

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.165 of 2015 and
M.P.No.1 of 2015

Natrayan

... Appellant

Vs.

1.Hamsaveni
2.Renuka
3.Sujatha
4.Hemalatha
5.Varadarajan
6.Dhanajeya Muniraj
7.Mageswara Muniraj

... Respondents

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 30.09.2013 and made in A.S.No.32 of 2012 on the file of the learned Subordinate Judge, Darapuram dismissing the appeal and confirming the judgement and decree dated 29.11.2011 and made in O.S.No.570 of 2004 on the file of the learned District Munsif, Darapuram.

For Appellant : Mr.N.A.Nissar Ahmed

JUDGEMENT

The defendant in O.S.No.570 of 2004 on the file of the learned District Munsif, Darapuram is the appellant herein. The suit was filed by one Mr.Jeganmohandas. During the pendency of the suit, Mr.Jeganmohandas died and therefore, the respondents herein were brought on record as his legal representatives. The suit was filed for redemption of the suit mortgage declaring that no amount is due under the mortgage dated 28.04.1986 from the plaintiff and to direct the defendant to re-transfer the suit property by ordering delivery of possession to the plaintiff free of encumbrances and for other reliefs. The trial Court by decree and judgement dated 29.11.2011, decreed the suit for redemption of the suit property on condition that the plaintiff should pay the mortgage amount. As against the same, the defendant filed an appeal in A.S.No.32 of 2012 on the file of the learned Subordinate Judge, Darapuram. The same was dismissed by the First Appellate Court by decree and judgement dated 30.09.2013 thereby confirming the decree and judgement of the trial Court. Challenging the same, the appellant/defendant is before this Court with this second appeal.

2. This second appeal has come up 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 plaintiffs in brief is that under Ex.A.1 dated 28.04.1986, the suit property was mortgaged by the deceased first plaintiff to the defendant for a sum of Rs.20,000/- Now, according to the plaintiffs, as per the Tamil Nadu Debt Relief Act, 1979, the entire amount due under the mortgage stands wiped off. The plaintiffs relied on Section 9(5) of the Tamil Nadu Debt Relief Act, 1979.

4.The defendant in his written statement has stated that the defendant is only a tenant under the plaintiffs and there is no relationship of mortgagor and mortgagee between the plaintiffs and the defendant.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, four witnesses were examined and nine documents were exhibited. On the side of the defendant, the defendant was examined as D.W.1 and no document was exhibited.

6.Having considered all the above, the trial Court found that the plaintiffs are not entitled for the benefit of the Tamil Nadu Debt Relief Act, 1979. The trial Court has further held that the transaction between the parties is mortgage and therefore, the mortgage money should be paid for redeeming the property. Accordingly, the trial Court decreed the suit. The First Appellate Court also confirms the same. That is how the appellant/ defendant is before this Court with this second appeal.

7.It is contended by the learned counsel for the appellant that though Ex.A.1 dated 28.04.1986 is a mortgage deed, in its literal sense, in fact, the transaction was not a mortgage transaction. It is further submitted by the learned counsel that there is enormous oral evidence, by which, it has been clearly established that the defendant is only a tenant and not a mortgagee.

8.In my considered opinion, these two questions are on facts and there is no question of law much less a substantial question of law involved in this second appeal. First of all, Ex.A.1 dated 28.04.1986 which is a registered document clearly goes to show that the transaction is a mortgage. As per Section 92 of the Indian Evidence Act, the defendant is de-barred from let in evidence against the terms and conditions of the said document. Two Courts below have appreciated Ex.A.1 and have come to the right conclusion that the transaction is a pure and simple a mortgage transaction and in the said conclusion arrived at, I do not find any infirmity at all warranting interference at the hands of this Court.

9.Though, the plaintiffs claim that they are entitled for the Tamil Nadu Debt Relief Act, 1979, the Courts below have held that the plaintiffs are not entitled for the said relief and therefore, the mortgage money should be paid by the plaintiffs to the defendant for redeeming the suit property. In this finding also, I do not find any

10.In view of the forgoing discussions, I find absolutely there is no substantial question of law involved in this second appeal so as to admit the same. The second appeal has to necessarily fail.

11.In the result, the second appeal fails and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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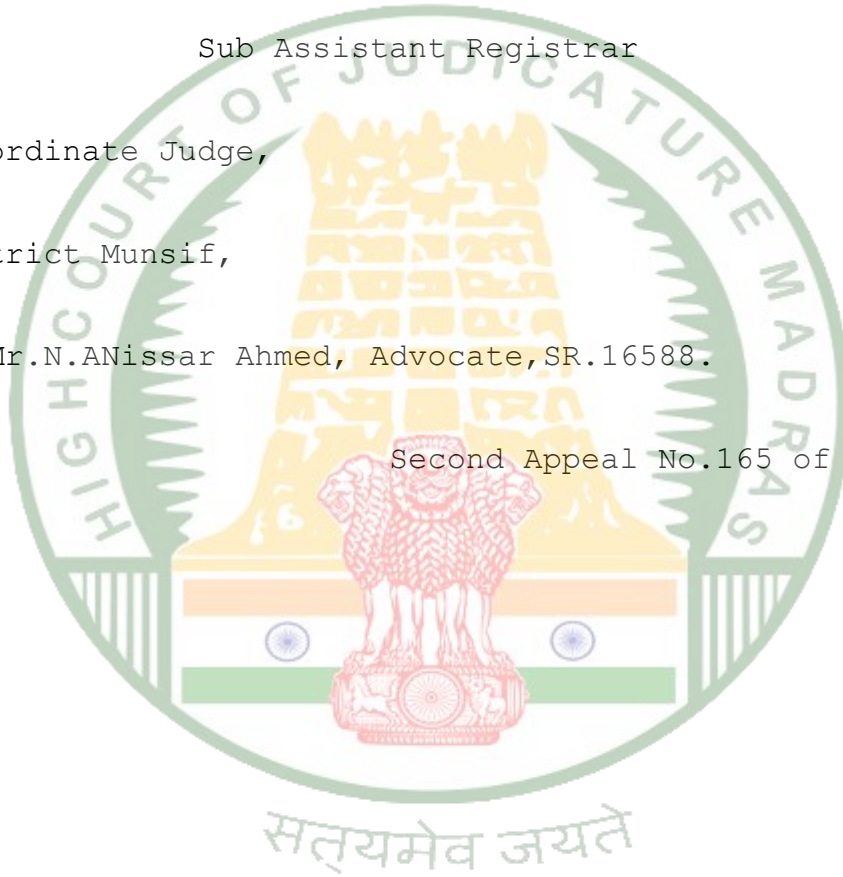
1.The Subordinate Judge,
Daraburam.

2.The District Munsif,
Daraburam.

+1 cc to Mr.N.ANissar Ahmed, Advocate,SR.16588.

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