

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2015

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.930 of 2015 and
M.P.No.1 of 2015

E.Umapathy

... Appellant/2nd Defendant

vs.

1.D.Natarajan

2.S.Namachivayam

... Respondents/Plaintiff and 1st Defendant

Prayer: This Second appeal has been filed against the judgment and decree passed in A.S.No.16 of 2013 on the file of the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District dated 26.06.2015 confirming the decree and judgment passed in O.S.No.146/2008 on the file of the learned Subordinate Judge, Ranipet on 06.01.2012.

For Appellant : Mr.G.Poonkundran

JUDGMENT

The second defendant in O.S.No.146 of 2008 on the file of the learned Subordinate Judge, Ranipet, Vellore, is the appellant herein. The second respondent herein is the first defendant in the suit. The said suit was filed by the first respondent herein for recovery of money secured under a simple mortgage. The property under mortgage is owned by the first defendant and he executed a general power of attorney in favour of the second defendant authorising him to sell or mortgage the said property to anybody. In exercise of the said power conferred, the second defendant executed a simple mortgage in favour of the plaintiff on 06.09.2000 for a sum of Rs.1,00,000/-.

2. According to the terms of the mortgage, the defendants agreed to repay the said amount, within a period of three years from the date of mortgage. But, the amount was not repaid at all, on time. Therefore, the plaintiff filed the above suit for recovery of money in terms of mortgage. The suit was decreed as prayed for by the trial Court by decree and judgment dated 06.01.2012.

3.Challenging the same, the appellant herein filed an appeal in A.S.No.16 of 2013 before the II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District. By decree and judgment dated 26.06.2015, the First Appellate Court dismissed the appeal thereby confirming the decree and judgment of the trial Court. As against the said concurrent findings of the Courts below, the appellant has come up with this second appeal.

4.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and perused the records carefully.

5.The learned counsel for the appellant would submit that the suit is barred by limitation. According to him, as per the terms of the mortgage, the mortgage money should be paid by the defendants within a period of three years from the date of mortgage. Therefore, according to the learned counsel, the suit which was filed after the expiry of the said period of three years, is barred by limitation. The learned counsel relies on Article 61 of the Limitation Act, 1963 to substantiate his contention. The learned counsel would further submit that the Attestor to the mortgage was not examined to prove the consideration.

6.I have considered the above submissions.

7.So far as Article 61 of the Limitation Act is concerned, in my considered view, it has got no application to the facts of the present case. Only Article 62 of the Limitation Act is applicable, which states that, to enforce payment of money secured by a mortgage the suit should be filed within a period of 12 years from the date when the money secured by the mortgage becomes due.

8.In this case, though the mortgage deed is dated 06.09.2000, the amount became due on the expiry of three years period, as fixed in terms of the mortgage deed. Therefore, the suit filed within 12 years from the said date is well within the period of limitation. If the date of mortgage is taken as the crucial date, even then, the suit which was filed in the year 2008 is very well within the period of limitation. Thus, the first ground raised by the learned counsel for the appellant deserves to be rejected.

9.The next ground raised by the learned counsel for the appellant is that the Attestor to the mortgage deed has not been examined. In my considered opinion, it is not necessary as the said document is a registered document. Regarding the amount due under the mortgage deed, though there is a dispute, it is a

question of fact, which cannot be a ground to raise in this second appeal. Thus, I do not find any question of law much less a substantial question of law to admit this second appeal.

10. In the result, the second appeal fails and accordingly, the same is dismissed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Jbm

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

1. The II Additional District and Sessions Judge, Vellore at Ranipet.
2. The Subordinate Judge, Ranipet.

+ 1 cc to Mr. G. Poonkundran, Advocate SR 60353

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