



Cont.P.No.656 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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and

Sub Application (OS) Nos.668 & 682 of 2023

Sunil Kumar @ M.Kannan

... Petitioner

Vs.

1.Latha Nair

2.Chinthu Nair

3.Chanchu Nair

... Respondents

Contempt Petition filed under Section 10 of the Contempt of Courts Act, 1971, to issue notice to the respondents 1 to 3 and to punish them for the acts of contempt committed by them for disobeying the judgment and decree dated 04.12.2009 in O.S.No.4671 of 2007 passed by the IV Assistant Judge, City Civil Court, Chennai, and confirmed in A.S.No.33 of 2011, dated 11.03.2013, passed by the II Additional Judge, City Civil Court, Chennai.



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For Petitioner : M/s.Sudharshana Sundar
for Mr.Ravi Raja Bappu

For Respondents : Mr.N.Muralikrishnan
Senior Counsel
for Mr.E.C.Ramesh

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

The above Contempt Petition is filed alleging that the respondent is liable for punishment for contempt for disobeying the judgment and decree, dated 04.12.2009, in O.S.No.4671 of 2007, passed by the learned IV Assistant Judge, City Civil Court, Chennai, which is also confirmed in the appeal in A.S.No.33 of 2011, by judgment dated 11.03.2013, passed by the II Additional Judge, City Civil Court, Chennai.

2.Brief facts that are necessary for the disposal of this Contempt Petition are as follows :

2.1.The petitioner is the 2nd plaintiff in the suit in O.S.No.4671 of 2007. The property which is the subject matter of the suit is the property of



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the petitioner's mother who purchased the same under a registered sale deed dated 03.04.1970. It is the case of the petitioner that the marriage between his mother and father was dissolved under a Deed of Dissolution dated 07.04.1972. It was at that time, the petitioner's mother executed a settlement deed granting life interest to the petitioner's father and after his life time, in favour of the petitioner.

2.2.After the death of petitioner's mother, the petitioner filed a suit in O.S.No.4671 of 2007 before the City Civil Court, Chennai, against his father and the respondents herein, who are the second wife and children of first defendant through his second wife, for permanent injunction restraining his father from alienating the property. The suit was contested and ultimately, the trial Court granted a decree restraining the father of petitioner from alienating the property, after holding that he has only a limited interest to enjoy the property during his life.

2.3.Thereafter, an appeal in A.S.No.33 of 2011 was also filed by the petitioner's father along with the respondents in this Contempt Petition. The



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appeal was also dismissed, confirming the judgment and decree of the trial Court in O.S.No.4671 of 2007.

2.4.It appears that, after the lifetime of the petitioner's father, the petitioner caused a legal notice calling upon the respondents to vacate the property and hand over possession. However, the respondents appear to have issued a reply stating that their father had redeemed a previous mortgage in respect of the property and therefore, they are entitled to be in possession of the property till the mortgage money is settled.

2.5.It is in that context, the petitioner has come by way of this Contempt Petition before this Court, alleging that the respondents have willfully disobeyed the judgment and decree of the trial Court in O.S.No.4671 of 2007.

3.Heard the learned counsel on either side and perused the entire materials available on record.



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4.This Court, going through the documents and the admitted facts, is unable to find a cause for contempt. Even though a Contempt Petition will lie even for disobeying the order of the Subordinate Court, the nature of judgment and decree in the suit filed by the petitioner in O.S.No.4671 of 2007 does not warrant initiation of contempt. In the suit in O.S.No.4671 of 2007, the petitioner obtained a decree for permanent injunction restraining the father of the petitioner and the respondents from dealing with the property or to create any encumbrance. By virtue of the judgment and decree of the trial Court, the respondents are not supposed to create any kind of third party interest, lien, or charge over the property, which will affect the interest of the petitioner. However, the decree is not for mandatory injunction or for recovery of possession upon the death of the father. In such circumstances, it is open to the petitioner to file a suit for recovery of possession, in case, the respondents do not hand over possession. This Court finds that there is no disobedience of the judgment and decree of the trial Court in the suit.



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WEB COPY 5.Learned counsel appearing for the petitioner as well as the respondents admit that the petitioner has filed a suit in C.S.No.214 of 2023 before this Court for recovery of possession and for mesne profits. In such circumstances, we leave it open to the petitioner to pursue his remedy in the suit in C.S.No.214 of 2023. This Court finds that there is no cause for contempt.

6.During the pendency of the proceedings, the petitioner wanted mediation and expressed his willingness to give 1/3rd of the suit property. However, the respondents took a stand that, in view of the fact that the mortgage created by the petitioner's father was redeemed by the father who is the 1st defendant in the suit in O.S.No.4671 of 2007, they have a right of subrogation, as the entire mortgage was settled by the father himself. It may be true. However, the petitioner, by virtue of the findings in the previous suit, is entitled to get a decree in the suit as a matter of course, as the respondents' contention in this proceedings does not indicate any subsisting right. Even assuming that there was a mortgage that was redeemed by the



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father, it is admitted before us that a sum of Rs.15,000/- alone was paid by the petitioner towards redemption. Assuming that the father had redeemed the earlier mortgage, the father or the respondents, at the best, could only recover a sum of Rs.15,000/- with interest at the rate of 12% p.a. as agreed under the Mortgage Deed, which will not be more than Rs.75,000/- as on date on a rough calculation. Further, the alleged mortgage itself is void as against the petitioner, since the life estate holder has no right to alienate or transfer a right in immovable property beyond his life time. Therefore, this Court finds no valid defence or triable issue in the suit having regard to the findings in the previous suit.

7.Considering the findings in the previous suit and the facts, this Court is inclined to request the Registry to list the suit for trial before the Hon'ble Judge hearing suits, so as to dispose of the suit in C.S.No.214 of 2023 as early as possible, preferably within a period of six months from the date of receipt of a copy of this order. The Hon'ble Judge may dispose of the suit on merits, uninfluenced by any of the observations made in this order touching the merits.



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WEB COPY 8. In view of the conclusions reached above, this Contempt Petition is dismissed. Consequent to the dismissal of the Contempt Petition, connected Sub-Applications are also dismissed.

**(S.S.S.R., J.) (S.M., J.)
21.12.2023**

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

1. The II Additional Judge,
City Civil Court,
Chennai.

2. The IV Assistant Judge,
City Civil Court,
Chennai.



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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

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