



C.R.P.(NPD)No.2084 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

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1.E.Suchitra
2.E.Rajakumari
3.E.Vignesh (Minor)
(Minor represented by his mother and
Natural guardian E.Suchitra)
4.A.Gandhimathi ... Petitioners

VS

1.The Official Liquidator,
Perfect Benefit Fund Ltd.,
2nd Floor, Corporate Bhavan,
No.29, Rajaji Salai, Chennai-600 001.
2.M.Chezhiyan
3.A.Arachelvan .. Respondents

Petition filed under Article 227 of the Constitution of India against the order dated 25.11.2016 passed in CMP.No.520 of 2014 in ASSR.No.16124 of 2014, on the file of the Principal Judge, City Civil Court, Chennai.



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For Petitioners : Mr.Arunkumar
for M/s.Sampathkumar and Associates

For Respondents : Mr.M.Rajarajan (for R2 & R3)

Mr.S.R.Sundar
for Official Liquidator

ORDER

This civil revision petition arises against the order passed in CMP.No.520 of 2014 in AS.SR.No.16124 of 2014. By an order dated 25.11.2016, the petition filed under Order 41 Rule 3(A) of the Code of Civil Procedure was dismissed.

2.The petitioners before me are the legal heirs of the plaintiff. The defendant by the name Perfect Benefit Fund had on the basis of an alleged mortgage executed by the brother of Ezhilan, brought the property for auction. The deceased Ezhilan filed a suit for a declaration, permanent injunction and for cost. He based the suit on the fact that he became the owner of the property due to an exchange deed with his brother Arachelvan. He claim title and according to him, the Perfect Benefit Fund was wrong in bringing the property for auction when he is not the mortgagor. The matter went for trial and the suit was dismissed on 02.07.2008.

3.After the judgment was pronounced in the suit, Ezhilan



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unfortunately passed away and his legal representatives were not aware of the proceedings pending before the Court. When the legal representatives were came to know of the pending proceedings, they substituted themselves in place of Ezhilan in order to prosecute the appeal. There remained a delay of 2054 days. Hence, an application was filed under Order 41 Rule 3A. It came to be dismissed. Therefore, this revision.

4.In the meantime, the defendant Perfect Benefit Fund went into liquidation, pursuant to the orders of this Court and all the matters came to be vested with the Official Liquidator attached to the Madras High Court. After a hot contest, the CMP came to be dismissed. Against which, this revision has been filed.

5.It is not in dispute that the husband of the first civil revision petitioner passed away on 15.07.2011 leaving behind minor children. His claim is that his brother had mortgaged the property which belonged to him by way of a compromise deed and he is the rightful owner of the property. Vital rights relating to the property are in dispute and therefore, the Court below could have taken less stringent view when the legal heirs are prosecuting the appeal.

6.However, taking into consideration the hardship that would have



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been caused to the Benefit Fund, I was of the view that I could condone the delay on payment of cost of Rs.1,00,000/-. Accordingly, the learned counsel for the appellant has brought a draft in favour of the Official Liquidator, High Court Madras drawn on State Bank of India, Anna Nagar Branch, Chennai in D.D.No.684433.

7.Mr.S.R.Sundar, learned Standing Counsel appearing on behalf of the Official Liquidator has also received the cost. Therefore, the condition having been complied, CMP.No.520 of 2014 stands allowed. The order passed by the Court below in the said application on 25.11.2016 is set aside. The appellate Court shall now take up the appeal and number the same and dispose of in accordance with law. This civil revision petition is allowed. No costs.

03.08.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The Principal Judge,
City Civil Court,
Chennai.

V. LAKSHMINARAYANAN,J.



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