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O.S.A.No.84 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

CORAM

THE HON'BLE Mr. JUSTICE S.S.SUNDAR
AND
THE HON'BLE Dr. JUSTICE A.D.MARIA CLETE

O.S.A.No.84 of 2024

N.Thanabal

.. Appellant

Vs.

1.M/s.Devie & Co.
Rep. by its Proprietor Kumar
180, Dr.Nanjappa Road
Coimbatore 641 018

2.S.Kumar

3.M/s.Rajeswari Credits
Rep. by its Partner S.Thiagarajan
Old No.155-A, New No.259
Jawahar Bazaar, Karur

4.Ms/.Sree Lakshmi Devi Investment
Rep. by its Partner S.Thiagarajan
Old No.155-A, New No.259
Jawahar Bazaar, Karur

5.M/s.Swarnalakshmi Credits
Rep. by Kandasamy
Old No.155-A, New No.259
Jawahar Bazaar, Karur
(Defendants 3 to 5 were impleaded *vide* order dt.28.8.2007 in A.No.669/2005)



O.S.A.No.84 of 2024

6.K.Anandhi

(6th defendant impleaded *vide* order dt.17.7.2018 in OSA.No.71/2017 and time extended as per order dated 14.02.2020 in C.S.No.158 of 2004)

7.V.Ravikumar

(7th defendant impleaded *vide* order dt.11.4.2019 in OSA.No.413/2018 and time extended as per order dated 14.02.2020 in C.S.No.158 of 2004)

8.KR.Alagappan

9.KR.Sivaraman

10.S.Meenal

11.AL.Neela

(Defendants 8 to 11 impleaded *vide* order dt.24.9.2019 in A.No.4819/2019 and time extended as per order dated 25.11.2019 in A.No.8987 of 2019 and further extended as per order dated 14.02.2020 in C.S.No.158 of 2004)

.. Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent, against the order dated 05.03.2024 passed in A.No.450 of 2024 in C.S.No.158 of 2024.

For Appellant	: Mr.M.Velmurugan
For RR1 and 2	: No appearance
For RR3 and 4	: No such person
For R5	: No such address
For R6	: Mr.S.Rajasekar
For R7	: Mr.S.Gopinathan
For RR8 to 11	: Mr.P.K.Rajagopal



WEB COPY



O.S.A.No.84 of 2024

JUDGMENT

(Delivered by S.S.SUNDAR, J.)

This appeal is directed against the order dated 05.03.2024 passed by the learned Single Judge in A.No.450 of 2024 in C.S.No.158 of 2004.

2. The brief facts that are necessary for deciding this appeal are as under :

2.1. The appellant is the plaintiff in C.S.No.158 of 2004 which was filed for recovery of money, based on a simple mortgage deed admittedly executed by the 2nd defendant/2nd respondent herein, in favour of the plaintiff on 13.12.2002. The 1st defendant is the proprietary concern in which the 2nd defendant is the proprietor.

2.2. After the mortgage in 2002, the 2nd defendant/2nd respondent, the original owner/mortgagor sold the property in favour of the defendants 6 and 8 to 11 by virtue of subsequent sale deeds executed in the year 2004 and 2006. Therefore, the mortgagors viz., the 2nd defendant/2nd respondent has no subsisting right as on date in respect of the mortgaged property. The defendants 6 and 8 to 11 were impleaded as parties to the suit.



O.S.A.No.84 of 2024

2.3. However, the plaintiff, based on the compromise entered into between the defendants 1 and 2, filed A.No.450 of 2024 to accept the memorandum of compromise dated 22.01.2024 entered into between the plaintiff and the defendants 1 and 2 and to pass an order in terms of the compromise. The said application was resisted by the other defendants, on the ground that the compromise memo is not binding and that they have subsisting interest, based on the sale deeds executed by the 2nd defendant/2nd respondent. As per the compromise, defendants 1 and 2 had agreed to sell the suit property by executing a deed of conveyance for a consideration mutually settled and prayed for a judgment and decree in C.S.No.158 of 2004 in accordance with the terms of the compromise.

2.4. The learned Single Judge, by order dated 05.03.2024, dismissed the said application holding that it cannot be entertained as it would prejudice the rights of the other parties who have vested rights. Challenging the same, this appeal has been preferred.

3. This Court, on the facts admitted, find that the compromise memo is totally invalid and not binding on the defendants 6, 8 to 11, who have earlier purchased the property, namely the right of redemption from the defendants



O.S.A.No.84 of 2024

1 and 2. Therefore, the compromise memo entered into between the plaintiff and the defendants 1 and 2, is invalid and to defeat the right of purchasers.

4. The learned counsel for the appellant/plaintiff submitted that the suit has been filed by the defendants 1 and 2 as against the purchasers for cancellation of the document of conveyance. So long as the sale deed is declared as invalid by a competent Court, the right of purchasers cannot be put in jeopardy after impleading them in the present suit.

5. When the sale deeds have been executed by the defendants 1 and 2 in 2004 and 2006, this Court is unable to find any bonafides. It is also represented that an application was filed under Order VII Rule 11 CPC in the other suit and the matter is now before Hon'ble Supreme Court. Assuming for a moment that the defendants 1 and 2 have independent right, this Court cannot permit the parties to foreclose the suit, by entering into a compromise and to get a decree in terms of compromise to the prejudice of other parties to the suit who are not parties to the compromise.

6. A compromise must be between all the parties to the litigation to be valid. In this case, all the parties to the suit are not parties to the compromise.



O.S.A.No.84 of 2024

Defendants 6 and 8 to 11 have purchased the equity of redemption from 2nd defendant/mortgagor. After selling the property (i.e., the right of redemption), the 2nd defendant has no subsisting right in the suit property. However, by compromise, the plaintiff and the 2nd defendant had agreed to execute a sale deed in favour of the plaintiff and to get a decree in terms of compromise. This is with an intention to foreclose the rights of other defendants, who have purchased, whatever right the 2nd defendant has in the property. As against the defendants 6 and 8 to 11, the compromise is void and hence, the compromise is hit by explanation to Order XXIII Rule 3 CPC. Therefore, this Court is unable to entertain this appeal and it is dismissed as being devoid of merits. No costs.

[S.S.S.R.,J.] [A.D.M.C.,J.]
01.10.2024

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WEB COPY



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