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C.R.P.(PD).No. 162 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.02.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No. 162 of 2025

H.A.R. Abdul Rasheed (Deceased)

1.Abdul Razack

2.Nasreen

3.Yasmeen Begum

...Petitioners

Vs.

1.A.Ashok Kumar

2.Jameela Khan

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order of the I Assistant City Civil Court, Chennai dated 27.11.2024 passed in IA.No.2 of 2024 in OS.No.5671 of 2008.



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For Petitioner : Mr. S.V.Karthikeyan

ORDER

Challenging the dismissal of the application seeking amendment of the prayer, the plaintiffs are before this Court. The parties are referred to in the same rank as before the Trial Court.

2. The plaintiffs filed a suit in O.S.No.5671 of 2008 on the file of the I Assistant City Civil Court, Chennai, seeking a mandatory injunction directing the 1st defendant to return the original documents of title relating to the suit schedule property and to declare the three simple mortgages dated 28.10.1987, 27.02.1989 and 10.07.1989 as not binding upon the plaintiffs.

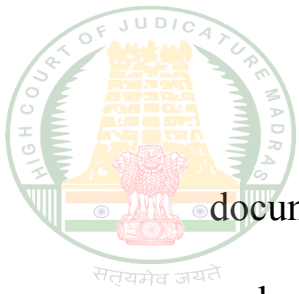
3. The plaintiffs would state that they claim title to the suit property under one Nargis Begum @ Rahimunnisa Begum, who is the



wife of the 1st plaintiff and the mother of the plaintiffs 2 to 4. The said Nargis Begum @ Rahimunnisa Begum during her lifetime in order to meet certain family expenses and marriage expenses had approached the 1st defendant and obtained a loan of Rs.55,000/- at 30% interest on 28.10.1987 and had executed a simple mortgage in respect of the suit property.

4. The plaintiffs would submit that a sum of Rs.51,500/- was paid by cheque and Rs.3500/- was appropriated towards registration expenses. The plaintiffs would submit that the said Nargis Begum @ Rahimunnisa Begum had paid interest for first 5 months at the rate of Rs.1375/-, per month and thereafter could not pay the same. Therefore, the interest was compounded monthly.

5. To receive the compounded interest the 1st defendant had got executed a second mortgage deed dated 27.02.1989 for a sum of Rs.30,000/-, which constituted the accumulated compound interest. Only a sum of Rs.10,900/- was paid by the 1st defendant under this



document after deducting arrears of interest and registration charges and once again on 10.07.1989, third mortgage was executed by the 1st defendant for Rs.65,000/-, when the amount payable by the said Nargis Begum @ Rahimunnisa Begum was only a sum of Rs.49,500/-. Therefore, the total sum borrowed was a sum of Rs.1,11,900/- and the sum of Rs.36,406/- was paid towards interest.

6. After Nargis Begum @ Rahimunnisa Begum's death on 11.03.1990 a legal notice was issued by the 1st defendant dated 24.07.1990 demanding repayment. Followed by another notice dated 09.08.1990 by the auctioneers stating that the property was brought to auction.

7. Therefore, the plaintiffs filed O.S.No.7713 of 1990 before the City Civil Court, Chennai, to restrain the 1st defendant from bringing the property to sale. An interim injunction was granted on the payment of Rs.25,000/- to the 1st defendant. The sum was also paid on 10.09.1990 and subsequently the suit was decreed in favour of the



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plaintiffs. Thereafter, the plaintiffs herein and Fathima Bibi, the mother of Nargis Begum @ Rahimunnisa Begum and Thaseen Begum, the deceased daughter of Nargis Begum @ Rahimunnisa Begum as also the 2nd defendant filed original petitions under Section 12 of the Tamil Nadu Debt Recovery Act, in O.P.Nos.519/1990, 518/1990, 419/1990, 8/1991 and 78/1991, claiming relief under the Tamil Nadu Debt Relief Act and had deposited into Court their admitted amounts as per their inherited separate and defined shares. As per the calculation of the plaintiffs a sum of Rs.1,62,146/- was paid by them.

8. After receiving the said sum, the 1st defendant filed C.S.No.1577 of 1991 before this Court seeking recovery of a sum of Rs.1,57,821/- together with interest at 30% per annum. The suit was later transferred to the file of the VI Assistant City Civil Court, Chennai and re-numbered as O.S.No.8052 of 1996. This suit was dismissed for default on 27.08.2003. The suit was not revived. Therefore, the dismissal became final.



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9. However, without returning the original documents the 1st defendant retained the same. Therefore, the plaintiffs have come forward with the suit in question. The I Assistant Judge, City Civil Court, by Judgement and Decree dated 29.04.2015, decreed the suit for mandatory injunction, directing the 1st defendant to return the original documents regarding the suit property to the plaintiffs and dismissed the suit for declaration.

10. Several years thereafter the plaintiffs without even challenging the Judgement and Decree in O.S.No.5671 of 2008 have come forward to file I.A.No.2 of 2023 to amend the prayer from granting mandatory injunction as follows:

“Granting mandatory injunction directing the 1st defendant to return the original documents of the title relating to the suit property i.e., No.9, Gopal Reddiar



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Colony, 1st Cross Road, Jawahar Nagar, Chennai – 600

082 to the plaintiff after cancelling the simple mortgage

deeds Nos.7 of 1988 dated 28.10.1987, 763 of 1989 dated

27.02.1989, 2931 of 1989 dated 10.07.1989 executed by

late Nargis Begum in favour of the 1st defendant”

11. The reason given is that while preparing the plaint in the prayer for mandatory injunction they had not added the words "*after cancelling the mortgages*". Therefore, since the decree is not executable the amendment be ordered.

12. The learned I Assistant City Civil Judge, Chennai, after hearing the parties dismissed the application. The learned Judge held that the decree has been passed after a detailed Trial where the relief of declaration was denied and against the same no appeal has been filed. Though the plaintiffs had submitted that an entire loan amount has been discharged, the said contention is not supported by documents. Further, since the request is for cancellation of an instrument the same



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has to be valued and appropriate Court fee paid. Therefore, for all these reasons the petition came to be rejected.

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13. Heard the learned counsel for the plaintiffs / petitioners.

14. The suit O.S.No.5671 of 2008 was partly decreed on 29.04.2015. The petitioners have not filed any appeal challenging the disallowed portion. They have also not given reasons as to why the appeal has not been filed and as to why the application is now moved with this inordinate delay that too after the suit has been decreed. The learned counsel would submit that a decree can be amended at any point in time. However, a person seeking an amendment has to give sufficient legally sustainable reasons. The same is absent in the instant case and the learned I Assistant City Civil Judge, Chennai has rightly rejected the same.



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15. I see no reason to interfere with the findings. Accordingly,
the CRP is dismissed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

The I Assistant City Civil Judge,
Chennai.



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P.T. ASHA, J,

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