IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.02.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.12 of 2015 and M.P.No.1 of 2015

1. Balathandayutham

S.Lakshmi (died)
2. S.Pachaiyappan .. Appellants/Defendants 1,3 in Trial Court)
(Cause title accepted vide order of Court
dated 5.12.2014)

-Vs-

Bank of India,
B.Udayur Branch,
Chidambaram Taluk
rep. by its
Deputy Regional Manager.. Respondent/Plaintiff in Trial Court

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree of the learned Principal District Judge, Cuddalore dated 29.11.2013 passed in A.S.No.14 of 2008 dismissing the appeal confirming the judgment and decree of the I Additional Subordinate Judge, Cuddalore dated 30.11.2007 passed in O.S.No.71 of 2004.

For Appellants : Mr.R.Gururaj

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J U D G M E N T

The appellants herein are the defendants 1 to 3 in O.S.No.71 of 2004 on the file of the learned I Additional Subordinate Judge, Cuddalore. The respondent is the plaintiff in the suit. There were two other defendants, namely, defendants 4 and 5 by name S.Rani and S.Meenakshi, who are not parties to this Second Appeal. Originally, the suit was filed on the file of the Subordinate Judge, Chidambaram in O.S.No.157 of 1993 and thereafter, it was transferred to the Fast Track Court, Chidambaram and renumbered as O.S.No.8 of 2004 and again, it was transferred to the file of the learned I Additional Subordinate Judge, Cuddalore and renumbered as O.S.No.71 of 2004. The trial court decreed the suit as against the appellants herein alone and dismissed the suit as against the defendants 4 and 5 by decree and judgment dated 30.11.2007. As against the same, the appellants filed an appeal in A.S.No.14 of 2008 before the learned

Principal District Judge, Cuddalore District. By decree and judgment dated 29.11.2013, the Principal District Judge dismissed the appeal thereby confirming the decree and judgment of the trial court. As against the same, the appellants are 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 appellants and I have also perused the records carefully.

3. The above suit was filed by the plaintiff bank for recovery of a sum of Rs.1,74,035.20 with subsequent interest based on a mortgage by deposit of title deeds. According to the plaintiff, the 1st defendant approached the plaintiff bank for grant of term loan to the tune of Rs.1,58,000/- for the purpose of purchasing a new Tractor and Trailor. Accordingly, the loan was sanctioned and hypothecation agreement was also entered into between the 1st defendant and the plaintiff bank on 29.05.1989. The defendants 2 and 3 stood as guarantors and executed a guarantee deed on 29.05.1989 itself. It is the further case of the plaintiff bank that on the same day, the 1st defendant deposited his title deeds pertaining to the property comprised in R.S.Nos.21/6 and 23/1 at Suthukuzhi Village in Chidambaram District. He has defaulted to repay the said amount as on the date of filing of the suit. According to the bank, a sum of Rs.1,74,035.20 was due towards principle and interest. It is on this contention, the suit was filed.

4. In the written statement filed by the defendants 1 to 3, it is admitted that the loan was so sanctioned and the same was also paid to the 1st defendant on 29.05.1989. It is further admitted that a hypothecation agreement was entered into on the same day. It is also admitted that the defendants 2 and 3 stood as guarantors. But, it is stated that no equitable mortgage in respect of the above mentioned properties was ever created. They did not sign in any paper creating such equitable mortgage at Kumbakonam. The letter Ex.A.5 which is stated to be a letter showing the creation of the equitable mortgage was not signed by the defendants and the same has been concocted for the purpose of the case. It is also stated that there was no acknowledgment of debt under Ex.A.14 on 16.10.1990. It is stated that the 1st defendant had applied for crop loan and for that purpose, he handed over the documents. But the crop loan was not sanctioned. The title deeds at the hands of the bank have been now misused as though there was a mortgage by deposit of title deeds created. It is admitted that the 1st defendant has fall in arrears and he has not completely repaid the loan. At any rate, according to the defendants, since there was no equitable mortgage created as it is alleged by the plaintiff, the suit for recovery of money, based on mortgage by deposit of title deeds, is unsustainable. It is also stated that the bank is at B.Udaiyur Village which has not been notified for the purposes of creating usufractuary mortgage. At any

rate, according to the defendants, the suit is liable to be dismissed.

