

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 07.01.2015

Pronounced on : 13.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.595 of 2006

Mr.N.Ramanujam

.. Appellant/ Plaintiff

-Vs-

1.Mrs.S.Thillai

2.S.Bhaskar

3.M/s.Balajee and Company,
Auctioneers and Estate Agents,
Office at T-5
Mahaveer Chambers,
No.103, Nyniappa Naicken Street,
Chennai - 600 003

.. Respondents/ Defendant

Second Appeal filed under Section 100 of C.P.C against the judgment and decree of the III Additional Judge, City Civil Court at Chennai dated 13.03.2006 made in A.S.No.282 of 2005 confirming the decree and judgment of the VIII Assistant Judge, City Civil Court, Chennai dated 18.03.2005 made in O.S.No.5842 of 2001.

For Appellant : Mr.K.P.Gopalakrishnan

For Respondents 1 -2 : Mr.V.Manohar

R3 Disd vie order of court dated 25.4.2007

JUDGMENT

The plaintiff in the original suit O.S.No.5482 of 2001 decided by the VIII Assistant Judge, City Civil Court, Chennai is the appellant in the present second appeal. The appellant herein filed the above said suit against the respondents herein for permanent injunction restraining the respondents from in any way bringing the plaint schedule property for sale by private auction.

2. The said prayer was made based on the plant averments, which are in brief, as follows:

Based on two mortgage deeds dated 21.08.2000 registered as Document Nos.2917/2000 and 2918/2000 in the office of the Sub Registrar, Kodambakkam, Chennai containing a clause enabling the mortgagee to effect sale of the mortgaged property under Section 69 of the Transfer of Property Act, 1882, the respondents 1 and 2/defendants 1 and 2, wanted to sell the plaint schedule property by public auction and for that purpose, they entrusted the job to the private auctioneer, namely the third respondent herein. The third respondent issued Ex.A1-Auction Notice dated 21.09.2001 advertising the sale of the suit properties by public auction on the basis that power of such sale was given to the respondents 1 and 2/mortgagees under the mortgage deeds. In view of the steps taken by the defendants to bring the suit properties for sale by public auction employing the third respondent for the said purpose, the appellant/plaintiff filed the above said suit O.S.No.5482/2001 on the file of the trial court for permanent injunction restraining them from bringing the property for sale under Section 69 of the Transfer of Property Act, 1882.

3. Regarding the execution of the mortgage deeds, copies of which have been marked as Exs.B1 and B2, the appellant/plaintiff had taken a plea that those documents were created with the help of the signatures obtained by the first respondent on dotted lines in some papers at her residence and also the signatures obtained in several other papers in the office of the Sub Registrar, Kodambakkam, Chennai and that the signatures were obtained in the pretext of getting some documents to satisfy the second respondent, the son of the first respondent and with an assurance not to use the same as mortgage.

4. It was also contended by the appellant/plaintiff that he had no privity of contract with the second respondent and on the other hand, due to long acquaintance he had had with the first respondent from 07.05.1996 to 10.05.1998, he borrowed little by little a total sum of Rs.3,06,500/- agreeing to repay the same with simple interest at the rate of 12% per annum from the date of availing of each portion of the said amount as loan from the first respondent and that towards the interest on the loan amount, periodical payments were made from 11.01.1998 to 16.08.2001 and the total amount thus paid by the appellant/plaintiff was Rs.1,54,000/-. Based on the said averments and also the averment that he never intended to execute any mortgage in favour of the respondents 1 and 2, the appellant/plaintiff laid the suit for the relief of permanent injunction.

5. The suit was resisted by the respondents 1 and 2 denying the plaint averments and contending that the appellant/plaintiff borrowed a total sum of Rs.7,50,000/- on 21.08.2000, towards which the first respondent contributed Rs.4,00,000/- and the second respondent contributed Rs.3,50,000/-; that in order to give security for the prompt repayment of the said amount, the appellant/plaintiff executed two registered mortgage deeds in

favour of the respondents 1 and 2; that the said documents were prepared as instructed by the appellant/plaintiff; that the said mortgage deeds contained a clause conferring right of sale under Section 69 of the Transfer of Property Act on the mortgagees, namely respondents 1 and 2; that when the loan amount was not discharged, the respondents 1 and 2 had to issue a letter dated 21.09.2001 demanding for payment; that on receipt of the letter, without sending a proper reply, the appellant/plaintiff rushed to the court with false and untenable allegations, without even seeking a decree for redemption of mortgage; that the suit itself would not be maintainable and that the same being an attempt at abuse of process of court, should be dismissed with exemplary cost.

6. Necessary issues were framed and a trial was conducted in which, one witness was examined as PW1 and the auction notice dated 21.09.2001 was produced as the sole document and marked as Ex.A1 on the side of the appellant herein/plaintiff, whereas three witnesses were examined as DWs.1 to 3 and three documents were marked as Exs.B1 to B3 on the side of the respondents herein/defendants.

