



WEB COPY



CRP No.1180 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.1180 of 2023
and
CMP.No.8143 of 2023

1.C.Bakthavachalam

2.B.Chandrasekar

... Petitioners

Versus

1.M/s.Sree Varadaraja Benefit Fund Limited

No.149, Old No.63/1

Purasawalkam High Road,

Chennai.

2.Jagadish Auctioneers & Co.

No.24, Chakrapani Road,

2nd Lane, Maduvankarai,

Chennai-600 064.

3.S.Rajesh Kumar

...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India,
praying to set aside the order dated 27.09.2022, passed by the learned IV
Additional City Civil Judge, Chennai in I.A.No.12 of 2019 in O.S.No.9021 of
2010.



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For Petitioners : Mr. D. Rajagopal
For Respondents : Notice send service awaited

ORDER

The petitioners have filed this revision petition to set aside the order passed by the learned IV Additional City Civil Judge, Chennai in I.A.No.12 of 2019 in O.S.No.9021 of 2010, dated 27.09.2022.

2. Heard, Mr. D. Rajagopal, learned counsel for the petitioners and perused the materials available on record.

3. The learned counsel for the petitioners submitted that the petitioners have filed the suit in O.S.No. 9021 of 2010, before this Court for the relief of declaration, to declare that the alleged auction conducted by the 1st and 2nd defendants dated 11.07.2009 with regard to the schedule mentioned property as null and void and to declare the consequential sale deed dated 20.07.2009 registered as Document No.2613 of 2009 executed by the 1st defendant in favour of the 3rd defendant is null and void and not binding on the plaintiffs. Thereafter, the petitioners have filed an I.A.No.12 of 2019 in O.S.9021 of 2010, before the IV Additional City Civil Judge, Chennai, under Order VI Rule 17 of CPC seeking for amendment of the plaint in the suit by inserting para



25(v) in the prayer para of the above suit, as follows: 25(v) to permit the plaintiffs to discharge / redeem the mortgage to receive the mortgage amount due and deliver to the plaintiffs the mortgage deed and all other original documents relating to the mortgaged property before the concerned registration authority. On hearing both sides the learned trial Judge dismissed the said application on 27.09.2022, holding that the sale deed was executed in the year 2009, whereas, the application was filed in the year 2019, therefore, the petitioners are not entitled to seek for amendment of the plaint. Challenging the said order in Interlocutory Application, the petitioners have preferred this revision petition.

4. On a perusal of the record, it reveals that, the petitioners have approached the Court in the year 2010, by filling a suit to declare that the auction conducted by the 1st and 2nd defendants dated 11.07.2009 with regard to the schedule mentioned property as null and void and to declare the consequential sale deed dated 20.07.2009 executed by the 1st defendant in favour of the 3rd defendant is null and void. The defendants have also contested that the right of redemption had extinguished after the sale certificate was issued in favour of the highest bidder and the sale deed was executed in favour of the 3rd defendant on 20.07.2009. After laps of 10 years the petitioners have



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filed an application for amendment of the plaint and the same was dismissed by the trial Judge on 27.09.2022.

5. However, on seeing the plaint averments, it clearly reveals that during 2009 property was auctioned. Immediately, they filed a suit on 11.08.2009, by challenging the auction and execution of the sale deed. So from 2009 onwards, the plaintiffs are approaching the Court. Admittedly, the 1st plaintiff is aged about 67 years at the time of filing of the suit. Now the trial is commenced, at this stage the petitioners prays to permit them to amend the plaint by including the prayer for redemption of the mortgage. If such prayer is not permitted their valuable rights on the property will be defeated. Furthermore, the said amendment would not cause any prejudice to the defendants. Hence, the order passed by the learned IV Additional City Civil Judge, Chennai in I.A.No.12 of 2019 in O.S.No.9021 of 2010 is hereby set aside and the trial Court is directed to permit the petitioners / plaintiffs to amend the prayer as sought in the I.A.

6. Accordingly, this Civil Revision Petition is allowed. The defendants are directed to file additional written statement in respect of the said amendment within a period of 4 weeks from the date of receipt of a copy of this



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order and thereafter, the trial Court is directed to proceed the trial further in the manner known to law. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Neutral Citation: Yes/No
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To

1. The IV Additional City Civil Judge, Chennai.
2. The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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