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C.R.P.(PD).No.2962 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2962 of 2021

and

C.M.P.No.21197 of 2021

V.Damodharan

... Petitioner

VS

1.R.Shankar

2.M/s.Balajee & Co., Auctioneers
& Estate Agents,
No.160, II Floor, Thambu Chetty Street,
Chennai – 600 001

3.P.Rajendran

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records and set aside the fair and decreetal order dated 26.08.2021 made in I.A.No.13133 of 2018 in O.S.No.1383 of 2018 on the file of XVII Additional City Civil Court, Chennai by allowing this Civil Revision Petition.



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C.R.P.(PD).No.2962 of 2021

For Petitioner : Mr.R.Ravindran

For R1 : Mr.C.B.Murali Krishnan

For R3 : Mr.Y.Arul Manickam

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court allowing the application for amendment filed by the 1st respondent.

2. The 1st respondent herein filed a suit seeking declaration that Sale Deed executed by 3rd defendant in the suit dated 21.09.2017 in favour of the 1st defendant was null and void and not binding on the plaintiff. He also sought for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. Pending suit, an amendment application has been filed by the 1st respondent seeking inclusion of new prayer for redemption of mortgage and to determine the



C.R.P.(PD).No.2962 of 2021

amount payable to the 3rd defendant under the Mortgage Deed dated 22.04.2008.

3. It is the case of the 1st respondent that he mortgaged the suit property by depositing original title document with the 3rd defendant in the suit and obtained a loan of Rs.4,00,000/-. By amendment application, the 1st respondent wants to introduce a new prayer for redemption of mortgage and to determine the amount payable to 3rd defendant under Mortgage Deed dated 22.04.2008. The Trial Court allowed the amendment application filed by the 1st respondent. Aggrieved by the same, the 1st defendant in the suit has come by way of this revision.

4. The learned counsel appearing for the petitioner submitted that the new prayer sought to be introduced by the 1st respondent is barred by Section 69 of the Transfer of Property Act, 1882. The learned counsel further submitted that once the mortgaged property is sold in the auction sale, the right of Mortgagee to redeem the property gets extinguished. Therefore, the 1st respondent is not entitled to maintain a new prayer. The learned counsel



C.R.P.(PD).No.2962 of 2021

further submitted that in the amendment application, the 1st respondent has not sought for amendment of valuation column and the new prayer sought to be introduced is not at all valued and sufficient court fee is not paid. The learned counsel further submitted that in the original plaint already there is a prayer for injunction as prayer-B. Now, the 1st respondent wants to include a new prayer as prayer-B. There is no clarity in the application, how new prayer can be introduced in the plaint as prayer-B, when already there is a prayer for injunction in the plaint as Prayer 'B'.

5. The 1st respondent herein seeks a declaration that Sale Deed executed by 3rd defendant in favour of 1st defendant was null and void. If that prayer is granted by Court below, then the bar under Section 69 of the Transfer of Property Act, 1882 will get extinguished, the 1st respondent will get the right to redeem the property. Therefore, the Trial Court rightly allowed the new prayer sought to be introduced by the 1st respondent on the ground that rejection of the amendment application will result in multiplicity of proceedings. However, when new prayer is introduced by way of amendment, it is obligatory on the part of the 1st respondent/plaintiff to value the new



C.R.P.(PD).No.2962 of 2021

prayer and affix sufficient court fee in the plaint. The 1st respondent has not sought for any amendment to the valuation column of the plaint to pay court fee on the newly introduced prayer. Therefore, to that extent, the amendment application filed by the 1st respondent is defective.

6. As rightly pointed out by the learned counsel appearing for the petitioner that in the original plaint, there is a prayer for injunction in prayer-B. Now, by way of amendment, the 1st respondent wants to introduce a new prayer for redemption of mortgage as prayer-B. When already there is a prayer-B in the form of injunction, how the new prayer can be introduced as prayer-B in the plaint, is not at all explained by the 1st respondent. If the amendment sought for by the 1st respondent is allowed as it is, a new prayer cannot be introduced in the plaint as prayer-B. It requires renumbering of the prayers in the plaint. However, the 1st respondent has not sought such renumbering by way of amendment. In view of defects found in the amendment application, the Trial Court ought not to have allowed the amendment application with all these defects pointed out.



C.R.P.(PD).No.2962 of 2021

7. Hence, the order impugned in this revision is set aside and the matter is remitted back to the Trial Court. It is open to the 1st respondent to cure the defects pointed out in the amendment application and seek fresh amendment, if so advised. If the 1st respondent cure the defects and seeks fresh amendment, the same shall be considered and final orders shall be passed within a period of twelve weeks from the date of receipt of copy of this order.

8. Accordingly, the Civil Revision Petition is allowed and the matter is remitted to the file of Trial Court as mentioned above. No costs. Consequently, the connected civil miscellaneous petition is closed.

21.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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C.R.P.(PD).No.2962 of 2021

To

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The XVII Additional City Civil Court,
Chennai.



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C.R.P.(PD).No.2962 of 2021

S.SOUNTHAR, J.

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C.R.P.(PD).No.2962 of 2021

21.02.2024