

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2015

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THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.813 of 2013
and M.P.No.1 of 2013

Punjab and Sind Bank
Having Branch throughout
the country and one such branch
situated at No.434, 435, Oppanakara street,
Coimbatore.
Rep. By its Branch Manager,
Sri.Girish

... Appellant/Plaintiff

-Versus-

1.Sri.S.Sundaravadivelu
2.Smt.Kanagamani
3.The Sub Registrar (Criminal),
Co-operative Society and Sales Officer,
Having Office at Deputy Registrar
Cooperative Office,
Collectorate, Coimbatore 641 018.

... Respondents/Defendants

This second appeal is under Section 100 of the Civil Procedure Code filed against the judgment and decree dated 23.09.2011 passed in A.S.No.18 of 2011 by the learned Principal Subordinate Judge, Coimbatore, confirming the judgement and decree dated 30.10.2010 passed in O.S.No.2162 of 2007 by the learned I Additional District Munsif, Coimbatore.

For Appellant

: Mr.R.Govindaraj

Judgement

The appellant is the plaintiff in O.S.No.2162 of 2007 on the file of the learned I Additional District Munsif, Coimbatore. The respondents are the defendants in the said suit. The said suit was filed by the plaintiff for permanent injunction restraining the 3rd defendant from bringing the suit property for sale in the execution proceeding pending on the file of the 3rd respondent. The trial court, by decree and judgement, dated 30.10.2010 dismissed the suit. As against the same, the plaintiff filed an appeal in A.S.No.18 of 2011 before the learned Principal Subordinate Judge, Coimbatore and

the same was also dismissed. Challenging the said decree and judgement passed by the first appellate court, the plaintiff is now 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 also perused the records carefully.

3. The facts of the case would be as follows:- The defendants 1 and 2 had jointly borrowed loan from the plaintiff bank on 30.11.2004 by creating equitable mortgage over the suit property. But, the loan amount was not repaid and thus, the mortgage is still subsisting. While so, it appears, that the 1st defendant, who was the President of K.2089, Southern Railway Employees Co-operative Stores had committed misappropriation to the tune of Rs.13,89,000/-. In this regard, appropriate proceedings were initiated against him under Section 87 of The Tamil Nadu Co-operative Societies Act, 1983. In surcharge proceedings Nos.01/2003, 02/2003, 03/2003, 04/2003 and 05/2003 orders were passed by the Deputy Registrar of Cooperative Societies directing the 1st respondent/1st defendant to pay a sum of Rs.16,900/-, Rs.6,46,000/- Rs.91,650/- Rs.12,000/- and Rs.6,22,000/- respectively. The said amounts were not paid by the 1st respondent/1st defendant. Therefore, execution proceedings were initiated in E.P.Nos.172/2005, 173/2005, 174/2005, 175/2005 and 176/2005 respectively. During the pendency of the said execution proceedings, the suit property herein was attached and the same was brought for sale. According to the 3rd respondent, since the property was brought for sale in the execution proceedings, as per Section 156 of The Tamil Nadu Cooperative Societies Act, the civil court has got no jurisdiction to entertain the present suit so as to restrain the 3rd respondent from auctioning the property in the execution proceedings.

4. The trial court framed appropriate issues. Both parties were called upon to let in evidence. On the side of the plaintiff, 1 witness was examined and 5 documents were marked. On the side of the defendants, 1 witness was examined and 6 documents were marked. As against the specific issue relating to the jurisdiction of the civil court to entertain the said suit, the trial court after having referred to Section 156 of The Tamil Nadu Cooperative Societies Act, held that the suit is not maintainable. The trial court did not go into the other issues. The first appellate court also confirmed the said conclusion. That is how, the plaintiff bank is now before this court with this second appeal.

5. In this second appeal, the learned counsel for the appellant would submit that the suit property was already mortgaged with the appellant that was even long prior to the attachment order made in the execution proceedings on the file of the 3rd respondent. The learned counsel would further submit that since the first charge on

the property is in favour of the appellant, the property cannot be sold by the 3rd respondent inasmuch as there was no charge at all over this property in the awards passed by the Deputy Registrar of Cooperative Societies.

6. So far as the jurisdiction is concerned, the learned counsel would submit that Section. 156 of the Tamil Nadu Cooperative Societies Act is not applicable.

