IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.10.2015

CORAM :

THE HON'BLE MR. JUSTICE P.R. SHIVAKUMAR

Second Appeal No: 911 of 2008

1. C.A. Palaniappan (deceased)
   S/o. Appukutti
   No:5 Perumal Mudali Street
   Roapettah
   Chennai - 600 014.

2. P. Logambal
3. D. Shanthi
4. A. Vijaya
5. Girija
6. A. Chitra
7. P. Kannan ... Appellants

(Appellants 2 to 7 brought on record as LRs of the deceased Sole appellant vide order of Court dated 24.2.2014 made in M.P. Nos. 1 to 3 of 2009 in S.A. No: 911 of 2008)

-Vs-

The Secretary
The Purasawalkam Santhatha Sangha Nidhi Ltd.
47 Vellala Street
Purasawalkam
Chennai. ... Respondent

Second appeal is filed under Section 100 of C.P.C. as against the judgment and decree in A.S. No: 20 of 2007 dated 14.08.2007 on the file of the VII

Additional City Civil Judge, Chennai, as confirmed in O.S. No: 2599 of 2003 dated 19.09.2006 on the file of VIII Assistant City Civil Judge, Chennai.

For appellants : Mr. G. Appavu

For respondent : Mr. V. Raghupathi

J U D G M E N T

The plaintiff in the original suit is the deceased first appellant in the second appeal. Apellants 2 to 7 are his legal representatives. The suit was filed by the deceased first appellant against the respondent / defendant for redemption of mortgage. The trial Court held that the plaintiff had not repaid the mortgage debt fully and dismissed the suit holding that the plaintiff was not entitled to a decree for redemption. On appeal also the learned lower appellate Judge agreed with the said finding of the trial Court dismissing the suit filed by the deceased first appellant herein for redemption. From the said decree of the lower appellate Court, the second appeal has arisen.

2. The second appeal was admitted on 22.08.2008 formulating the following questions to be the substantial questions of law :-

> " 1. Whether the lower Courts are justified in refusing to grant the redemption decree, when the mortgagor had approached within the statutory period ?
>
> 2. Whether the lower Courts are entitled to impose condition precedent for deposit of the entire amount without proper calculation ?
>
> 3. Whether the lower Courts are entitled to rely upon the false statement of account without deciding the liability in the manner known to law and to direct the appellant to pay the amount?
>
> 4. Whether the lower Courts are correct in rejecting the right of redemption of the suit mortgage by the plaintiff ? "

3. The arguments advanced on both sides are heard. The judgment of the Courts below and the materials available on record are perused.

4. The first and foremost contention of the learned counsel for the appellant is that when the mortgagor files a suit for redemption contending that the mortgage debt stands fully discharged, the Court shall decide the question whether the mortgage debt has been discharged in part or in full and if it comes to the conclusion that the mortgage debt remains

undischarged, either it shall direct an account to be taken or decide the amount payable by the mortgagor for redeeming the mortgage and pass a preliminary decree directing the payment of the said amount with subsequent interest within a time to be fixed by the Court and that only in the event of failure to make payment of such amounts quantified by the Court, the Court can pass a final decree directing the sale of the mortgaged property for the recovery of money due under the mortgage. It is the further contention of the learned counsel for the appellant that the trial Court committed a grave error in law in simply dismissing the suit for redemption without passing such a preliminary decree directing payment of the amount found to be due under the mortgage and that the lower appellate Court also fell in line with the trial Court in the commission of such an error in law. Under the said circumstances, the learned counsel for the appellant would submit that the statement of accounts furnished by the respondent / defendant, so far as it pertains to the period prior to the filing of the suit can be accepted to be correct as interest had been calculated on the contractual rate. However, it is the further contention of the learned counsel for the appellant that the pendente lite interest and post decree interest shall be subject to the discretion of the Court as contemplated unde Order 34 Rule 11 of C.P.C. and that hence, this Court shall use its discretion in fixing the reasonable rate of interest from the date of the plaint.

5. It is also contended that though the property admittedly belongs to the wife of the appellant and it was she who borrowed the amount, since the deceased first appellant also joined in the execution of the mortgage deed as a co-mortgagor, the respondent cannot deny his right to redeem the mortgage, as any one of the co-mortgagors shall have a right to redeem the mortgage. The redemption of mortgage shall enure to the benefit of his wife alone. The learned counsel for the respondent does not dispute the correctness of the abovesaid contention raised on behalf of the appellants.

6. It is not in dispute that the contractual rate of interest is 21.6% per annum. However, considering the facts and circumstances of the case, this Court felt that the grant of pendente lite interest and post decree interest at the contractual rate may not be desirable and that some allowance should be made in the rate of interest. Accordingly, the views of the parties were sought for and the parties, through their respective counsel, agreed that the reasonable rate of interest from the date of plaint till the date of payment may be fixed at 18% (simple interest) per annum.

7. Accordingly, the respondent herein has submitted a memo of calculation showing the payments made subsequent to the date of institution of the suit and interest calculated at the rate of 18% per annum. As per the said working sheet, the amount due as on date comes to Rs.17,23,949/-. The learned counsel for the appellant also submits that the amount found in the working sheet submitted by the respondent reflects the correct amount due if 18% simple interest is calculated towards pendente lite interest and post decree interest. It is also the submission of the learned counsel for the appellant that the appellant is prepared to get a preliminary decree for redemption granting three months time to pay the above said amount arrived at together with the future interest upto the date of payment. The balance amount of Rs.5,25,892.70 as on the date of suit has to be treated as balance amount of principal for working out the subsequent interest.

8. The learned counsel for the appellant has also signed the calculation sheet submitted by the respondent in token of the approval of the correctness of the same. In view of the above, this Court holds that the decree of the trial Court straightaway dismissing the suit for redemption without first fixing the liability and passing a preliminary decree and also the decree of the lower appellate Court confirming such dismissal of the suit are not in accordance with law and on the other hand they are erroneous which cannot be sustained by this Court. The above said finding will provide an answer to all the questions formulated as substantial questions of law.

9. In view of the answers given to the substantial questions of law and in view of the consensus arrived at by the parties and reported to this Court by way of calculation sheet, the second appeal is allowed. The decree of the trial Court dismissing the suit, which was confirmed by the lower appellate Court is set aside. A preliminary decree fixing the total liability of the suit mortgage debt comes at Rs.17,23,949.40. Out of the said sum, Rs.5,25,892.70 shall alone form the principal. Three months time is granted from today for payment of the said amount together with interest at the rate of 18% per annum on the principal component of the decreetal amount. In case of failure to comply with the direction, the respondent shall be entitled to apply for a final decree directing the sale of the mortgaged property.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gp

To

1. The Presiding Officer
   VII Additional City Civil Judge
   Chennai.

2. The Presiding Officer
   VIII Assistant City Civil Judge
   Chennai.

3. The Record Keeper,
   V.R.Section,
   High Court, Madras.

+1cc to Mr.G. Appavu, Advocate, S.R.No.54899
+1cc to Mr.V. Raghupathi, Advocate, S.R.No.54622

S.A. No: 911 of 2008

KJI(CO)
CA(18/11/2015)