

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.01.2024

Pronounced on: 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.483 of 2017

S.Thilagam

...Appellant

Vs.

Palani

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 22.12.2016 in A.S. No.12 of 2016 on the file of the I Additional District Court, Salem reversing the Judgment and Decree granted on 30.06.2015 in O.S. No.436 of 2013 on the file of the Principal Subordinate Court, Salem.

For Appellant : Mr.D.Shivakumaran

For Respondent : Mr.R.Subramanian

JUDGMENT

The plaintiff is on Second Appeal against the reversing finding in a suit for recovery of money.



2. The parties are described as per their litigative status before the Trial Court.

3. The plaintiff filed O.S.No.436 of 2013 for recovery of a sum of Rs.2,99,933.64 from the defendant on the strength of a mortgage by deposit of title deeds dated 28.06.2009.

4. The case of the plaintiff is that on 27.06.2009, the defendant had borrowed a sum of Rs.2,00,000/- from the plaintiff, evidenced by the execution of a promissory note on the same day, agreeing to repay the said sum of Rs.2,00,000/- together with interest at 12% per annum. On the very next day i.e., 28.06.2009, defendant deposited the original settlement deed dated 14.05.2009 along with a covering letter of even date i.e, 28.06.2009, offering the said document as a security for the repayment of amount borrowed.

5. The defendant filed a written statement as well as additional written statement stating that the defendant had signed a blank stamp paper and blank promissory note and he had borrowed only a sum of Rs.20,000/-



from one Kamal of Yercaud in the year 2009. According to the defendant he never gave the settlement deed nor created an equitable mortgage and the suit was liable to be dismissed. In the additional written statement, the defendant has stated that he has requested the said Kamal to return the blank promissory note and the registered settlement deed but the said the Kamal had handed over the same to the plaintiff, based on which the suit has been filed.

6. Before the Trial Court, the plaintiff examined herself as P.W.1 and P.W.2 and P.W.3 viz., Viswanathan and Prabhu were examined and Exs.A1 to A6 were marked as exhibits on the side of the plaintiff. On the side of the defendant, the defendant examined himself as D.W.1 and Ex.B1, a copy of the plaint in O.S.No.436 of 2013 was marked.

7. The Trial Court found that the defence set up by the defendant was not genuine and the suit pronote was infact executed only by the defendant and the plaintiff is entitled to seek the amount lent. Further, the Trial Court also after discussing the evidence of P.Ws.2 and 3 witnesses, found that the suit pronote was supported by consideration. The Trial Court also found that



the plea of discharge was not proved. With regard to the deposit of title deeds, the Trial Court held that the equitable mortgage in Ex.A4 was admissible in law and it did not require registration and ultimately the Trial Court decreed the suit as prayed for.

8. Aggrieved by the said judgment and decree of the Trial court, the defendant preferred A.S.No.12 of 2016. The First Appellate Court referring to Ex.A4 and placing reliance on the decision of the Hon'ble Supreme Court in *State of Haryana and Ors Vs. Navir Singh and another*, reported in **2014 1 L.W. 97**, held that a memorandum like Ex.A4 would require registration U/s.17 (1) (c) of the Registration Act and consequently allowed the Appeal.

9. The plaintiff, as against the reversal finding, has preferred the present Second Appeal. On 04.08.2017, this Court admitted the above Second Appeal on the following substantial questions of law :

“(i) Whether a memorandum of acknowledgement of mortgage, in the absence or recitals about the terms and conditions of mortgage engrossed therein, but merely evidencing creation of an equitable mortgage,



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require registration u/s.17(1) (c) of the Indian Registration Act?

(ii) When the loan transaction and deposit of title deed are on two different days, is the lower appellate Court is correct in law in holding that the memorandum of deposit of title deed requires registration”

10. Heard Mr.D.Shivakumaran, learned counsel for the appellant/plaintiff and Mr.R.Subramanian, learned counsel for the respondent/defendant. I have also gone through the judgments of the Courts below and also the relevant cases on which reliance is placed by the counsel on either side.

11. The learned counsel for the appellant would place reliance on ***State of Haryana and Ors Vs. Navir Singh and another*** reported in **2014 1 L.W. 97**. Infact, this decision is also quoted before the First Appellate Court. The Hon'ble Supreme Court, in the said case, has held that a mortgage by deposit of title deeds may be effected by the debtor, by merely delivering to the creditor, documents of title to the property, with an intention to create a security thereon. Even though there is no requirement for any instrument to be drawn for such purpose, the parties may choose to have a memorandum



prepared showing deposit of title deeds. The Hon'ble Supreme Court has further held that in a case where a memorandum recorded in writing creates rights, liabilities or extinguishment of such rights and liabilities, then the said memorandum would require registration. The Hon'ble Supreme Court has discussed the ratio laid down by the Apex Court in ***United Bank of India Vs. M/s. Lekharam Sonaram & Co*** reported in ***AIR 1965 SC 1591***.

