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C.R.P.(NPD)No.3275 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.3275 of 2018
and CMP.No.18579 of 2018

Kamalchand (Died)

2.P.K.Vasanthi Bai

3.Vicky

4.K.Prakash

5.A.Kavitha

... Petitioners

(Sole respondent died. Petitioners 2 to 5

brought on records as LRS of the deceased sole petitioner

viz. P.Kamalchand vide court order dated **20.07.2023** made in

CMP.No.16340 of 2022 in CRP.No.3275 of 2018 by VLNJ)

Vs.

Mahaboob Bee

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, against the order and decretal order dated 16.08.2018 passed in I.A.No.196 of 2018 in O.S.No.70 of 2012, on the file of Subordinate Judge, at Ponneri.



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For Petitioners : Mr.V.V.Sairam

For Respondent : Mr.M.D.Ilayaraja

ORDER

This revision arises against an order passed in I.A.No.196 of 2018 in O.S.No.70 of 2012, dated 16.08.2018. The petitioner before me is the defendant in the suit. The suit is one for redemption of a mortgage. The relationship between the plaintiff and the defendant is not denied. After the preliminary decree was passed, an application was taken in final decree in I.A.No.303 of 2017.

2.Mr.V.V.Sairam, learned counsel appearing for the petitioners would state that unless and until the exparte preliminary decree is set aside, his client will be put to serious prejudice and loss. He would state that there is sufficient costs to condone the delay of 681 days in filing the application to set aside the exparte decree.

3.Mr.M.D.Ilayaraja, learned counsel appearing for the respondent would state that the relationship between the parties is not denied and what has been passed is only a preliminary decree and thereafter, much water has flown under the bridge. The plaintiff has also taken on



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application for final decree in which notice has been issued to the mortgagee. He would state that since the relationship between the parties is admitted setting aside the preliminary decree would not be of any avail.

4.Heard both sides and carefully pursued the records.

5.From the perusal of the papers, it is crystal clear that the relationship between the parties is admitted. The mortgage is also based on a registered mortgage deed in Document No.9490 of 2008. At the time of preliminary decree, the Court only declares whether the plaintiff is entitled to redeem the property or not. The relationship, having been admitted to re-open the preliminary decree as submitted by the learned counsel for the respondent would only be re-inventing the wheel.

6.Apart from that, no 'sufficient cause' has been shown to set aside the exparte preliminary decree. Whatever right the petitioner/defendant/mortgagee has, he can always workout the same by filing a memo of calculation before the trial Court in I.A.No.303 of 2017.

7.All that remains is only the calculation of the amount that the



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plaintiff will have to pay the defendant in due discharge of the mortgage deed dated 06.10.2008 in terms of the preliminary decree. Therefore, I am not inclined to interfere with the order of the trial Court dismissing the application. The suit, being of the year 2012, I request the learned trial Judge to take up the application for passing of final decree and pass final orders on or before 31.03.2024.

8. With the above direction, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.08.2023

Index: Yes/No
Speaking Order : Yes/No
Neutral Citation: Yes/No
rjr/vs

To

The Subordinate Judge,
Ponneri.

V.LAKSHMINARAYANAN,J.

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