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Tr.C.S.N.186 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2024

Coram

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Tr.C.S.No.186 of 2024

and

A.No.4772 of 2024

R.Ganapathy

.. Plaintiff

/versus/

1.The Madras Purasaiwalkam Hindu
Janopak Saswatha Nidhi Ltd.,
Represented by its Commissioner,
No.168, Vallara Street,
Purasaivakkam, Chennai 84

2.Verma & Co.,
Rep.by D.C.Verma
New No.25, Flowers Road,
Chennai-84.

3.G.Deepak

4.G.Manasuni

5.G.Vasudha

.. Defendants



Tr.C.S.N.186 of 2024

WEB COPY

Transfer Original Suit has been filed under Section Order VII, Rule 1 of the Civil Procedure Code, 1908, to pass decree and judgment:

(i) To declare the auction held on 05.02.2022 at the office of the 1st defendant conducted by the 2nd defendant is illegal and not binding on the plaintiff or his successor in title in respect of the suit property i.e. land measuring an extent of 8 cents with building Ground + two floors comprised in TS No.108 part, Ekkaduthangal Village, Guindy Taluk, Chennai.

(ii) To permanent injunction restraining the 1st defendant or their men or agent or any one claiming under him from confirming the auction or encumbering the suit property i.e land measuring an extent of 8 cents with building ground + two floors comprised in TS No.108 Part, Ekkaduthangal Village, Guindy Taluk, Chennai District within Corporation of Chennai, SRO Saidapet,

(iii) to order of Costs.

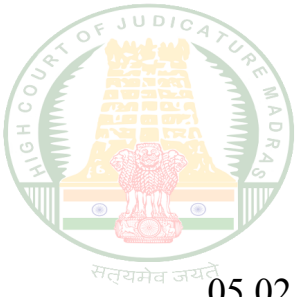
For Plaintiff : Mr.R.Manoharan

For D1 : Mr.A.Ramakrishnan

For D3,D4 & D5 : Mr.R.Harinath

ORDER

Based on the Will alleged to have been executed by Gulumurthy, the present Suit is filed seeking declaration regarding auction held on



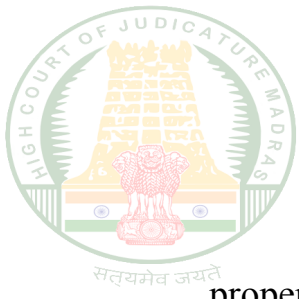
Tr.C.S.N.186 of 2024

WEB COPY

05.02.2022 conducted by the second defendant on behalf of the first defendant as illegal and not binding on the plaintiff.

2. The plaintiff, while filing the suit, had not impleaded the auction purchaser. The learned counsel appearing for the applicant/plaintiff states that the application to implead the auction purchaser is filed and numbered as A.No.4772 of 2024. The learned counsel appearing for the applicant/plaintiff states that the implead application has to be allowed and notice to be ordered to the auction purchaser.

3. The perusal of the plaint indicates that Gurumurthy, who is the brother of the plaintiff had borrowed money from the first defendant and defaulted. The property mortgaged by him has been brought to sale by the first defendant Nidhi. It is reported that in the auction, one Subramanian is a successful bidder for a sum of Rs.82,00,000/- and he has already deposited the sale price. The case of the plaintiff is that his brother even prior to the auction as early as 20.02.2007 had handed over the possession of the suit



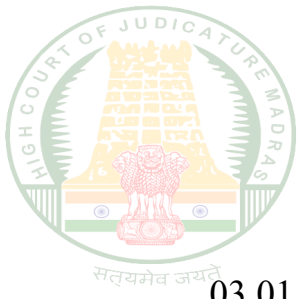
Tr.C.S.N.186 of 2024

WEB COPY

property to him and by mutual understanding between him and his brother, he agreed to discharge the debt of his brother Gurumurthy. Later, Gurumurthy died leaving behind Will bequeathed the suit property in favour of the plaintiff. On the strength of the Will he had paid a sum of Rs.11,00,000/- towards partial discharge of loan availed by Gurumurthy.

4. The learned counsel pleads that based on the Will and payment made, he has locus to sustain the suit.

5. This Court, on verifying the records, finds that the right of the plaintiff is pegged on the alleged Will executed by his brother Gurumurthy. The said Gurumurthy died on 23.09.2012. The Will is dated 10.04.2007. Though it is contended in the plaint that necessary steps taken to get the Will Probated, there is no material to show that the Will got probated. Contrarily, G.Deepak, the son of Gurumurthy had earlier moved City Civil Court in O.S.No.5780 of 2013 to restrain the first defendant Nithi from selling the property in public auction, but the same was dismissed on



Tr.C.S.N.186 of 2024

WEB COPY

03.01.2017. Thereafter, the plaintiff has come forward to file this suit for same relief based on the Will of Gurumurthy. The present suit filed by the brother of Gurumurthy is contested by the legal heirs of Gurumurthy stating that their father Gurumurthy had not executed any Will in favour of the plaintiff Gananpathy.

6. In the said circumstances, this Court is of the view that the suit is not sustainable without probate of the said Will alleged to have been executed by Gurumurthy. The trial in the suit is not necessary. Hence, the plaint is rejected for want of cause of action with liberty to the plaintiff to get probate of the Will and seek for remedy whatsoever available under the law. Accordingly, this Tr.C.S.No.186 of 2024 is dismissed. Consequently, connected Application is closed.

06.12.2024

Index:yes/no
Speaking order/non speaking order
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Tr.C.S.N.186 of 2024

DR.G.JAYACHANDRAN,J.

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