



CRP.No.2919 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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Arumugam

... petitioner

Vs.

Mohan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order passed in IA.No.533 of 2014 in OS.No.28 of 2010 dated 07.04.2015 on the file of the Principal District Munsif Court cum Judicial Magistrate at Vandavasi.

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.K.G.Senthilkumar

### **ORDER**

This civil revision petition has been filed to set aside the fair and final order passed in IA.No.533 of 2014 in OS.No.28 of 2010 dated 07.04.2015 on the file of the Principal District Munsif Court cum Judicial Magistrate at Vandavasi, thereby dismissed the application seeking final decree.



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2. Heard, the learned counsel for the petitioner and the learned counsel for the respondent.

3. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed suit for recovery of money on the mortgage of the suit schedule property. The said suit was decreed and preliminary decree was passed on 07.01.2011. The preliminary decree revealed that if the decreed amount is not paid by the respondent, the suit property can be brought into sale to realise the decreed amount. After the decree, the respondent failed to pay the amount and as such, the petitioner filed application under Order 34 Rule 5 of CPC seeking final decree. It was dismissed on the ground that the suit was filed for recovery of money alone and as such, it cannot be treated as suit on mortgage though the suit property was under mortgage. In a suit for sale, if the plaintiff succeeds, the court shall pass a preliminary decree, and further directing that in default of paying money, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof, be sold and the proceeds of the sale be paid into court and applied in payment of what has been found or declared under or by the preliminary decree. Admittedly, the respondent failed to pay the amount and as such, the petitioner rightly filed petition for final decree to bring the property for sale to realise the decreed



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amount. Therefore, this Court finds infirmity or illegality in the order passed by the court below and it is liable to be set aside.

4. Accordingly, the fair and final order passed in IA.No.533 of 2014 in OS.No.28 of 2010 dated 07.04.2015 on the file of the Principal District Munsif Court cum Judicial Magistrate at Vandavasi is set aside and this civil revision petition is allowed. There shall be no order as to costs.

03.01.2023

Speaking/non-speaking  
Index : Yes/No  
Internet : Yes  
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**G.K.ILANTHIRAIYAN, J.**

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To  
The Principal District Munsif Court cum  
Judicial Magistrate at Vandavasi

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