



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.R.P. (PD) Nos.1807 & 1954 of 2022
and C.M.P. Nos.9220 & 9907 of 2022

Kanthimathi Bhaskar

...

Petitioner /
Plaintiff
[in both CRPs]

versus

1.M/s.Metal Impex,
Represented by its Partner Kamlesh Jain,
Prince Apartment,
59, Ormes Road, 7th Floor,
Kilpauk, Chennai - 600 010.

2.Sneh.M.Jain

3.Kalawati

...

Respondents 1 to 3 /
Defendants 1 to 3
[in both CRPs]

4.Sri Raj & Co.
Rep. by its Partner,
No.7, Sunkurama Chetty Street,
1st Floor, Chennai - 600 001. ...

4th Respondent /
Proposed defendant
[in both CRPs]



COMMON PRAYER: Civil Revision Petitions have been filed under Article 227 of the Constitution of India, against the fair and decreetal orders dated 17.03.2022 passed in I.A.Nos.1 and 2 of 2019 in O.S.No.2196 of 2019 on the file of the learned XX Additional Judge, City Civil Court, Allikulam, Chennai.

For Petitioner : M/s.A.Dipthi Munoth
[in both CRPs]

For Respondent Nos.1 to 3 : Mr.Rahul K.Jain
[in both CRPs]

For Respondent No.4 : Mr.K.Mohan
[in both CRPs]

COMMON ORDER

These Civil Revision Petitions have been preferred challenging the orders of the learned XX Additional Judge, City Civil Court, Allikulam, Chennai dated 17.03.2022 made in I.A.Nos.1 and 2 of 2019 in O.S.No.2196 of 2019.

2. The revision petitioner is the plaintiff, who has filed the suit in O.S.No.2196 of 2019 against the defendants for redemption of mortgage; when the suit was pending, the plaintiff filed two petitions in I.A.Nos.1 and 2 of 2019 to amend the plaint and also to include the fourth



respondent / proposed defendant as a party to the proceedings and these petitions were dismissed. Aggrieved over that, the plaintiff has filed these Civil Revision Petitions.

3. Ms.A.Dipthi Munoth, learned counsel for the revision petitioner submitted that while the suit filed by the revision petitioner for redemption was pending, the suit property was sold in an auction proceedings through the proposed party / auctioneer by the defendants 1 to 3; the suit property was sold by the auctioneer at a rock-bottom price; the respondents 1 and 3 are aware of the value of the suit property even at the time of mortgaging the same in their favour; since the auction was not conducted in a fair manner and the property was also sold for a very low price; the petitioner challenges the auction itself on the allegations of the fraud and collusion.

4. In view of the same, the Court ought to have granted permission to include the prayer to declare the auction as null and void by way of amending the plaint; since the proposed party was hand in glove with the respondents 1 to 3, the proposed party should also be added as a party to



the proceedings but the learned trial Judge had chosen to dismiss the petitions by stating that the suit relief itself has become infructuous; if the plaintiff could prove that the auction purchaser is benami of the mortgagees, the plaintiff can very well maintain her suit for redemption and hence the findings of the learned trial Judge should be set aside. In support of the above said contentions, the learned counsel for the revision petitioner cited the decision of the Bombay High Court held in ***Vallabhdas Mulji vs. Pranshankar Narbheshankar*** reported in ***AIR 1929 Bombay 24***.

5. Mr. Rahul K. Jain, learned counsel for the respondents 1 to 3 submitted that due notice was given to the plaintiff before bringing up the property for auction; in fact the revision petitioner had sent a reply by seeking further time; the auction was conducted only after observing the due process of law; despite taking sufficient time, the revision petitioner has not come forward to settle her dues and that resulted in the auction proceedings. After the paper publication was issued for the auction proceedings that is scheduled to be held on 18.08.2018, the revision petitioner rushed to file the present suit, which was originally filed before the High Court in C.S.No.536 of 2018. While filing the said suit, the revision petitioner has also filed

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injunction application from restraining the defendants from confirming the auction sale in favour of the highest bidder.

