



C.R.P.No.1343 of 2021
and C.M.P.No.10413 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1343 of 2021

and

C.M.P.No.10413 of 2021

M/s.Sira Finance (HUF)

Rep by its karta

Mr.Kamal Nayan

S/o. Harakchand

No.810, Anna Salai,

Chennai - 600 002.

... Petitioner

Vs.

1.Homa Samanvitha Saminathan

2.M/s.Varma & Company

3rd Floor, (The Egmore Benefit
Saswath Nithi Society Ltd. Bld.)

New No.25, (Old No.13),

Flower Road, Chennai - 600 084

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.3450 of 2021 on the file of the learned V Assistant Judge, City Civil Court, Chennai.



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For Petitioner : Mr.Arvind Srevatsa
For R1 : Mr.J.Kamaraj

ORDER

This petition has been filed to strike off the plaint in O.S.No.3450 of 2021 on the file of the learned V Assistant Judge, City Civil Court, Chennai.

2.The revision petitioner is the first defendant in the suit in O.S.No.3450 of 2021 on the file of the V Assistant Judge, City Civil Court, Chennai. The suit was filed by the plaintiff to grant permanent injunction restraining the defendants, their men and agents, servants or anyone acting on their behalf from bringing the suit property for public auction. The present petition is filed under Article 227 of the Constitution of India for striking off the plaint in O.S.No.3450 of 2021 mainly on the ground of abuse of process of law.

3.The facts of the case in brief :



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The plaintiff is the only daughter of late P.Saminathan and Mrs.Uma Saminathan. It is the case of the plaintiff that the suit properties consist of two residential flats in Rani Meyyammai Towers in Sathyadev Avenue, R.A.Puram, Chennai. According to the plaintiff this was purchased by her father and mother using the income from ancestral properties her father inherited. The plaintiff also contended that she being a student was not aware of the dealings of her father with the first defendant but came to know recently that both her father and the first defendant were having business dealings and even her mother who was a homemaker was oblivious of the transactions. The plaintiff had come to know that on 03.10.2008 the suit property was mortgaged by her parents in favour of the first defendant one Kamal Nayan who is the karta representing the first defendant M/s. Sira Finance (HUF) and who was also a close friend of her deceased father and that the mortgage deed was registered in SRO, Mylapore as Document No.2341 of 2008. According to the plaintiff there were companies like M/s. Meenu Hometec Pvt. Ltd. and M/s.Saimira AditumTechnologies Pvt. Ltd. in which her mother (in the first company) and herself (in the second company) were inducted as



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directors and the karta of the first defendant (HUF) Kamal Nayan and his brother Vimal Nayan were also directors. The plaintiff's father expired on 28.06.2019 and the trouble started then as both the plaintiff and her mother were not aware of the business dealings of her late father with the first defendant. The suit properties were brought to auction by the first defendant on 09.10.2020 and it was only then the plaintiff's mother realized the seriousness of the situation and in order to protect the suit property, she filed a suit in O.S.No.2672 of 2020 on the file of the learned XIV Assistant Judge, City Civil Court, Chennai. In I.A.No.2 of 2020 in O.S.No.2672 of 2020 interim injunction was granted till the disposal of suit on condition of payment of 50% of the amount due as per the mortgage deed within one month. The plaintiff's mother aggrieved over this order filed CMA.No.25 of 2020 before VI Additional City Civil Court, Chennai, seeking setting aside of the order in I.A.No.2 of 2020 in O.S.No.2672 of 2020 passed by the learned XIV Assistant Judge, City Civil Court, Chennai. The same is still pending. According to the plaintiff, the time limit for foreclosure is 12 years and the date of auction fixed as 26.04.2021 is beyond this period and hence, the auction sale by



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foreclosure suffers from limitation. Moreover, the second defendant who is the agent appointed by the first defendant to sell the suit property has failed to comply with Section 69 of the Transfer of Property Act which stipulates three months notice demanding the dues. The plaintiff had expressed her apprehension that the suit property may fetch a much lesser rate and she may be thrown out to the streets if the auction is allowed to take place and that therefore, the permanent injunction was all the more vital.

