

(2018) 03 MAD CK 0025
In the Madras High Court
Case No : 227 of 2016

S.Vijayalakshmi

APPELLANT

Vs

Vijayaraj H.Jain & Ors.

RESPONDENT

Date of Decision : 02-03-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 506](#),
[Section 448](#), [Section 448](#)

Citation : (2018) 03 MAD CK 0025

Hon'ble Judges : C.V.Karthikeyan

Bench : Single Bench

Advocate : D.Ashok Kumar

Judgement

1. This civil suit has been filed, to pass a judgement and decree, against the Defendants:-

(a)for declaration that the sale deed, dated 03.02.2011, registered as Document No.163 of 2011 in the Office of the Sub Registrar, Sowcarpet,

executed by the Plaintiff in favour of the Defendants 1 to 3 is illegal, null, void, inoperative and unsustainable.

(b) for consequential injunction, restraining the Defendants 1 to 5 from alienating or encumbering the suit property, viz. the house ground and

premises, bearing Door No.4, Old No.20, Iyya Mudali Street, George Town, Chennai 600001, in any manner, inclusive of alienation either by

way of sale or mortgage, etc.

(c) for costs of the suit

2. The case of the Plaintiff as set out in the plaint is as follows:-

a. The house ground and premises, bearing Old Door No.4, New Door No.22, Ayya Mudali Street, Sowcarpet, Chennai-79, measuring 1290

sq.ft. in OS.No.3579, RS.No.6985, CC.No.5852, within the sub registration District of Sowcarpet, within the registration District of Chennai

North, more fully described in the Schedule, was owned by one L.K.Natesa Mudaliar, having acquired the same by a registered sale deed, dated

4.4.1946, bearing Document No.290 of 1946 and since then, he had been in possession and enjoyment of the same. He had executed a

settlement deed, in favour of his wife, Kanniammal and her son Nithyanandam, dated 14.02.1948, registered as Document No. 136 of 1948. As

the said settlement deed was not acted upon, the same had been cancelled by him and a new settlement deed dated 10.04.1981 had been

executed by him in favour of his wife, Kanniammal.

b. L.K.Natesa Mudaliar died on 19.9.1998. The suit property devolved upon his legal heirs, namely, the children born to the said Kanniammal,

Nithyanandam, Lokanayaki, Sathyamurthy, Vijayalakshmi, Kanakavalli, Karunakaran, Karthikeyan and Ramkumar. Out of them, Nithyanandam,

Sathyamurthy and Karunakaran are no more and their children were impleaded in the suit and as such, the Plaintiff and the Defendants 6 to 17 are

the sole legal heirs. The Plaintiff being one of the eight children and the mother having died intestate, she is entitled to 1/8th share.

c. In 1995, the mother of the Plaintiff had mortgaged the suit property with one PSS Nidhi Limited for Rs.2.5 lakhs. She died in 1998. PSS Nidhi

Limited attempted to bring the property in public auction. The children of Kanniammal, barring the Plaintiff, had availed funds from one Krishnaveni

Ammal and discharged the mortgage. After such discharge, the seven children had executed a fresh mortgage in favour of said Krishnaveni Ammal,

under a registered mortgage deed, dated 14.8.2002, bearing Document No.860 of 2002. By such acts of the other legal heirs, namely, 7 children

of the deceased Kanniammal, the Plaintiff had been subjected to serious hardship. Hence, she had filed a suit in OS.No.3474 of 2003 on the file of

the III Additional Judge, City Civil Court, Chennai, for partition of her 1/8th share in the suit property. In the mean time, the said Krishnaveni

Ammal, in her capacity as mortgagee, attempted to bring the suit property in public auction. The Plaintiff had obtained an order of injunction,

restraining such auction in IA.No.12054 of 2003. In CMA.No.2483 of 2003 filed as against the same, this Court had directed the Plaintiff to

deposit a sum of Rs.6 lakhs to the credit of the said suit. Though the Plaintiff was not a party to the mortgage, the Plaintiff had deposited a sum of

