981 of 2016 in I.A.No.4834 of 2015 in O.S.No.1723 of 2015 on the file of the XI Assistant City Civil Court, Chennai.

For Petitioner

: Mr.Vasudevan

for M/s.S.Senthil Vel

For Respondent

: Mr.Tamilselvan

for M/s.A.Rajesh Kanna

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 10.01.2017 made in I.A.No.3981 of 2016 in I.A.No.4834 of 2015 in O.S.No.1723 of 2015 on the file of the XI Assistant City Civil Court, Chennai.

2.The petitioner is defendant in O.S.No.1723 of 2015 on the file of the XI Assistant City Civil Court, Chennai. The respondent filed the said suit for permanent injunction, restraining the petitioner from selling the property by public auction. In I.A.No.4834 of 2015 filed by the respondent, an interim injunction was granted on condition that the respondent deposits a sum of Rs.5,00,000/- to the credit of the suit and respondent complied with the said condition. Subsequently, the said suit was dismissed for default. The petitioner sold the mortgaged property in public auction without any intervention of the Court and recovered a sum of Rs.26,60,000/-. The respondent also filed I.A.No.3980 of 2016 for

payment out by issuing cheque in favour her counsel Mr.A.Tamilselvan. The petitioner filed I.A.No.3981 of 2016 to take of the amount of Rs.5,00,000/-, which is deposited by the respondent as condition for granting interim injunction, in I.A.No.4834 of 2015 dated 27.03.2015. The petitioner filed counter affidavit and opposed I.A.No.3980 of 2016, filed by the respondent.

3.The learned Judge, considering the pleadings and arguments, by a common order dated 10.01.2017, allowed I.A.No.3980 of 2016 filed by the respondent and dismissed I.A.No.3981 of 2016 filed by the petitioner.

4.Against the order dated 10.01.2017, dismissing I.A.No.3981 of 2016 in I.A.No.4834 of 2015 in O.S.No.1723 of 2015, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioner submitted that the respondent has deposited the amount as security and learned Judge ought to have allowed I.A.No.3980 of 2016, filed by the petitioner under

Section 151 of C.P.C., as the suit filed by the respondent was dismissed for default. The learned Judge failed to consider the terms of mortgage, whereby the respondent agreed for sale of mortgaged property by public auction and if there is any shortage of realising the outstanding amount, the respondent agreed for attachment and sale of her other movable and immovable properties. The learned Judge misinterpreted the word “ஸ்தாவர ஜங்கம் சொத்துக்கள்”. The petitioner is entitled to realise the principle as well as interest due in mortgage. The learned Judge ought to have dismissed I.A.No.3980 of 2016 filed by the respondent and prayed for allowing the I.A.No.3981 of 2016.

6.Heard the learned counsel appearing for the petitioner as well as the respondent and perused the entire materials available on record.

7.From the materials on record, it is seen that the respondent has borrowed money from the petitioner on security of her immovable property and executed mortgage deed, wherein the respondent agreed for sale of mortgaged property by public auction without intervention of the

Court as per the provisions of the Transfer of Property Act. The respondent defaulted in payment of amounts borrowed. The petitioner brought the property for sale in public auction through the Auctioneer. At that stage, the respondent filed O.S.No.1723 of 2015 for permanent injunction, restraining the petitioner from bringing the property for sale. She also prayed for interim injunction, pending suit in I.A.No.4834 of 2015. The interim injunction was granted on condition that the respondent deposits a sum of Rs.5,00,000/- to the credit of the suit. The respondent complied with the said order. Subsequently, the petitioner brought the property for sale, as the suit filed by the respondent was dismissed for default, and realised the sum of Rs.26,60,000/-. The respondent filed I.A.No.3980 of 2016 for payment out by issuing cheque in favour of her counsel Mr.A.Tamilselvan and the petitioner filed I.A.No.3981 of 2016 to take the amount of Rs.5,00,000/-, deposited by the respondent in I.A.No.4834 of 2015 as a condition for granting interim injunction. According to the petitioner, he has not realised the entire amount due and payable by the respondent in mortgage and the petitioner is entitled to a sum of Rs.5,00,000/-, lying in the Court deposit. The said

claim is not acceptable, as the petitioner has to prove the balance amount due to him by the respondent in an appropriate proceedings by letting in evidence with regard to any amount paid by the respondent towards mortgaged amount and total amounts due and payable to the petitioner, being principle and interest. The contention of the learned counsel appearing for the petitioner that the petitioner is entitled to realise balance amount by sale of the movable and immovable properties and amounts lying to the credit of O.S.No.1723 of 2015 is movable property is concerned, unless the petitioner proves in an appropriate form, the balance amount due to him after giving credit to the amounts realised by sale of the mortgaged property, he is not entitled to take the amount lying to the credit of the suit. The amounts claimed by the petitioner cannot be proved in proceedings for payment out petition. In view of the same, the impugned common order of the learned Judge dismissing I.A.No.3981 of 2016 filed by the petitioner and allowing I.A.No.3980 of 2016 filed by the respondent suffers no error.

