IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

RSA.No. 170 of 2007 C

JUDGMENT DATED 03-02-2006 AS 180/2001 OF PRINCIPAL SUB COURT, KOTTAYAM

OS 333/1998 OF MUNSIFF COURT, VAIKOM
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APPELLANT(S)/RESPONDENT/PLAINTIFF:
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*1. PACHU M.V., MULLAKAR VEETTIL,
CHEMBU KARA, CHEMBU VILLAGE. (DIED)
LEGAL HEIRS ARE IMPLEADED

2. LAKSHMI, AGED 72 YEARS,
W/O.PACHU (LATE), MULLAKKAR VEETIL,
CHEMBU KARA, CHEMBU VILLAGE,
KOTTAYAM DISTRICT.

3. RAMANI, AGED 52 YEARS,
D/O. PACHU (LATE), MULLAKKAR VEETIL,
CHEMBU KARA, CHEMBU VILLAGE,
KOTTAYAM DISTRICT.

4. LALITHA, AGED 50 YEARS,
D/O.PACHU (LATE), MULLAKKAR VEETIL,
CHEMBU KARA, CHEMBU VILLAGE,
KOTTAYAM DISTRICT.

5. SARALA, AGED 48 YEARS,
D/O.PACHU (LATE), MULLAKKAR VEETIL,
CHEMBU KARA, CHEMBU VILLAGE,
KOTTAYAM DISTRICT.

6. VINAJA, AGED 46 YEARS,
D/O.PACHU (LATE), MULLAKKAR VEETIL,
CHEMBU KARA, CHEMBU VILLAGE,
KOTTAYAM DISTRICT.

7. DHARMAJAN, AGED 44 YEARS,
S/O.PACHU (LATE), MULLAKKAR VEETIL,
CHEMBU KARA, CHEMBU VILLAGE,
KOTTAYAM DISTRICT.

* LEGAL HEIRS OF DECEASED SOLE APPELLANT ARE IMPLEADED
AS ADDITIONAL APPELLANTS 2 TO 7 AS PER THE ORDER DTD.15.10.2014
IN IA.2534/2014.

BY ADVS.SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN

msv/

RSA.No. 170 of 2007

RESPONDENT(S)/APPELLANTS/DEFENDANTS:
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1. **DESEYAKETTUTHENGU NIKSHEPASANGAM,**
   CHEMBU KARA, CHEMBU VILLAGE,
   REPRESENTED BY ITS PRESIDENT.

2. **DESEYAKETTUTHENGU NIKSHEPASANGAM,**
   CHEMBU KARA, CHEMBU VILLAGE,
   REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SMT.THANKOM.G
SRI.E.M.MURUGAN
SRI.PRAVEEN K. JOY

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

P.BHAVADASAN, J.

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R.S.A. No. 170 of 2007

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Dated this the 03rd day of July, 2015

JUDGMENT

A very narrow question arises for consideration in this second appeal.

2. The suit related to the redemption of a mortgage. It is an admitted fact that the plaintiff availed of a loan from a Sangham initially for ₹4,000/- and executed Ext.A1 mortgage deed. As per the terms of the mortgage deed, the mortgagee is allowed to take the usufructs from the property. It is not in dispute that there were subsequent loans taken by the mortgagor and according to the mortgagor, those were not fastened on to the property which was initially mortgaged and those were independent transactions. His case was that the only amount for which the property was secured was the first loan taken for the amount of ₹4,000/-. He therefore sued for redemption on that basis.

3. The defendant resisted the suit by pointing out that the claim that the mortgage was confined to the first debt is incorrect and it extended to all subsequent debts also since all those were secured by registered documents. They therefore contended that unless the amount due from all the debts is paid, the decree cannot be granted.

4. On the basis of the above pleadings, issues were raised by the trial court. The evidence consists of the testimony of PW1 and documents marked as Exts. A1 and A2 from the side of the plaintiff. The defendant examined DW1 and had Exts.B1 to B8 marked.

5. The trial court accepted the case put forward by the plaintiff and passed the preliminary decree which reads as follows:

> "In the result, preliminary decree for redemption is passed declaring that Rs.4,000/- is due to the defendant sangham mortgage, that interest 14% per annum is due on mortgage money from 30.11.77, the date of execution of Ext.A1 mortgage deed till

> realization and the plaintiff shall pay in to court the above mentioned sum with interest within 2 months from today.
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> Upon such payment with interest the defendants shall being into court all documents in their possession relating to plaint schedule property and deliver them to the plaintiff, reconvey and clear off all encumberances created by the defendants and deliver up to the plaintiff quite and peaceable possession of the plaint schedule properties. In default of payment, plaintiff shall be debarred from redeeming the property."

6. The aggrieved defendant carried the matter in appeal as A.S.No. 180/2001. The lower appellate court, after referring to the averments in the plaint, Ext.B8 and various other documents, came to the conclusion that the finding of the court below that the mortgage was confined to the first debt of ₹4,000/- cannot be accepted and since there were registered documents extending the mortgage to the subsequent debts also, the lower appellate court accepting the entries in Ext.B8, calculated the principal amount due as

on that day as ₹16,664/- and a decree was passed in the following terms:

> "In the result, the appeal is allowed. The judgment and decree of the lower court allowing the plaintiff to redeem the mortgage on payment of Rs.4,000/- is set aside. The plaintiff is allowed to redeem the mortgage on payment of the money shown in Ext.B8 page No.51 with 14% interest on the principal amount of Rs. 16,664/-. The plaintiff shall deposit the money to the court with interest within two months. Therefore, the appeal is allowed in part. The appellant is entitled to the costs of the appeal."

7. Notice was issued on the following substantial questions of law:

> "(A) Whether the directions in the 1st appellate judgment that, the plaintiff has to pay excess amount than that of "Mortgage money" received by the plaintiff by virtue of Ext.A1 is against law in view of section 60 of the Transfer of Property Act?
>
> (B) Whether the plaintiff is liable to pay the money as claimed by the defendants?"

8. The learned counsel appearing for the appellant raised the very same contentions raised before the trial court.

9. One cannot overlook the fact that there were subsequent loans taken by the plaintiff and they were also secured by the registered deed. In fact, one need not go far to find that the subsequent debts were also covered by the mortgage deed as could be discernible from paragraph 5 of the plaint. The trial court overlooked this crucial fact and thus came to a wrong finding that the mortgage is confined to ₹4,000/-.

10. The lower appellate court has rightly noticed that none of the entries in Ext.B8 is disputed and it is also not disputed that there were subsequent registered deeds securing the subsequent amounts taken from the Sangham.

11. The lower appellate court was justified in its finding that the amount as shown in Ext.B8 is the principal amount as on the date of the suit.

12. The finding of the lower appellate court is essentially one based on appreciation of evidence in the case is a question of fact. Apart from the fact that there is no substantial question of law arising for consideration in this appeal.

13. However, it is felt that the interest granted by the lower appellate court seems to be highly excessive. Considering the nature of transaction and the plight in which parties are placed, it is felt that some leniency can be shown with regard to the interest.

While confirming the judgment of the lower appellate court regarding the principal amount due as per decree, the interest granted is set aside and it is reduced to 8% on the decree amount from the date of decree till realization. The lower appellate court decree stands modified to that extent. The respondent will be entitled to his costs before this Court.

Sd/-
P.BHAVADASAN
JUDGE

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