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C.R.P.No.1039 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1039 of 2024
and CMP.No.12082 of 2024

1.Kavitha
2.Priyadarsini
3.Lavanya
4.Deepika

... Petitioners

Vs

1.M/s.Vox Realities Private Limited
Rep. by its Managing Director Mr.G.Ravanan
No.5, Warren Road, Chennai - 600 004.

Murugesan (deceased)

2.Sri Kandaswamy Permanent Fund Ltd.,
Rep by its Director Mr.S.Subramanian
28, Agraharam Street, Chindatripet
Chennai - 600 002.

3.The Sub-Registrar Mylapore Sub District
Chennai - 600 028.

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to struck down the appeal in A.S.No.284 of 2023 pending on



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the file of XIX Additional Judge, City Civil Court, Chennai as illegal, contrary to law and unconstitutional in the light of the judgment by this Court.

For Petitioners : Mr.Perumbulavil Radhakrishnan
Mr.G.Karthikeyan

For Respondents : Mr.L.Murali Krishnan
for Mr.K.P.Sathish Kumar for R1

ORDER

This civil revision petition seeks to strike off the proceedings in A.S.No.284 of 2023 on the file of XIX Additional City Civil Court at Chennai. The civil revision petitioners are the plaintiffs in O.S.No. 384 of 2019 on the file of II Assistant City Civil Court at Chennai.

2. I heard Mr.Perumbulavil Radhakrishnan for the civil revision petitioners and Mr.L.Murali Krishnan for Mr.K.P.Sathish Kumar for first respondent.

3. Before I delve into the merits of the case, the history of litigation is necessary. The parties shall be referred to as per their rank in the suit



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proceedings in O.S.No.384 of 2019.

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4.The suit in O.S.No.384 of 2019 had been laid by civil revision petitioners as plaintiffs 1 to 4 against their father Murugesan (D1), Sri Kandasamy Permanent Fund Limited (D2), M/s.Vox Realities Pvt. Ltd., (D3) and The Sub Registrar, Mylapore (D4) for mandatory injunction, to cancel the deed of mortgage and to deliver vacant possession of the property.

5. It is to be noted that apart from the suit in O.S.No.384 of 2019 against which the appeal in A.S.No.284 of 2023 has been preferred, yet another suit had been preferred in C.S.No.738 of 2003 on the file of this Court. This suit in C.S.No.738 of 2003 was laid by the plaintiffs 1 and 2 in O.S.No.384 of 2019 against their father Murugesan (D1), their sisters Lavanya (D3), Deepika (D4) (who are the plaintiffs 3 & 4 in O.S.No.384 of 2019) and Sri Kandasamy Permanent Fund Limited (D2), seeking for a relief of declaration and permanent injunction.

6. The facts of the case in C.S.No.738 of 2003 (Renumbered as O.S.No.2485 of 2015) are as below:



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- a) Originally the suit schedule mentioned property belonged to one Sukuni Bai Ammal. The said Sukuni Bai Ammal had alienated the property in and around the year 1941 in favour of Pachaiyammal. Pachaiyammal had married one Duraiswami and their marriage produced several children. The first defendant, Murugesan was born to Pachaiyammal and Duraiswami. The plaintiffs who are four in number are the grand daughters of Pachaiyammal. In and around 1961, Pachaiyammal decided to create a line of succession for the property. Therefore, she executed a settlement deed on 02.02.1961 in favour of her son Murugesan. In terms of the settlement deed, she retained the entire life interest and granted limited life interest in favour of the first defendant, Murugesan and after his lifetime, the vested remainder was to go to his four daughters namely Kavitha, Priyadarsini, Lavanya and Deepika, who are the revision petitioners herein.
- b) Murugesan, though he is only a life estate holder without a right of alienation, executed two mortgages for Rs.5.00 lakhs each. One is a simple mortgage and the other is a mortgage by deposit of title deeds. The mortgagee is the second defendant namely Sri Kandaswamy



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Permanent Fund Ltd.,

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c) Murugesan was alleged to have defaulted in repayment of mortgage amount and therefore, in exercise of powers vested in it in terms of Section 69 of Transfer of Property Act, Sri Kandaswamy Permanent Fund Ltd., brought the property for auction.

d) At that stage, Kavitha and Priyadarsini, the first and second daughters of Murugesan realised that their rights over the property is sought to be parted away on account of illegal acts of Murugesan. Therefore, they presented C.S.No.738 of 2003 on the file of this Court. They sought for a relief of declaration that the mortgage deed executed by Murugesan in favour of Sri Kandaswamy Permanent Fund Ltd., on 22.08.1994 as null and void and also for the relief of permanent injunction restraining Sri Kandaswamy Permanent Fund Ltd., from bringing the suit schedule property for auction.