4. The defendants resisted the suit stating that the City Civil Court had no pecuniary jurisdiction to try the suit as the amount involved was Rs.4,31,86,400/- up to 01.04.2021 and also the interest of Rs.1,16,00,000/- from 02.04.2021 till realisation. Another contention of the defendants was that the relief of permanent injunction in O.S.No.3450 of 2021 is not maintainable as it is larger than the scope of the suit itself. It was also contended that the non-joinder of necessary parties like the other legal heirs itself makes the suit bad in law. Another contention was that it was a sheer abuse of process of law by making



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multiple litigations and not complying with the earlier order of the Court like the order in I.A.No.2 of 2020 in O.S.No.2672 of 2020 filed by the plaintiff's mother and allowing the CMA No.25 of 2020 against this order to get dismissed for default all point towards delaying tactics employed by the plaintiff and her mother.

5. The I.A.No.2 of 2021 in O.S.No.3450 of 2021 was heard by the trial Court and another opportunity was afforded to the plaintiff, keeping in mind the covid pandemic situation and the grievance of the plaintiff and 15 days time was given for deposit of 50% of the dues.

6. In such circumstances, the present revision petition is filed by the first defendant in O.S.No.3450 of 2021.

7. For the sake of convenience, the parties are referred to as per their ranking in the trial Court and in appropriate places, their rank in the present petition would also be indicated.



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8. Heard Mr.B.Arvind Srevatsa, learned counsel appearing for the revision petitioner and Mr.J.Kamaraj, learned counsel appearing for the first respondent.

9. On a bare perusal of the related typed set of papers adduced by the revision petitioner, it is clear that the first respondent / plaintiff's mother initiated the litigation by way of O.S.No.2672 of 2020 seeking relief of permanent injunction from bringing the suit property to auction on 09.10.2020. It is also evident that the plaintiff's mother was the only plaintiff in O.S.No.2672 of 2020 and her daughter (plaintiff in O.S.No.3450 of 2021) was not a party to it. Another distinct aspect is that this suit was filed after the actual auction notice dated 17.09.2020. The I.A.No.2 of 2020 in O.S.No.2672 of 2020 was also filed by the plaintiff's mother praying for an ad-interim injunction to prevent the defendants from bringing the suit property to auction. A conditional order was passed in the I.A.No.2 of 2020 directing the plaintiff's mother to remit 50% of the amount of dues within a month of the date of the order.



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Aggrieved over this order the plaintiff's mother preferred an appeal in CMA.No.25 of 2020 in VI Additional City Civil Court, Chennai. This CMA.No.25 of 2020 was dismissed for default. It is learnt that subsequently the CMA was restored vide I.A.No.5 of 2020 in CMA.No.25 of 2020 and orders were reserved in CMA.No.25 of 2020. However, another auction sale notice dated 01.04.2021 was issued by the second respondent M/s.Varma & Company.

10. In the meanwhile, the plaintiff (in O.S.No.3450 of 2021) and her mother filed another suit in O.S.No.4993 of 2021 before IV Additional City Civil Court, Chennai, praying for redemption of mortgage at an amount and on a date fixed by the Court, permanent injunction from bringing the suit property to public auction on any date, mandatory injunction directing the respondents 1 & 2 to furnish time and correct statement of account and any other relief as deemed fit. There was also an I.A.No.2 of 2021 in O.S.No.4993 of 2021 praying for ad-interim injunction. The O.S.No.4993 of 2021 and I.A.No.2 of 2021 in that were just the replica of the earlier O.S.No.2672 of 2020 and I.A.No.2



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of 2020 in O.S.No.2672 of 2020 except for the addition of the plaintiff in O.S.No.3450 of 2021 as the second plaintiff and the mother of the deceased Saminathan as the third defendant. The prayer in O.S.No.4993 of 2021 was altered to include the right to redeem the mortgage. The appeal in CMA No.25 of 2020 against the orders in I.A.No.2 of 2020 is already pending as 'orders reserved'.