12. Learned counsel for the appellant would place reliance on the decision of this Court in ***K.Sivakumar Vs. Y.Neeraja*** reported in ***2017 (2) L.W 679***, where this Court held that when the memorandum appear to be only in the nature of a letter acknowledging the fact that the defendant had deposited the title deed as security for earlier received loan amount, the said document does not require registration. He would also place reliance on the judgment of this Court in ***Mr.Y.L.Veerabadra Vs. Mr.A.Mohammed Farook***, reported in ***AIR 2019 MAD 116***. In the said decision, this Court held, following the ratio laid down in ***United Bank of India Ltd's*** case referred supra and ***State of Haryana & Ors Vs. Navir Singh***, discussed supra, that a memorandum recording a mortgage by deposit of title deeds being a mere document recording, the transaction and not



creating/extinguishing any rights or liabilities, did not require registration.

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13. Per contra, the learned counsel for the respondent would place strong reliance on the decision of the Hon'ble Supreme Court in ***United Bank of India Vs. M/s.Lekharam Sonaram & Co*** reported in ***AIR 1965 SC 1591***, referred herein supra and would contend that there is no necessity for any execution of Ex.A4 letter and mere deposit of the title deed viz., the settlement deed in the instant case would have been sufficient, provided it was handed over with an intention to offer it as a security for the loan amount borrowed on the previous day. However, according to the learned counsel for the respondent, when the parties decided to record the said factum of deposit of settlement deed in writing and when the both the said handing over of the settlement deed as well as the execution of the letter were on the same date, then the document in Ex.A4 would be compulsorily registerable. He would take me through the decision of the Hon'ble Supreme Court in ***United Bank of India Vs. M/s.Lekharam Sonaram & Co*** reported in ***AIR 1965 SC 1591*** in this regard. He would also place reliance on the decision of this Court in ***H.G. Nanjappa Vs. M.F.C. Industries (P) Ltd,*** reported in ***1987 MLJ page 180***. In the said decision, this Court again



referring to the decision of the *United Bank of India Vs. M/s.Lekharam Sonaram & Co* reported in *AIR 1965 SC 1591* and other cases, held that the real test was to find out whether the memorandum recording handing over title deed required registration or not is to ascertain whether the said memorandum represented the bargain between the parties and held further, whether the particular document by itself creates a mortgage or not has to be decided on the terms of the document only.

14. Where the deposit of title deeds was made by a memorandum referring to a promissory note executed earlier, it would not make the memorandum the only document evidencing the terms of bargain. Further, as held by the Hon'ble Supreme Court in *State of Haryana Vs. Narvir Singh*, reported in *(2014) 1 SCC 105* the memorandum reduced to writing and evidencing deposit of title deeds alone would not render the document registerable unless such memorandum recorded any creation of right or liability or extinguishment of such right of liability of the parties to the document. Ex.A4 reads thus:

“ ஐயா,

நான் 27.06.2009ம் தேதி தங்களிடம் இருந்து ரூ.2,00,000/-

என்னுடைய குடும்ப அவசர தேவைக்காக பெற்றுக்கொண்டு ஒரு புரோநோட்



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மேற்படி தொகைக்கு எழுதிக்கொடுத்துள்ளேன். இன்று 28.06.2009 தேதி என் பெயரிலும் என் மகன் ஜெயக்குமார் பெயரிலும் உள்ள 14.05.2009ம் தேதியிட்ட தானசெட்டில்மெண்டின் அசல் பத்திரத்தை பத்திர எண்.359/2009 மேற்படி கடனுக்கு ஜாமீனாக இருக்க வேண்டி தங்களிடம் ஒப்படைத்துள்ளேன்.”

15. From the contents of Ex.A4 extracted herein above, I find that neither any rights or liabilities have created nor extinguished under the said document. The letter merely records the factum of borrowing of Rs.2,00,000/- made by the defendant on the previous day and handing over the title deed in original viz., the settlement deed dated 14.05.2009 as a security for the loan amount borrowed earlier.

16. Thus, the document does not require registration as contended by the learned counsel for the respondent. Further, even in the decision of this Court in *H.G.Nanjappa Vs. M.F.C. Industries (P) Ltd*, reported in *100 L.W. Pg 4*, this Court upheld the finding of the Trial Court that such a document does not require registration. For the foregoing reasons, it is clear that the First Appellate Court has committed a grave error in holding that Ex.A4 required registration and therefore the suit was not maintainable. The Trial Court has rightly appreciated the legal position and found that the



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plaintiff was entitled to decree as prayed for. Therefore, the judgment and decree of the I Additional District Court, Salem in A.S. No.12 of 2016 dated 22.12.2016 is set aside and the judgment and decree of the Principal Subordinate Court, Salem in O.S. No.436 of 2013 dated 30.06.2015 stands restored.

17. In fine, the Second Appeal is allowed. There shall be no order as to costs.

31.01.2024

Index : Yes/No
Internet : Yes/No
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To

1. The I Additional District Judge, Salem
2. The Principal Subordinate Judge, Salem.



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P.B.BALAJI, J,

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Pre-delivery Judgment in

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