7. Pending the suit, the aforementioned grand daughters of Pachaiyammal moved a application in O.A.No.826 of 2003, seeking an ad interim injunction restraining Sri Kandaswamy Permanent Fund Ltd., or anyone claiming thereunder from bringing the property for auction. The said



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Fund entered appearance through a counsel in the suit as well in the application.

8. After hearing both sides, by an order dated 30.10.2003, this Court had specifically directed that any sale that may take place in terms of Section 69 of Transfer of Property Act will be subject to the result of the suit in C.S.No.738 of 2003. In other words, it is made clear that if any person purchases the property in the auction, his/her title will be subject to the result of the suit.

9. Be that as it may, a certain Vox Realities Pvt. Ltd., (who is the 3rd defendant in O.S.No.384 of 2019) claims that one Ajay Bhatt was the successful purchaser in the auction sale, which was made subject to the result of the suit in C.S.No.738 of 2003 and as his nominee, it purchased the property. On coming to know about this purchase, the plaintiffs moved an application in O.A.No.724/2007 in C.S.No.738 of 2003 seeking for a relief of ad interim injunction restraining M/s.Vox Realities from interfering with the peaceful possession and enjoyment of the suit property.



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10. At the same time, an application in A.No.4133 of 2007 was taken out to implead M/s.Vox Realities. Pending disposal of the application to implead M/s. Vox Realities in the suit, the said ad interim injunction was granted by this Court on 30.07.2007. Subsequently, by an order in A.No.4133 of 2007, M/s.Vox Realities was also impleaded as a party to the suit.

11. By virtue of enhancement of pecuniary jurisdiction of the City Civil Court, the suit in C.S.No.738 of 2003 stood transferred to the file of II Additional City Civil Court at Chennai. It was renumbered as O.S.No.2485 of 2015.

12. After a detailed trial, the suit came to be decreed on 29.06.2017 with costs, granting the relief of declaration that the mortgage executed by the first defendant Murugesan in favour of Sri Kandaswamy Permanent Fund Ltd., the second defendant, is illegal and void. The suit was dismissed insofar as the relief of permanent injunction is concerned.

13. The *lis pendens* purchaser M/s.Vox Realities feeling aggrieved by



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the decree in O.S.No.2485 of 2015, preferred a regular appeal before this Court in A.S.SR.No.44900/2021. It sought leave to file an appeal against the judgment and decree of the trial Court in CMP.No.11899/2021 in A.S.SR.No.44900/2021. In the said CMP, this Court ordered notice to the respondents/plaintiffs. The plaintiffs entered appearance through a counsel and filed a detailed counter.

14. After hearing both sides, this Court vide order dated 28.10.2021 had dismissed the said CMP.No.11899 of 2021 in A.S.SR.No.44900 of 2021 and held that M/s.Vox Realities being a purchaser who was aware of the litigation, yet it went ahead and purchased the property. Thus, it was not entitled to maintain the appeal. It was made clear that if at all any person is entitled to an appeal, it is only the mortgagee viz., Sri Kandaswamy Permanent Fund Ltd., The relevant portion is extracted hereunder :

'23. The petitioner is the auction purchaser pending the suit and after being put on notice that the sale in his favour was subject to the ultimate result of the suit. Therefore, the petitioner has purchased the property being fully aware of the risk that they were taking. The petitioner cannot be heard to question the Judgment and Decree that in O.S.No.2485 of 2015, as it is



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brought to the notice of this Court that pending the suit before this Court in C.S.No.738 of 2003 the petitioner had been impleaded as a party to the suit on 30.07.2007 by orders in A.No.4133 of 2007. Having failed to participate in the proceedings despite being brought on record the petitioner cannot now contend that he has not been made a party to the proceedings which is a blatant falsehood. Having deliberately stayed away from the proceedings despite being aware of the pendency of the suit and the relief claimed, the petitioner cannot now seek to question the Judgment and Decree passed in O.S.No.2485 of 2015. That apart, the petitioner is only an auction purchaser and that too after notice about the pending proceedings and on condition that his sale would be subject to the result of the suit. In these circumstances the petitioner cannot be permitted to question the Judgment and Decree passed in O.S.No.2485 of 2015 by the II Additional Civil City Judge, Chennai. That apart, the person who can question the validity of mortgage is only the 2nd defendant, the mortgagee. The 2nd defendant has not questioned the Judgment and Decree nor have they participated in the proceedings.'

