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CRP No.4058 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P. No.4058 of 2019

G. Rani

...

Petitioner

Vs

1. B.Vetrivelar

2. K. Bala Venkatesh

...

Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order dated 11.03.2019 made in C.M.A.No.18 of 2018 on the file of the V Additional Judge, City Civil Court, Chennai, in reversing the well considered order and decreetal order dated 29.11.2017 made in I.A.No.15857 of 2017 in O.S.No.4354 of 2017 pending on the file of the XII Assistant Judge, City Civil Court, Chennai, as illegal, arbitrary and contrary to settled principles of law.

For Petitioner : Mr.R.Veeramani

For R1 : Mr.P.Amarnath

For R2 : No appearance

### **ORDER**

This Civil Revision Petition has been filed as against the order and decreetal order dated 11.03.2019 made in C.M.A.No.18 of



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2018 on the file of the V Additional Judge, City Civil Court, Chennai, thereby reversing the order and decreetal order dated 29.11.2017 made in I.A.No.15857 of 2017 in O.S.No.4354 of 2017 on the file of the XII Assistant Judge, City Civil Court, Chennai, thereby dismissing the petition for interim injunction.

2. The revision petitioner is the first defendant in the suit filed by the first respondent herein for declaration declaring the Mortgage Deed dated 04.12.2013 registered vide document No.2866 of 2013 as illegal, non-est and null and void. He also prayed for mandatory injunction directing the petitioner herein to hand over the original documents of title in respect of the suit property which was deposited in pursuance of the Mortgage Deed dated 04.12.2013 and also for permanent injunction restraining the petitioner herein from bringing the suit properties to auction on the strength of the Mortgage Deed dated 04.12.2013. He also prayed for permanent injunction restraining the petitioner herein from interfering with the peaceful possession and enjoyment of the suit schedule property.



3. The first respondent filed a suit for the above relief on the strength of the settlement deed executed in favour of him by his grandmother dated 23.10.2000 in respect of the suit schedule property. Though the said settlement deed was executed in favour of the first respondent, the second respondent, who is none other than his father, was given life interest in the suit schedule property. Only after his demise, the absolute right of the suit schedule property will be devolved upon the first respondent herein. After execution of Settlement Deed, the second respondent, who is none other than the father of the first respondent, mortgaged the suit property and executed the Mortgage Deed dated 04.12.2013 registered vide document No.2866 of 2013 on borrowal of Rs.15,00,000/- with interest at the rate of 36% per annum. However, the second respondent did not even pay any single paise to the petitioner herein. When the petitioner is about to take appropriate action to bring the suit property for auction, the first respondent filed the present suit. He also filed a petition for interim injunction. The Trial Court dismissed the interim injunction application with valid consideration. Aggrieved by the same, the first respondent preferred an appeal and the Appellate Court allowed the appeal and granted interim injunction thereby restraining the petitioner from bringing the suit schedule properties for



private auction sale till the disposal of the suit. The first respondent has no right over the suit property, though he is the ultimate beneficiary. The right will be devolved upon the first respondent only after the demise of the second respondent, who is none other than his own father.

4. Admittedly, the second respondent mortgaged the property with the petitioner on borrowal of Rs.15,00,000/- with interest at the rate of 36% per annum. He failed to pay any interest and he committed default. At that juncture, the first respondent colluded with his father and filed the present suit on the strength of the Settlement Deed dated 23.10.2000. Therefore, the first respondent has no right or title over the property to file the present suit, that too, for the above said prayers. Therefore, the suit itself is not maintainable and it is liable to be dismissed. No prayer sought for in the suit is maintainable on the strength of the Settlement Deed executed in favour of the first respondent dated 23.10.2000 in respect of the suit schedule property. That apart, admittedly, no amount has been paid so far to the petitioner herein by the second respondent. Without considering the same, the First Appellate Court mechanically allowed the appeal and granted interim injunction restraining the petitioner from bringing the property for auction.



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5. However, the learned counsel for the first respondent would submit that he is ready and willing to deposit the mortgage amount to the credit of the suit.

6. Considering the above submission, the interim order granted by the First Appellate Court is hereby confirmed on condition that the first respondent shall deposit a sum of Rs.15,00,000/- to the credit of the suit in O.S.No.4354 of 2017 on the file of the XII Assistant Judge, City Civil Court, Chennai, by way of fixed deposit in the Nationalised Bank within a period of six weeks from today, failing which the order passed by the First Appellate Court shall stand automatically cancelled and the injunction petition filed by the petitioner is dismissed.

7. Accordingly, the Civil Revision Petition is disposed of. The Trial Court is directed to dispose of the suit within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

10.02.2023

Index : Yes/No

Internet : Yes/No

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**Note : Issue order copy on 17.02.2023**



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**G.K.ILANTHIRAIYAN,J.**

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To

1. The V Additional Judge,  
City Civil Court, Chennai.
2. The XII Assistant Judge,  
City Civil Court, Chennai.

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