



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3423 of 2010

and

M.P.No.1 of 2010

Oppilamani Udayar

...Petitioner

Vs.

1.Sivasamy
2.Dharmalingam(died)
3.Ravi
4.Vasanthi
5.Nagaraj
6.Elavarasan
7.Jayanthi

...Respondents

(R4 to 7 brought on record as LR's of the deceased R2 viz Dharmalingam vide court order dated 23/3/2021 in C.M.P.No.110598 of 2020 in C.R.P.No.3423 of 2010)



PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to under Article 227 of the Constitution of India as against the judgment and decree dated 30.12.2009 made in C.M.A.No.7 of 2008 on the file of the Subordinate Judge, Ariyalur in confirming the fair and final order dated 24.06.2008 made in E.A.No.2 of 2008 in E.P.No.82 of 2006 in O.S.No.150 of 2004 on the file of the District Munsif Court, Ariyalur are illegal, unsound and liable to be dismissed.

For Petitioner : Ms.V.Saranya
: Represented M/s.Ethirajulu
For Respondents :
For R1 : Mr.C.Prabakaran
For R2 : Died
For R3 : Mr.M.Sivakumar
For R4 : -No Appearance-
For R5 to R6 : Not Ready In Notice.
For R7 : -No Appearance-

ORDER

This is a revision preferred by a Mortgagor. The Mortgagor suffered a decree in O.S.No.150/2004 on the file of the District Munsiff, Ariyalur.

2.A preliminary decree for foreclosure was passed and a final decree was also passed for permitting sale of property. In pursuance



thereof execution petition was filed in E.P.No.82 of 2006. The amount claimed in the Execution Petition was Rs.1,05,642/-, this represents the following heads:-

- (i) Amount as per decree is Rs.69,133.15/-.
- (ii) Interest on Rs.69,133.15/- amounting to Rs.24,893/-
- (iii) Cost of Rs.11,616/-.

3.For the subsequent interest of Rs.40,000/-, which was the mortgage amount, the petitioner has filed a memo stating that as of 14th August 2021, the total liability is Rs.1,78,397/-.

4.The position of law is clear, once it is a mortgage it is always a mortgage. A mortgagor has the right to pay the amount, claimed under the decree, as long as the decree for foreclosure is in jeopardy or the execution proceedings are kept pending. The petitioner has challenged the execution proceedings before this Court and therefore, the decree is still in jeopardy.

5.In order to give an opportunity to pay the entire dues under the



decree, time is granted for four (4) weeks i.e., till 16.08.2023 to pay the entire amount claimed under the decree. In case the amount is not paid on or before 16.08.2023, further orders will be passed in the revision petition.

6.The Mortgagor is called upon to pay the entire amount as per the calculation. It means the entire amount claimed under the E.P.No.82 of 2006 together with the interest at 12 per cent per annum from the date of the decree that is 07.07.2006 till 16.08.2023. As stated above, this amount shall be paid on or before 16.08.2023.

7.With the above direction this Civil Revision Petition stands allowed. Connected Miscellaneous Petition is closed. No Costs.

Post on 17.08.2023 for reporting compliance.

05.07.2023

Index : Yes/No
Neutral Citation Case : Yes/No
nst



WEB COPY

5



To:

The Principal District Munsif Court,
Ariyalur.



WEB COPY



V. LAKSHMINARAYANAN, J.

nst

C.R.P.No.3423 of 2010
and
M.P.No.1 of

2010



WEB COPY



05.07.2023

C.R.P.No.3423 of 2010

and

M.P.No.1 of 2010

V.LAKSHMINARAYANAN, J.

This court passed an order on 05.07.2023 calling upon the mortgagor to pay the entire E.P amount on or before 16.08.2023.

2.Ms.V.Saranya for M/s.Ethirajulu learned Counsel appearing for the petitioner has produced an e-payment receipt dated 28.07.2023. As per this payment receipt, the judgment debtor has deposited a sum of Rs.1,87,952/- to the credit of E.P.No.82 of 2006 in O.S.No.150 of 2004 on the file of the Principal District Munsif at Ariyalur. This is in compliance with the order dated 05.07.2023.



WEB COPY

3.The first respondent/decreed holder/mortgagee is entitled to withdraw the sum of Rs.1,87,952/- lying to the credit of Principal District Munsif at Ariyalur by filing an appropriate cheque application. Learned counsel appearing for the judgment debtor states that he has no objection to the said withdrawal. If the decreed holder files an application payment of application on or before 24.08.2023. The Court shall take up the application and allow the same without waiting for any objection from the auction purchaser or the judgment debtor. The said orders shall be passed on or before 31.08.2023. That leaves out only one other aspect namely the deposit made by the auction purchaser Mr.Ravi/3rd respondent herein. He has deposited a sum of Rs.1,10,300/- towards the sale of the E.P. schedule mentioned property. Since I have recorded full satisfaction of the decree, the auction purchaser will be entitled to withdraw the said sum together with interest if any on filing of an appropriate application for payment



ought. The judgment debtor shall in addition to the amount deposited in the decree shall pay a sum of Rs.10,000/- towards cost for the auction purchaser.

4. The said amount need not be deposited in the Court it can be paid directly to the auction purchaser and a receipt obtained from him.

5. With the above directions C.R.P.No.3423 of 2010 Stands disposed of. No costs. Connected Miscellaneous Petition is closed if any.

17.08.2023

nst

Note:- Registry is directed to upload order copy on 18.08.2023.



WEB COPY



10

V.LAKSHMINARAYANAN, J.

nst

C.R.P.No.3423 of 2010

and

M.P.No.1 of 2010



WEB COPY



17.08.2023