5. Based on the above pleadings, the trial court framed appropriate issues. Before the trial court, on the side of the plaintiff, 3 witnesses were examined and 22 documents have been exhibited. On the side of the defendants, 3 witnesses were examined and 43 documents have been exhibited. Having considered all the above, the trial court decreed the suit as prayed for as against the appellants herein. The appeal preferred by the appellants was also dismissed. That is how they are before this Court with this Second Appeal.

6. In this Second Appeal, it is contended by the learned Counsel for the appellants that Ex.A.5 which is stated to be a letter creating equitable mortgage, which is an unregistered one, does not bear the signature of these defendants and therefore, the courts below ought to have held that there was no equitable mortgage created at all. The learned Counsel for the appellants would further submit that the courts below have relied on Ex.P.14 which is stated to be a letter of acknowledgment dated 15.10.1990. According to the learned Counsel, this document, admittedly bears the signatures of the appellants herein, but that would not automatically go to prove that this document was executed by the appellants consciously. It is their contention that at the time, when the loan was sanctioned that their signatures were obtained in a blank printed form and now the same has been utilised by the bank as though an acknowledgment of debt was made on 16.10.1990. The learned Counsel for the appellants would bring it to my notice Ex.B.1, a blank printed form containing the signatures of the appellants. The learned Counsel for the appellants would compare Ex.B.1 with Ex.A.14 and say that both the forms are one and the same and the very fact that the signatures of the appellants found in Ex.B.1 which is a printed blank form would go to establish that Ex.A.14 has also been signed by these appellants when it was blank. Thus, according to the learned Counsel for the appellants, the trial court ought not to have relied on Ex.A.14.

7. I have considered the above submissions.

8. At the outset, I should say that there is no substantial question of law at all involved in this matter. All the issues are factual. Two courts below have appreciated the factual issues and have answered the same against the appellants. Therefore, it is not permissible for this Court to reappreciate the entire evidence to come to a different conclusion as though this Court is the First Appellate Court. So far as Ex.A.5 is concerned, admittedly, it does not bear the signatures of the defendants. It is nothing, but a record showing that such an equitable mortgage was created on the date of loan i.e. on 29.5.1989. This itself is in a printed form and there is no space for the signatures of the appellants. Similar form is Ex.B.1. It is a blank form, but, this form was not taken out from

the file of the bank. This form, according to the appellants, was earlier given to them for their signatures and they retained it and produced the same at the time of trial. I do not understand as to what is the weightage to be given to such a document which is produced by the defendants after signing the same at the first time in the court. It may be true that such form has been given to the defendants. Unless it is filled up and signed, it can have no value. Secondly, assuming that such a blank form was given to the defendants/appellants, that would not automatically go to show that Ex.A.14 was signed by the defendants when it was blank. As I have already stated, it is essentially a question of fact. Two courts below have held that this document was signed by the defendants consciously by knowing the contents of the said document. In the said document, it is stated that the equitable mortgage by deposit of title deeds created on 01.06.1989 shall be in full force. This document has been given much weightage by the courts below. This would go to show that this is a letter of acknowledgment wherein they have acknowledged that there is a mortgage by deposit of title deeds. This has also been appreciated by the courts below rightly. In the conclusion arrived at by the courts below, I do not find any perversity. At any rate, I find that there is no substantial question of law at all.

9. So far as the contention of the learned Counsel for the appellants that the plaintiff's bank is in B.Udaiyar Village and the said place has not been notified for the purposes of creating a mortgage by deposit of title deeds is concerned, there is no dispute that the said place has not been notified, but the creation of mortgage by title deeds was made at Kumbakonam. This has also been answered rightly by the courts below.

10. Having considered all the above, more particularly, the argument submitted by the learned Counsel for the appellants and the documents besides the evidence adduced, I am of the view that absolutely, there is no substantial question of law involved warranting admission of this Second Appeal.

11. In the result, the Second Appeal fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Deputy Registrar
Dated:24.2.15

True Copy

Sub Assistant Registrar

To

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

+1 cc to Mr.R.Gururaj, Advocate,SR.6605.

jp(co)
krd 19/3

S.A.No.12 OF 2015