



C.R.P.No.3856 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3856 of 2022
and
C.M.P.No.20248 of 2022

James Paul

... Petitioner

VS

Vellaiyammal

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the docket order dated 31.10.2022 passed in I.A.SR.No.65448 of 2022 in O.S.No.5674 of 2019 on the file of the XVI Additional City Civil Court, Singaravelar Maaligai, Chennai.

For Petitioner : Mr.K.P.Chandrasekaran

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below rejecting the petition filed by the revision petitioner seeking to reject the plaint.

2. The respondent herein filed a suit for specific performance of the



C.R.P.No.3856 of 2022

Agreement dated 16.09.2006.

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3. The petitioner herein who was arrayed as a 5th defendant in the suit filed an application for rejection of plaint in I.A.SR.No.65548 of 2022.

4. The main contention raised by the revision petitioner in his petition to reject the plaint was that his father with whom the plaintiff entered into the Suit Sale Agreement had already mortgaged the property with a third party and when the said mortgage was subsisting, his father had no proprietary right over the suit property to enter into a Sale Agreement.

5. The said contention raised by the revision petitioner cannot be accepted. It is settled law, the mortgage created in the property will not divest the right of the original owner over the suit property.

6. It is always open to him to sell the property which is subject matter of the mortgage, subject to the rights of the mortgagee under the mortgage. Therefore, merely because there was a prior mortgage over the suit property,



C.R.P.No.3856 of 2022

the right of the owner of the property to enter into a sale agreement will not get affected but it is only subject to the mortgage. Therefore, the petition for rejection plaint filed by the revision petitioner is devoid of merits and the Court below correctly dismissed the same.

7. The learned counsel for the petitioner has drawn the attention of this Court to the decision reported in **2022 (5) CTC 331 (Valliyammal vs. P.P.Sakthivel)**. In the said case, in pursuance of the mortgage, the mortgagee/bank brought the suit property for sale before the Debt Recovery Tribunal and the property was ordered to be sold. Therefore, the Court held that the sale agreement was not a *bona fide* transaction.

8. The fact of that case is altogether different from the fact of the present case. Therefore, the contention made by the learned counsel for the petitioner based on the decision reported in **2022 (5) CTC 331 (Valliyammal vs. P.P.Sakthivel)** cannot be accepted. I do not find any error in the order passed by the Court below.

9. Accordingly, the Civil Revision Petition is dismissed. However, it is



C.R.P.No.3856 of 2022

open to the revision petitioner to raise all his defences at the time of final disposal of the suit. No costs. Consequently, the connected civil miscellaneous petition is closed.

25.11.2022

Index : Yes / No
Speaking Order : Yes / No
dm



C.R.P.No.3856 of 2022

To

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The XVI Additional City Civil Court,
Singaravelar Maaligai, Chennai.



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C.R.P.No.3856 of 2022

S.SOUNTHAR, J.

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C.R.P.No.3856 of 2022

25.11.2022