Rs.6 lakhs. The said suit had been dismissed on 8.4.2004 erroneously. In AS.No.266 of 2004 filed as against the same, an order of interim stay of

operation of the judgement and decree was passed. Thereafter, the said Krishnaveni Ammal insisted for payment of Rs.7.5 lakhs to settle her claim

and this Court directed the Plaintiff to pay the difference sum of Rs.1.5 lakhs and on such payment, the said Krishnaveni Ammal was directed to

assign the mortgage in favour of the Plaintiff. The said order had been passed in CMP.No.7517 of 2004 on 30.09.2004. The Plaintiff had made a

payment of Rs.1.5 lakhs to the said Krishnaveni Ammal and payment out of Rs.6 lakhs had also been ordered. On such payment, the said

Krishnaveni Ammal had executed an assignee mortgage deed in favour of the Plaintiff on 19.11.2004 vide Document No.1190 of 2004.

d. Pending the appeal, there was neither payment of interest nor the other surviving legal heirs had chosen to come forward to effect any payment

in respect of the said mortgage. Interests are mulcting on the principle and hence, the Plaintiff having unable to manage her affairs, opted to bring

the property in public auction under Section 69 of the Transfer of Property Act. There was no response from the Defendants and hence, the

property was brought to auction on 9.9.2010. In the said public auction, the Defendants 1 to 3 were the successful bidders as the bid quoted by

them at Rs.60.21 lakhs being the highest. Hence, the said bid had been accepted and the sale had been confirmed in as is where is condition after

completion of the formalities. As such, a sale deed had been executed in favour of the Defendants 1 to 3 on 03.02.2011.

e. As per the terms of the public auction, 25% of the sale price at Rs.60.21 lakhs had been paid and the balance had been paid thereafter and on

such payment, the sale deed had been executed. Other than the said payment, no payment had been made by the Defendants 1 to 3. Thereafter,

the Defendants 1 to 3 had executed a general power in favour of the 4th Defendant and the 4th Defendant in pursuance of such general power had

indulged in negative tactics and with a view to grab the property, had also availed certain fictitious loans on the basis of simple mortgage and the

5th Defendant is one such mortgagee. The other Defendants are the surviving legal heirs of Kanniammal.

f. The sale being a sale in as is where is condition, no possession had been given to the Defendants 1 to 3 and the Defendants 1 to 3 attempted to

dispossess some of the Defendants. The Defendants 1 to 3 and their power agent, the 4th Defendant, filed a complaint before the C2, Elephant

Gate Crime Police and the Police Personnel had taken the son of the Plaintiff, Thiyagarajan, under the guise of enquiry. The Defendants 1 to 4 had

claimed that a sum of Rs.1.20 crores had been paid, pertaining to the said sale and sought for possession of the property. There is no question of

payment other than the payment shown in the sale deed. As the possession could not be obtained, the Police had forcibly entered into the house of

the Plaintiff and recovered a sum of Rs.28 lakhs and then left off the son of the Plaintiff. The said act of the police is highly illegal, warranting

serious repercussion.

g. The Defendants 1 to 3 were not keen in completing the sale and hence, their idea was to defeat and defraud the Plaintiff and the Defendants 6 to

16. However, the 10th Defendant filed an application in CMP.No.860 of 2012 for setting aside the sale deed, dated 3.2.2011 and the said

application was subsequently withdrawn. The Plaintiff had also filed an application in CMP.No.779 of 2013, owing to the forcible seizure of Rs.28

lakhs. The Plaintiff had offered to remit the balance in his hands at Rs.32,21,000/- on the cancellation of the said sale deed. The said application is

still pending. In the said application, the Defendants 1 to 3 had filed a counter, stating that the remedy is only by way of filing a suit. As against the

forcible seizure, the Plaintiff had lodged a police complaint before the Director General of Police and the Commissioner of Police, but no action

was taken. Hence, the Plaintiff had lodged a complaint before the National Human Rights Commission. On enquiry, a report was filed that the

conduct of the Police was illegal. The Defendants 1 to 4 are not intending to accept the sale deed and hence, their only right is to cancel the sale

deed and collect the balance at Rs.32,21,000/-.