11.At this juncture, there is no purpose to be served by going into the merits of the case. It is true that the mortgagee has the right to sell the mortgaged property as it is a simple mortgage where the mortgagee does not get possession of the property. It is also evident that the mortgagor has tried her level best to delay the auction sale. The plaintiff and her mother have not complied with the directions of the Court given twice both in I.A.No.2 of 2020 in O.S.No.2672 of 2020 and I.A.No.2 of 2021 in O.S.No.3450 of 2021. In both these IAs the time granted for deposit of 50% of the total dues was one month and 15 days respectively. The apprehensions of the plaintiff as expressed in her plaint are not only repetitive but also unfounded and imaginary. The mortgage



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WEB COPY deed in page 8 & 9 read as follows :

"That the mortgagors agree to discharge the mortgage loan within a period of six months from the date these presents and further agree to pay the monthly interest on or before 5th day of every succeeding month and in case they commit default of payment of interest continuously for a period of three months, irrespective of the period provided for redemption of the property the mortgagee may after due notice to the mortgagor proceed to foreclose the mortgage and will be entitled to demand the entire principal sum outstanding together with all interest, cost of notice, proceedings and any other expenses that the mortgage might incur.

"That in case the mortgagors fail to pay the sum as demanded, the mortgagee will be entitled to bring the mortgaged property for sale, in public auction or sell the property by private treaty as per the provisions of Section 69 of the Transfer of property act as extended to the area in which the property is situated, and in such case the mortgagee will be entitled to execute necessary sale deed in favour the successful bidder or the person who enters into private treaty, to purchase the property and in addition to this right conferred, the mortgagee is also pay for appointment of received for collection of any rent or profit taht may become payable on the property or to file a suit



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WEB COPY *for foreclosure of the mortgage as the case may be".*

These portions of the mortgage deed clarify the position of the mortgagee. A plethora of suits and interlocutory petitions by the plaintiff and her mother show the intentions they are only to use judicial process as a tool to drag on the proceedings to the maximum extent. Therefore, it is clearly an abuse of process of law on the part of the plaintiff.

12.The trial Courts have been quite lenient with the plaintiff and her mother to afford them a fair opportunity to redeem the mortgage. The plaintiff and her mother have only tried to bring in emotional angle to the whole case. The mortgage has not been disputed by them. Nor they can. Had their real intentions to redeem the mortgage been there, they would have tried to deposit the amount as stipulated by the trial Courts. They lack in that bonafide intention. Moreover, the plaintiff in O.S.No.3450 of 2021 had suppressed the fact that there was another O.S.No.4993 of 2020 filed jointly with her mother on the same cause of action with some modified pleadings and prayer. It is also pertinent to mention that the plea of suit property having been purchased using the



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income derived from ancestral nucleus has been made only in O.S.No.3450 of 2021 and in the earlier suit this averment is missing. However in the first O.S.No.2672 of 2020 the plaintiff's mother had brought in a new averment stating that the suit property belonged to her minor daughter (plaintiff in O.S.No.3450 of 2021) and her late husband had no right to mortgage the property. Thus, it is clear that there has been a blatant attempt by the plaintiff and her mother to abuse the process of law and to drag on the proceedings with the series of litigation. It is settled that filing several rounds of litigations is a classic example of abuse of process of Court.

13. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed. The plaint in O.S.No.3450 of 2021 on the file of the learned V Assistant Judge, City Civil Court, Chennai, is struck off.

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Internet: Yes/No

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Speaking/Non-Speaking order
mtl

R. HEMALATHA, J.

mtl

To

- 1.The V Assistant Judge, City Civil Court, Chennai.
- 2.The Section Officer, VR Section, High Court, Madras.

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