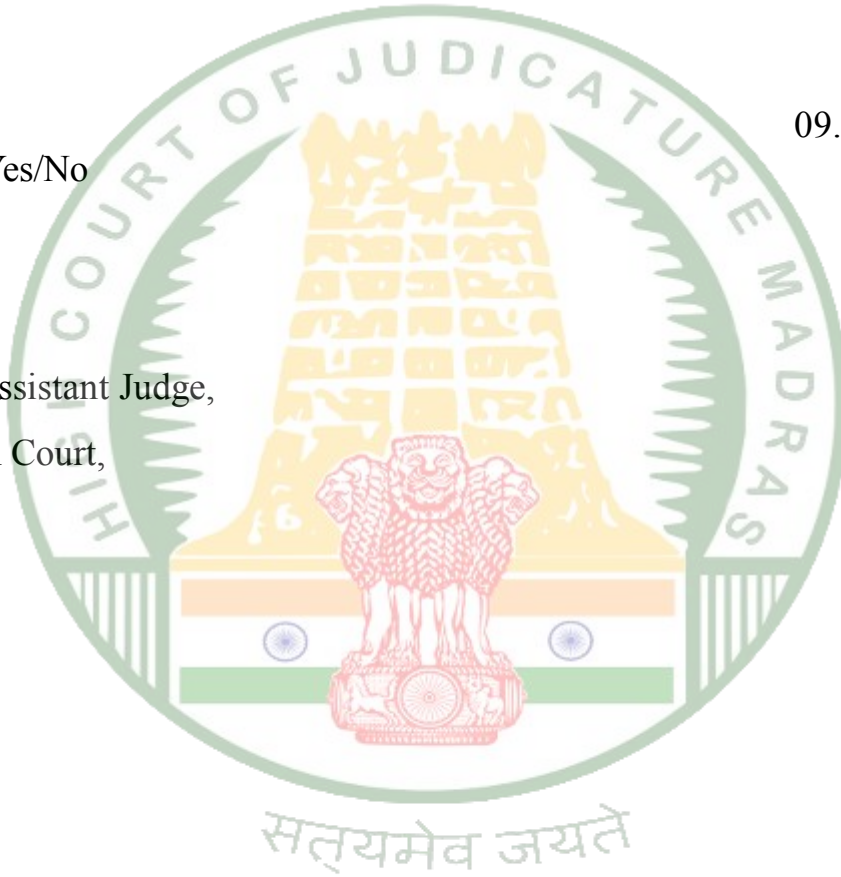
For the above reasons, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No
gsa

To

The XI Assistant Judge,
City Civil Court,
Chennai.

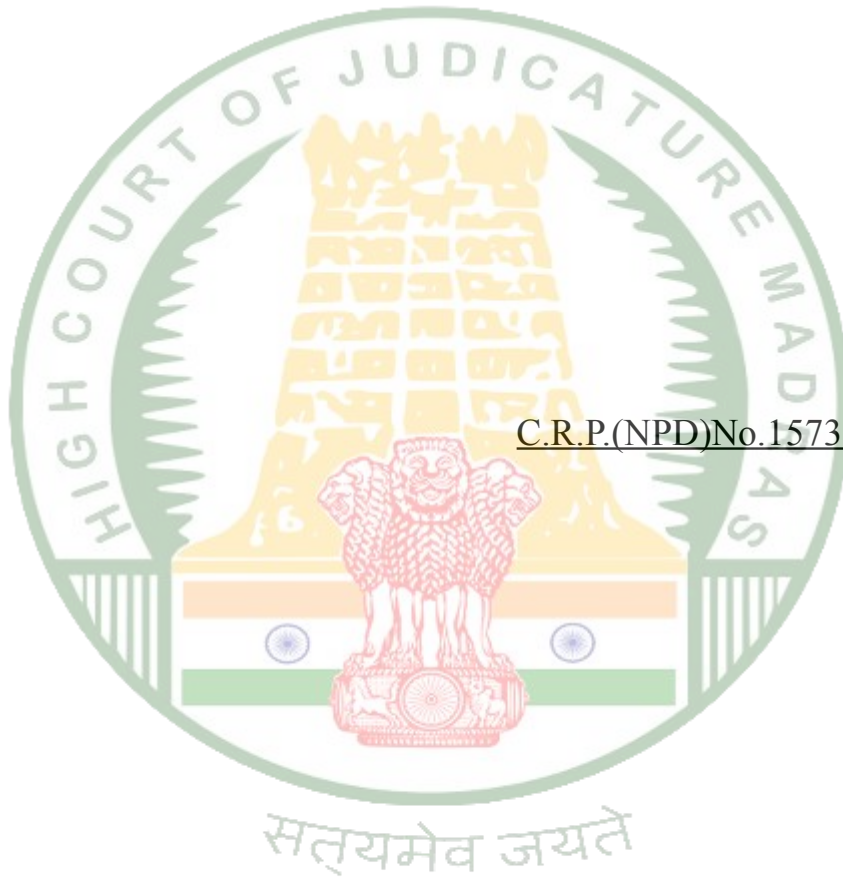


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