6. He further submitted that the High Court has also passed an order by giving an opportunity to the petitioner to arrange her own purchasers to whom the plaintiff can sell the property for higher sale price. Such orders were passed in favour of the plaintiff on 20.08.2018 in O.A.No.742 of 2018 and on 22.11.2018 in A.Nos.8111 and 8112 of 2018 in C.S.No.536 of 2018. The revision petitioner have suppressed all these details and filed the petition to amend the prayer and also to implead third party / auctioneer as a party to the proceedings. The amendment sought to be made by the revision petitioner will change the character of the suit itself and hence it cannot be permitted. In support of his above submissions, the learned counsel for the respondents 1 to 3 cited the following judgments;

“[i] Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others ((2009) 10 SCC 84)

[ii] M.Revanna vs. Anjanamma (Dead) by L.Rs., and others (AIR 2019 SC 940)”



7. The revision petitioner is the plaintiff and he has mortgaged the suit property in favour of the defendants 1 to 3 by virtue of the mortgage deed dated 13.03.2017 for a sum of Rs.2,10,00,000/-(Rupees Two Crores Ten Lakhs). Subsequently she filed a suit for redemption of mortgage. Though the suit was originally filed before the High Court in C.S.No.536 of 2018 and later it got transferred to the District Court on the point of jurisdiction and got readmitted as O.S.No.2196 of 2019.

8. The contention of the learned counsel for the revision petitioner is that even while the suit was pending, the auction was conducted and documents were created as though someone has taken the suit property in the auction. According to the revision petitioner, the benami of the mortgagees alone had taken the property in the auction and hence the petitioner has got a right to seek the prayer to declare the auction held by the proposed party / auctioneer as null and void.

9. The learned counsel for the respondents attracted the attention of this Court to the notice dated 04.04.2018 which was issued to the revision petitioner. In the said notice the revision petitioner was called



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upon to pay the loan amount and if the revision petitioner fails, the property will be brought for sale. After receiving the said notice, the revision petitioner has also given a reply notice on 06.04.2018 by stating that she has repaid the entire loan amount and thereafter, the property was brought for sale. The grievance of the revision petitioner is that before the property was brought for auction no individual notice was given to her and the auction itself is a fraud and hence she is entitled to amend the plaint for seeking the relief of declaration that the auction itself is null and void.

10. On getting the information from the auctioneer on 20.08.2018 that in a public auction the property was sold in favour of one M/s.Arihant Real Estate for a sum of Rs.1,40,00,000/- (Rupees One Crore Forty Lakhs). The petitioner filed applications before the High Court itself by stating that the respondents 1 to 3 have attempted to sell the property at a rock-bottom price. The Court has given liberty to the petitioner to arrange her own purchasers in order to purchase the property for a better value. It is seen that the revision petitioner cannot arrange a better purchaser. If the plaintiff could successfully prove before the Court that the auction purchaser



is just a benami of the mortgagees she can still maintain the suit for redemption.

11. On perusal of the affidavit filed by the revision petitioner along with the petition to amend the prayer for declaration that the auction is null and void, there is no plea for cause of action. The particulars of amendment does not state how the revision petitioner has got the cause of action against the proposed party to add a new prayer. The scope of redemption suit is just to prove that the revision petitioner had paid the mortgage amount in full and she is entitled to redeem the suit property.

12. In the absence of any pleading for cause of action the prayer alone cannot be permitted to be amended as wished by the revision petitioner. If the revision petitioner is aggrieved and as a suspicion that the auction conducted through a third party / auctioneer engaged by the defendants 1 to 3 is a fraudulent one, the plaintiff is entitled to file a separate suit to declare the said auction as null and void if she so advised. Since the transaction of the mortgage is only between the plaintiff and the defendants 1 to 3 through a simple mortgage deed in a suit for redemption a third party



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like the proposed party is unnecessary. A person who can serve as a witness need not be added as a party to the proceedings unless the relief sought is against the said person.

13. As stated already, it is open to the revision petitioner to file a fresh suit against the third party / auctioneer or the auction purchaser along with the defendants for declaring the impugned auction as null and void due to fraud and collusion. Since the issue involved in the suit can effectively resolved with the respondents 1 to 3 alone there is no necessity to implead the third party to the proceedings.

14. With these observations, these Civil Revision Petitions are dismissed and the orders dated 17.03.2022 passed by the learned XX Additional Judge, City Civil Court, Allikulam, Chennai in I.A.Nos.1 and 2 of 2019 in O.S.No.2196 of 2019 are hereby confirmed. Consequently, connected Miscellaneous Petitions are closed. No costs.

17.08.2022

Speaking order / Non-speaking order



Index : Yes / No
Internet : Yes

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To

The XX Additional Judge, City Civil Court, Allikulam, Chennai.

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R.N.MANJULA, J.

sri

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