15. Both sides would agree that Sri Kandaswamy Permanent Fund Ltd., had not preferred an appeal against the said decree.



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16. Feeling aggrieved over the rejection of the petition to grant leave, a Special Leave Petition was preferred by M/s.Vox Realities before the Supreme Court in SLP(C) No.2422 of 2022. The said Special Leave Petition came to be dismissed on 28.02.2022. In other words, the decree granted in O.S.No.2485 of 2015 dated 29.06.2017 attained finality.

17. With this round of litigation over, we now turn to the second round of litigation, which had commenced on the basis of the decree granted in O.S.No.2485 of 2015. Alleging that possession had been taken away from them by M/s.Vox Realities and since the Sub Registrar, Mylapore refused to record the decree in O.S.No.2485 of 2015 dated 29.06.2017, all the four daughters of Murugesan instituted a suit in O.S.No.384 of 2019 on the file of II Assistant City Civil Court, Chennai. The reliefs that were sought in this suit was for :

- a) a mandatory injunction directing the Sub-Registrar, Mylapore to make entry in his books that the mortgage executed by Murugesan in favour of Sri Kandaswamy Permanent Fund Ltd., is null and void;
- b) a mandatory injunction to cancel the sale deed executed pending the



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lis by Sri Kandaswamy Permanent Fund Ltd., in favour of M/s.Vox Realities;

- c) a direction to M/s.Vox Realities to deliver vacant possession of the suit property;
- d) to pay mesne profits from 29.06.2017 i.e., from the date of judgment in O.S.No.2485 of 2015 till the date of realisation and for a further sum of Rs.15,000/- per month as damages;
- e) a permanent injunction restraining M/s.Vox Realities from encumbering or creating any third party interest or altering the superstructure over the suit property.

18. In this suit, M/s.Vox Realities, the unsuccessful party before this Court and Supreme Court, entered appearance and filed a detailed written statement running to several pages. It is the only person who had contested the suit. Murugesan and Sri Kandaswamy Permanent Fund Ltd., remained *exparte*. In this proceedings, on the side of the plaintiffs, Ext.A1 to Ext.A28 were marked and on the side of the defendants Ext.B1 to Ext.B7 were marked. A certain Ravanan, the Managing Director of M/s.Vox Realities examined himself as D.W.1



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19. After a detailed examination of the evidence let in before him, the learned trial Judge vide his judgment and decree dated 01.08.2023 had partly decreed the suit. In its decree it had held that the plaintiffs are entitled for a mandatory injunction as against the fourth defendant, Sub Registrar, to enter in his books regarding the nullity of the mortgage and for a further direction that the fourth defendant shall make entry in his books that the sale deed executed in favour of M/s.Vox Realities by Sri Kandaswamy Permanent Fund Ltd., is null and void. M/s.Vox Realities, the third defendant is also directed to quit and deliver vacant possession within a period of four months from the date of the judgment and an injunction was also granted restraining it from alienating the property. Insofar as the relief of damages and mesne profits are concerned, the suit stood dismissed.

20. Aggrieved by the said judgment and decree in O.S.No.384 of 2019, M/s.Vox Realities preferred a regular appeal before the XIX Additional City Civil Court, Chennai. This appeal has been taken on file as A.S.No.284 of 2023. It is to strike off this appeal, the present civil revision has been presented.

12/20



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WEB COPY 21. Mr.Perumbulavil Radhakrishnan took me to the grounds of appeal and submitted that the pleas that had been taken by M/s.Vox Realities are in fact hit by *resjudicata* and the present appeal is an attempt to re-litigate the proceedings which had already been concluded in O.S.No.2485 of 2015, CMP.No.11899/2021 in A.S.SR.No.44900/2021 and as confirmed by the Supreme Court in SLP(C) No.2422 of 2022. He would submit that the continuation of the appeal is an abuse of process of law and that the lower Appellate Court should not be burdened with the appeal and the appeal should be removed from its file in exercise of powers under Article 227 of the Constitution of India.

22. Mr.L.Murali Krishnan, learned counsel appearing for Mr.K.P.Sathish Kumar for M/s.Vox Realities would submit that the respondent seeks to agitate the correctness or otherwise of the decree granted in O.S.No.384 of 2019 dated 01.08.2023. He would state that as a party defendant, he is entitled to do so.