h. As against the foul play opted by the Defendants 1 to 4, as no police action had been taken, the Plaintiff filed an application under Section 482

of Cr.PC in Cr.OP.No.16108 of 2014, which was allowed on 3.7.2014. Pursuant to

the same, a First Information Report was registered by the Vigilance and Anti Corruption Head Quarters, vide FIR No.4 of 2014 under Sections 448, 384 and 506 of IPC read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act. In the said First Information Report, the Defendants 1 to 4 and the Inspector, Sivamani and Sub Inspector, Rajendran were shown as accused. In WP.No.22604 of 2014, this Court had directed the Additional Director General of Police to expedite the filing of the charge sheet in the said First Information Report, by order dated 21.9.2015.

i. As against the sale price at Rs.60.21 lakhs, Rs.28 lakhs had been forcibly recovered by them, and hence, in so far as the the balance lying with the Plaintiff at Rs.32.21 lakhs is concerned, she had filed a memo, stating that she is prepared to deposit the same into the Court and the said memo was also recorded by this Court on 5.2.2013. It is under these circumstances that this civil suit had been filed, seeking the reliefs as stated above.

3. The Defendants 1 to 4 were served on 4.6.2016. The Defendants 2 to 8 and 13 to 16 were served on 3.11.2017 and the Defendants 9 to 12 were served on 3.11.2017. However, no written statement had been filed by the Defendants within time and hence, the matter was ordered to be listed under the caption of ""Undefended Board"". For non filing of the Written Statement, the said Defendants were set exparte and Exparte Evidence was ordered to be recorded by the order of this court, dated 05.01.2018.

4. The son of the Plaintiff, Thiagarajan had filed his proof affidavit for his chief examination and receipt of 35 documents as documentary evidence to prove the suit claim. In the Exparte Evidence, he had examined himself as PW.1 and marked Exs.P1 to P35 as documentary evidence in order to prove the suit claim.

5. The Plaintiff had also filed an undertaking dated 20.02.2018, stating as follows:-

2. ... The Defendants 1 to 3 having bid the property for a sum of Rs.60,21,000/- and they being the highest bidders, the sale had been confirmed in their name and as such, a sale deed had been executed by me in my capacity as a mortgagee and as against the sale price at Rs.60,21,000/-, the

Defendants 1 to 3 have played a fraud and snatched a sum of Rs.28,00,000/- with the help of the police and as against the same, a complaint had been lodged and after investigation, a charge sheet had also been filed in CC.No.6 of 2016 on the file of Special Court, Vigilance and Anti Corruption, Chennai.

3.... in the said suit the Defendants have remained exparte and evidence had been let in on my side and at the time of arguments, this Court had observed that since the sale price is in my custody had directed me to deposit the balance amount available after giving credit to Rs.28,00,000/- that had been snatched by the Defendants 1 to 3 and as such, a sum of Rs.32,21,000/- is payable in this connection and which sum I hereby undertake to deposit at any point of time and therefore, permit me to deposit the said sum. In the light of the deposit, the suit property being vacant, I may be allowed to have access to the said property.

Therefore, I humbly pray that this Hon"ble Court may be pleased to pass an order to deposit the said sum at Rs.32,21,000/- being the balance the sale consideration into the Court in the credit of CS.No.227 of 2016 and pass such further or other orders as this Hon"ble Court may deem fit and proper in the above circumstances of the case and thus render justice.

6. I have carefully considered the oral and documentary evidence, viz. Ex.P1 to Ex.P35 adduced by PW.1 and also the memo of undertaking dated 20.02.2018, filed by the Plaintiff. In the said memo of undertaking, the Plaintiff has come forward to deposit a sum of Rs.32,21,000/- (Rupees thirty two lakhs twenty one thousand only) towards the balance sale consideration. However, to provide additional security, the Plaintiff must be called upon to deposit a sum of Rs.50,00,000/- (Rupees fifty lakhs only).

7. In the absence of rebuttal evidence on the side o the Defendants and in the light of the evidence adduced on the side of the Plaintiff, this Court is of the view that the plaintiff has proved the suit claim and consequently, the suit is decreed, as prayed for, with costs, however, subject to deposit of Rs.50,00,000/- (Rupees fifty lakhs only) by the Plaintiff and on such deposit, the Plaintiff is entitled to have access to the suit property.

Thereafter, on cancellation of the sale deed in question, the Plaintiff is at liberty to file necessary application, seeking return of the excess amount, i.e. Rs.17,79,000/- (Rupees seventeen lakhs seventy nine thousand only)

deposited by her.