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C.R.P.(PD)No.3942 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.3942 of 2018
and CMP.No.21853 of 2018

V.DossKutti

.. Petitioner

VS

1.J.Sharmila Devi
2.K.Jothilingam @ Jambulingam
3.Sri Raj & Co.
4.Mangalam
5.A.Rahman
6.R.Ajima Bee

.. Respondents

Petition filed under Article 227 of the Constitution of India against
the Order and Decreetal Order dated 12.03.2018 in I.A.No.12480 of
2017 in O.S.No.2628 of 2012 passed by the learned XIII Assistant Judge,
City Civil Court at Chennai dismissing the Petition I.A.No.12480 of
2017.

For Petitioner : Mr.P.R.Krishna Raj
for Mr.N.Daranath

For Respondents : Mr.K.Mohan (for R1, R2 and R4)

No Appearance – (for R5 & R6)



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R3 – Not ready notice

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ORDER

The plaintiff is the revisionist. The suit had been filed for the following reliefs:

(i) declaring the auction dated 10.03.2012 conducted by the 3rd defendant putting the schedule property into public auction is null and void;

(ii) directing the 1st and 2nd defendants to furnish the statement of accounts pertaining to the mortgage deeds dated 9.2.2009, vide Doc. No.745/2009, 15.4.2009 vide Docut. No.2368 of 2009 and 13.01.2011 vide doc. No.254 of 2011 executed by the plaintiff in favour of the 1st defendant, registered before SRO, Sembium.

(iii) to grant permanent injunction restraining the 3rd defendant, their men, agent, servant or claiming rights through them from in any way to confirm the sale as per their notice dated 26.03.2012 issued by them; and

(iv) to pay the cost of the suit.

2.Since an interim order was not granted, the suit property was brought for sale and the property was sold. The defendants 5 and 6 are purchasers of the property *lis pendens*. The plaintiff sought for an



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amendment for a declaration that the sale deed executed by the 4th defendant in favour of the 5th defendant and by 5th defendant in favour of the 6th defendant as null and void and not binding on him. The said application for amendment had been dismissed on ground of limitation.

3.As per Section 52 of the Transfer of Property Act, the purchaser of the property pending a suit gets the right depending on the result of the suit. If the suit is decreed and the auction sale is set aside, there is nothing which could have been legally transferred by the 4th defendant in favour of the 5th defendant and consequently by 5th defendant in favour of the 6th defendant. In fact, I feel that the prayers were totally unnecessary because the 5th and 6th defendants are admittedly *lis pendens* purchaser. The suit had been filed on 23.04.2012 when the sale has been on 27.04.2012.

4.Be that as it may, in order to avoid technical plea, the plaintiff has taken out an application. The prayer does not change the cause of action of the suit nor the relief sought are substantially altered. Therefore, the order of the trial Court holding that the prayers are barred by limitation, begs the issue of *lis pendens* under Section 52 of the Transfer of Property Act.

5.Therefore, the revision is accepted. The order and decreetal order in I.A.No.12480 of 2017 in O,S.No.2628 of 2012 dated 12.03.2018 is set



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aside. The plaintiff is granted permission to amend the plaint. This civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.07.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The XIII Assistant Judge,
City Civil Court at Chennai.



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V. LAKSHMINARAYANAN,J.

VS

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