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C.R.P.No.1177 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.1177 of 2018
and CMP.No.6083 of 2018

1.Chandma
2.A.R.Rafi
3.R.Reshmi Jhan
4.R.Rahil Januead

.. Petitioners/Petitioners/Petitioners/
Plaintiffs

Vs

1.D.Geetha
2.C.Ezhilan

3.Sri Raj & Co.
Government Auctioneer
No.7, I Floor, Sunkurama Chetty Street
Chennai - 600 001.

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order made in I.A.No.14866/2017 in I.A.No.8546/2017 in O.S.No.6014 of 2008 dated 20.02.2018 on the file of the XVth Assistant City Civil Court, Chennai.



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For Petitioners : Ms.Thenmozhi Shiva Perumal

For Respondents : Mr.R.Babu for R1 & R2
R3 - No Appearance

ORDER

This revision arises under some strange circumstances. The revision petitioners are the plaintiffs in O.S.No.6014 of 2008, and the same is laid for redemption of certain mortgage. In the meantime, the mortgagee / first defendant have decided to bring the property to sale under Section 69 of the Transfer of Property Act, and had approached the third defendant, auctioneer, and that an auction notice came to be issued.

2. The defendants 1 and 2 have filed their written statement and have taken up a plea of limitation.

3. Very strangely, if not surprisingly, the plaintiffs have moved the trial Court in I.A.No.8546 of 2017 for deciding the issue of limitation as a preliminary issue. And very fortunately for the plaintiffs, this application was dismissed by the trial Court vide order dated 20.09.2017. The plaintiffs will now move the trial Court with another application in I.A.No.14866 of



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2017 to review the order passed in I.A.No.8546/2017. This possibly has triggered the trouble for the plaintiffs, where the trial Court has imposed a cost of Rs.20,000/-, and in default to pay the same it held that the right to sue of the plaintiffs will stand forfeited. This order is under challenge.

4. The plaintiffs display an uncanny knack of inviting trouble for themselves by their ingenuity. Where in any suit, the defendant takes up a plea of limitation, it will be the defendant who will seek that the issue of limitation to decide as a preliminary issue and not the plaintiff. The fact that the plaintiffs have taken out this application, some nine years after the institution of the suit is indicative of the fact that he possibly is keen to delay the trial of the suit. Now having lost this application, he would again move the trial Court with an application for reviewing it. This is plainly untenable. However the order of the Court below in holding that the plaintiffs would lose their right to sue might not be correct. Therefore, that part of the order of the Court directing right of the plaintiffs to sustain the suit would be forfeited, may have to be set aside.

5. When this Court finds that the suit was filed in 2008, the plaintiffs have



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only managed to stall the auction by the mortgagee for the last 15 years.

The mortgagor / plaintiffs pleads discharge. But then this Court is keen to understand there is no documentary proof for the same.

6. The counsel for the respondents/defendants submitted that the defendants are even willing to forego the cost of Rs.20,000/-. provided the plaintiffs get along with the trial of the suit.

7. The trial Court is now required to advance the case to 05.04.2023, and proceed with the trial of the case. It is underscored that from here onwards this Court will keenly watch how diligently the plaintiffs conduct themselves. The trial Court is required to expedite and conclude the trial latest by 30.04.2023.

8. The revision is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2023

Index : Yes / No

Speaking Order / Non-speaking Order
ds

Note : Issue order copy on 29.03.2023.



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To:

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



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N.SESHASAYEE.J.,

ds

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