7. I have considered the above submissions carefully.

8. On facts, I am in agreement with the learned counsel for the appellant inasmuch as insofar as the suit property is concerned, there was no charge made over the suit property in favour of the cooperative societies, who initiated the surcharge proceedings under Section 87 of The Tamil Nadu Cooperative Societies Act. As I have already pointed out, the charges were in respect of misappropriation committed by the 1st respondent. Thus, quite naturally, there was no charge over any of the properties, but, in an attempt to recover the amount in pursuance of the awards made by the Deputy Registrar of Cooperative Societies, the suit property has been attached. Thus, attachment is subsequent to the charge, which was already created by means of mortgage in favour of the appellant/plaintiff bank. Therefore, the appellant may be justified in saying that out of the sale proceeds of the suit property, the amount due to the appellant/plaintiff bank is to be settled first. There may be justification in the said submission of the learned counsel for the appellant, but, this court cannot declare so inasmuch as it is for the appellant bank to approach the authority, who has got jurisdiction to execute the award, to consider the issue. In my considered opinion, Section 156 of the Tamil Nadu Cooperative Societies Act is squarely applicable and the civil court cannot pass a decree of injunction restraining the 3rd defendant from discharging his statutory functions. It is not as though the appellant has got no remedy before the 3rd defendant or any other competent authority under the Tamil Nadu Cooperative Societies Act. The Tamil Nadu Cooperative Societies Act, 1983, is a self contained Act, which has got provision for raising order of attachment and to release the property from such attachment. Therefore, it is always open for the appellant to approach the authority concerned for raising the attachment and to work out any other remedy which is available under the said Act itself. I only say that, as rightly concluded by the courts below, the present suit is not at all maintainable in view of the specific bar contained in Section 156 of The Tamil Nadu Cooperative Societies Act. In such view of the matter, I do not find any question of law much less any substantial question of law warranting admission of this second appeal.

8. In the result, this second appeal fails and the same is accordingly dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

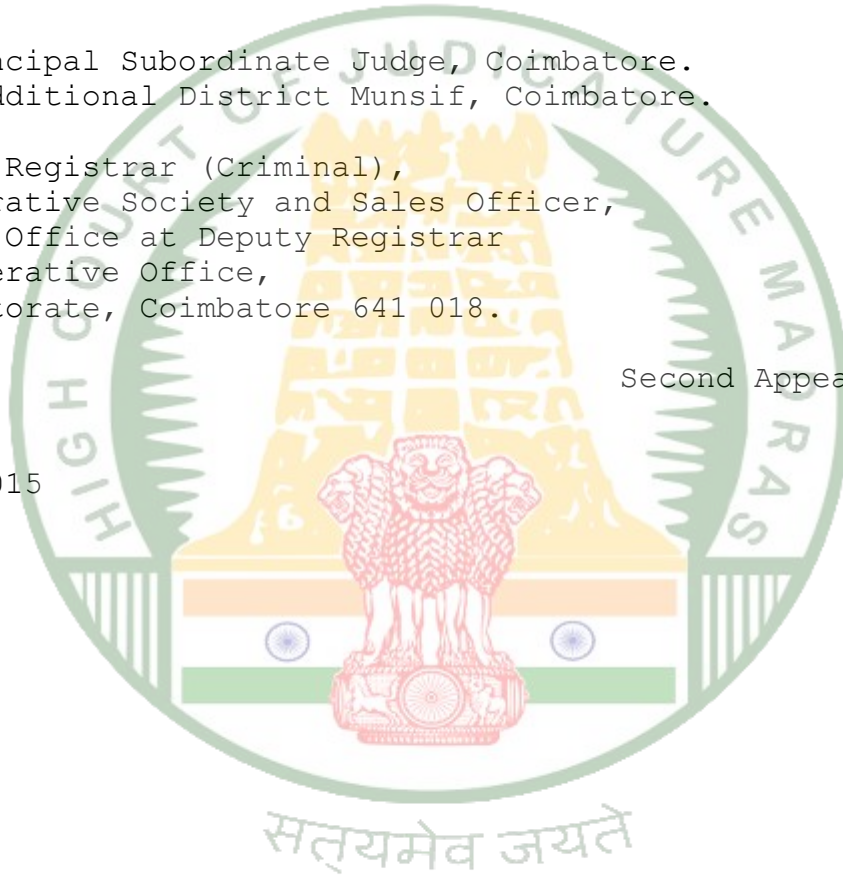
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To

- 1.The Principal Subordinate Judge, Coimbatore.
- 2.The I Additional District Munsif, Coimbatore.
- 3.The Sub Registrar (Criminal),
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