

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1003 of 2015 and
M.P.No.1 of 2015

K.Mohan @ Mohana Ranga

.. Appellant

-Vs-

1. S.Raju
2. Assistant General Manager,
Bank of Baroda, T.H.Road,
Triplicane, Chennai-5.
- 3.The Manager,
Bank of Baroda,
Errabalu Chetty Street,
Chennai-600 001.

.. Respondents

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 07.08.2015 made in A.S.No.355 of 2014 on the file of the learned V Additional Judge, City Civil Court, Chennai, in confirming the decree and judgment dated 08.08.2014 made in O.S.No.5632 of 2012 on the file of the learned XI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.R.Mangai Mannan

For Respondents : No Appearance

J U D G M E N T

The 2nd defendant in O.S.No.5632 of 2012 on the file of the learned XI Assistant Judge, City Civil Court, Chennai is the appellant herein. The 1st respondent is the plaintiff in the suit. The respondents 2 and 3 are the defendants 1 and 3 in the suit. The suit was filed by the plaintiff seeking Mandatory Injunction directing the defendants to hand over the original deeds in their custody pertaining to the suit property to the plaintiff and also for permanent injunction to restrain the defendants 1 and 3 from handing over the original title deeds to the 2nd defendant. The trial court by decree and judgment dated 08.08.2014, decreed the suit as prayed for. As against the same, the appellant filed an appeal in A.S.No.355 of 2014 on the file of the learned V Additional Judge, City Civil Court, Chennai. By decree and judgment dated 07.08.2015, the lower appellate court dismissed the appeal. Challenging the same the

appellant is before this Court with this Second Appeal.

2. This Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and I have also perused the records carefully.

3. The case of the plaintiff is as follows:

The suit property belongs to the appellant and two others. The appellant has raised a loan from the defendants 1 and 3 by depositing title deeds relating to the suit property. But the 2nd defendant was not able to discharge the loan. The bank was contemplating action to bring the property for sale. The appellant made a request to the plaintiff to discharge the loan and take the documents with him thereby creating some interest over the property. Accordingly, the plaintiff paid the entire amount through the Debt Recovery Tribunal in discharge of the said loan. The loan payment was made on 07.05.2010. Despite the same, the defendants 1 and 3 had not returned the title deeds to the plaintiff. As a matter of fact, the 2nd defendant had given a letter to the bank to hand over the title deeds to the plaintiff as soon as the loan was discharged. In those circumstances, the plaintiff filed the above suit for proper relief.

4. The appellant/2nd defendant resisted the suit. It is contended that the plaintiff had entered into an unsigned and undated agreement with the 2nd defendant in the year 2010 for promotion of flats. At the time of agreement, the plaintiff paid a sum of Rs.9,03,000/-. With that money, the 2nd defendant discharged the loan availed with the 3rd defendant. Therefore, according to the appellant, the plaintiff is not entitled for receiving the documents.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and as many as 6 documents were exhibited. On the side of the defendants, the 2nd defendant was examined as D.W.1 and as many as 5 documents were exhibited as Ex.B.1 to Ex.B.5. Having considered the same, the trial court decreed the suit which was confirmed by the lower appellate court. That is how, the appellant/2nd defendant is before this Court with this Second Appeal.

6. I have considered the submissions made by the learned Counsel for the appellant.

7. In my considered view, absolutely, there is no substantial question of law involved in this Second Appeal warranting admission of the same. The question is as to whether the loan was discharged by the plaintiff or by the 2nd defendant. In my view, there is no error in the said factual

finding. On appreciating the evidence, the courts below have come to the conclusion that the loan was discharged only by the plaintiff. The payment is supported by documentary evidence. Similarly, the courts below have found that the 2nd defendant had given a letter to the bank to return the title deeds only to the plaintiff. There is no denial for the same. It is only, on this factual finding, the courts below have decreed the suit. Thus, absolutely, there is no question of law much less a substantial question of law involved in the Second Appeal warranting admission of the same. I do not find any perversity in the findings of the courts below.

8. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

tsi

To

1.The XI Assistant Judge, City Civil Court, Chennai.

2.The V Additional Judge, City Civil Court, Chennai.

Copy to: The Section Officer, VR Section, High Court, Madras.

S.A.No.1003 OF 2015

svi co

kra 26.11.2015

सत्यमेव जयते

WEB COPY