23. The point I have to decide in this case is whether the appeal in



A.S.No.284 of 2023 is liable to be struck off. Before that, I have to take note of the following facts :

- i. By virtue of the judgment in O.S.No.2485 of 2015 dated 29.06.2017, the right, title and interest of the plaintiffs namely Kavitha, Priyadarsini, Lavanya and Deepika has been settled. They have been declared to be entitled to the suit schedule mentioned property;
- ii. By virtue of the very same judgment, the alienation by Murugesan in favour of Sri Kandasamy Permanent Fund Limited is null and void and inoperative as against the plaintiffs;
- iii. The purchase which had taken place pending the litigation in C.S.No.738/2003 is hit by *lis pendens*. I should recollect here that *lis pendens* commences with the date of presentation of the plaint, continues through the act of preferring an appeal or special leave petition before the Supreme Court;
- iv. The right of M/s.Vox Realities has been finalised by a judgement of this Court in CMP.No.11899/2021 in A.S.SR.No.44900/2021 dated 28.10.2021 and this order stood confirmed in SLP(C) No.2242 of 2022.



WEB COPY 24. The *lis pendens* purchase is not *ab inito void* but would depend upon the result of the suit. In fact this had been made clear by the order of this Court in O.A. No.826 of 2003 in C.S.No.738 of 2003 dated 30.10.2003.

25. With this preliminaries having been settled, I would now look into the prayer that had been made by Mr.Perumbulavil Radhakrishnan regarding the maintainability of the appeal.

26. When a decree has been passed against one party or even when a decree has been passed which affects the right of a third party, the aggrieved has right to present an appeal before the Appellate forum with leave of the Court by virtue of Section 96 of Code of Civil Procedure. Section 96 does not bar the filing of any appeal even if it be a vexatious one. The bar under Section 96 operates only under Section 96(3) and Section 96(4) of the Code. If the appeal does not come within the scope of Section 96(3) or Section 96(4) of the Code, I cannot find fault with the lower Appellate Court in receiving the appeal papers, numbering the same and issuing summons on the revision petitioners. It is for the learned Appellate Judge who is dealing with the



appeal to decide whether on the facts of the present case, the appeal preferred by M/s.Vox Realities is one worth agitating or whether it is a vexatious or an abusive appeal. While sitting under Article 227 of the Constitution, I have to see whether the Court which entertained the appeal, has jurisdiction to do so. In case, I come to the conclusion that it has the jurisdiction, I have no other option than to turn to the parties and direct them to approach the Court before which the proceedings are pending and raise all the pleas before that authority.

27. In this case, the appeal is pending before the senior Civil District Judge who has sufficient and vast experience in civil jurisdiction and I am sure if the appeal is argued with the same vehemence the revision was argued before me, the learned appellate Judge would see the law, facts and justice involved in the mater.

28. As the II Additional City Civil Court has jurisdiction to entertain the appeal, I decline to entertain this revision.

29. Before I conclude, I have to take notice of the fact that the



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proceedings were initiated atleast 21 years before and are yet to see the light in the end of the tunnel. The plaintiffs in the present case have already litigated upto Supreme Court in one round and yet again are faced with the present appeal. In the interest of justice and in order to give a full play to Vox Realities, third defendant in the present appeal, I feel that if a direction is given to the learned XIX Additional Judge, City Civil Court to dispose of the appeal in a shorter period, will give a finality to the rights of both the parties. Both sides would submit that the appeal in A.S.No.284 of 2023 pending on its file is listed for hearing on 19.07.2024.

30. The learned XIX Additional Judge, City Civil Court, Chennai is requested to advance the hearing from 19.07.2024 to 08.07.2024. On that date, both the sides shall appear before the learned Additional Judge and after ascertaining their convenience, the learned Judge will start hearing the appeal from 09.07.2024. The learned Judge shall complete the hearing in the appeal by 16.07.2024 and pass judgment on or before 29.07.2024. The learned Judge is also requested to submit a report to this Court on the compliance of the directions given above on 30.07.2024.



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31. I am sure that the learned District Judge who is pointed out above is a Senior Judge having sufficient experience in civil side and he will not seek any extension of time.

32. In the result, this civil revision petition is dismissed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Post the matter for reporting compliance on 31.07.2024.

Note : The learned Appellate Judge is required to act on the webcopy of this judgement produced by either side, and need not insist for a certified copy of the same.

01.07.2024

Index:Yes/No
Neutral Citation : Yes / No
Speaking order / Non-speaking order
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To:

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



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V.LAKSHMINARAYANAN,J.

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