7. At the end of the trial, the learned trial judge, on an appreciation of evidence in the light of the arguments advanced on both sides, accepted the case of the respondents and non-suited the appellant/plaintiff for the relief sought for in the suit and dismissed the suit by its judgment and decree dated 18.03.2005. The said decree and judgment of the trial court (VIII Assistant Judge, City Civil Court, Chennai) was challenged before the learned lower appellate court, namely III Additional Judge, City Civil Court at Chennai in A.S.No.282/2005. The learned lower appellate judge also concurred with the findings of the trial court and dismissed the appeal and thereby confirmed the decree passed by the trial court holding that the appellant/plaintiff was not entitled to the decree for injunction as prayed for. As against the said judgment and decree of the lower appellate court dated 13.03.2006 made in A.S.No.282/2005, the present second appeal has been filed on various grounds set out in the memorandum of grounds of second appeal.

8. At the time of admission of the second appeal, two questions were identified and formulated as substantial questions of law involved in the second appeal and they are as follows:

"1. Whether the public auction under Section 69 of the Transfer of Property Act is valid without giving notice under Section 69(2) of the Transfer of Property Act, especially in the circumstances that both the courts below have not considered the same?

2. Whether the courts below are correct in deciding the issue of burden of proof without considering the judgments of the Supreme Court reported in AIR 2000 SC 1203 and 2000(2) CTC 486?

9. The arguments advanced by Mr.K.P.Gopalakrishnan, learned counsel for the appellant and by Mr.V.Manohar, learned counsel for the respondents 1 and 2 were heard. The judgments of the courts below and the materials available on record were also perused.

10. The first respondent is the mother of the second respondent. The appellant/plaintiff admits the borrowal made by him from the first respondent/first defendant. He has denied having borrowed any amount from the second respondent/second defendant. The case of the appellant/plaintiff is that he borrowed only a sum of Rs.3,06,500/- from the first respondent/first defendant, agreeing to repay the same with a simple interest at the rate of 12% per annum and repaid a sum of Rs.1,54,000/- and that the balance amount alone shall be due from the appellant/plaintiff to the first respondent/first defendant. Though the appellant/plaintiff would have stated that he borrowed Rs.3,06,500/-, agreeing to repay the same with an interest at the rate of 12% per annum and that till 16.08.2001, he had paid a total sum of Rs.1,54,000/-, he has not furnished the details regarding the amount paid towards interest, amount paid towards the principal and the balance amount due from him as on the date of filing of the suit.

11. Per contra, it is the case of the respondents 1 and 2/defendants 1 and 2 that though previously the appellant/plaintiff borrowed small amounts as hand loans, the said amounts were promptly repaid; that because of such prompt repayments made by the appellant/plaintiff, having confidence that he would repay the loan amount, the respondents 1 and 2/defendants 1 and 2 lent a sum of Rs.7,50,000/- to the appellant/plaintiff on 21.08.2000 from out of their hard earned money; that the said amount consisted of Rs.4,00,000/- contributed by the first respondent/first defendant and Rs.3,50,000/- contributed by the second respondent/second defendant; that for the said borrowal made on 21.08.2000, the appellant/plaintiff executed Ex.B2-mortgage deed for a sum of Rs.4,00,000/- in favour of the first respondent/first defendant registered as document No.2917/2000 on the file of the Sub Registrar, Kodambakkam, agreeing to repay the same with an interest at the rate of 24% per annum containing a covenant granting a right of sale under Sections 69 and 69-A of the Transfer of Property Act, 1882 to the mortgagee therein and that he executed another mortgage deed in favour of the second respondent/second defendant for a sum of Rs.3,50,000/-, containing similar clauses, registered as Document No.2918/2000, a certified copy of which has been marked as Ex.B3.

12. The appellant/plaintiff, who does not dispute the execution of the said documents, would simply contend that the first respondent/first defendant obtained his signatures in dotted lines on various papers and also on various other papers in the office of the Sub Registrar, Kodambakkam, Chennai in the month of August 2000; that he was made to sign without knowing the contents of the documents and that believing the words of the first respondent/first defendant that the same would not be treated as

mortgage transactions he affixed his signatures. In this regard, except the interested testimony of the appellant/plaintiff as PW1, there is no other reliable evidence to substantiate his contention. On the other hand, including the first respondent/first defendant, three witnesses were examined in order to prove the execution of the mortgage deeds and the loan transaction secured by the mortgage deeds. Besides examining the first respondent/first defendant herself as DW1, the wife of the appellant/plaintiff and the son of the appellant/plaintiff were examined as DWs.2 and 3 respectively.

13. DW2 is one of the attestors of the mortgage deeds dated 21.08.2000, certified copies of which have been marked as Exs.B2 and B3. She was summoned by the respondents 1 and 2/defendants 1 and 2 to show that the appellant/plaintiff borrowed a sum of Rs.7,50,000/- from the respondents 1 and 2/defendants 1 and 2 and the same was used for purchasing a property brought to auction by Park Town Benefit Fund. She has clearly admitted that she purchased a property for Rs.7,00,000/- in the auction sale conducted by Park Town Benefit Fund in the month of June 2000. She has also admitted that she did not have any other property and she had to borrow for the purchase made in the auction sale. At the same time, she would deny having availed any loan from the respondents 1 and 2/defendants 1 and 2 and at the same time, she held out that she borrowed a sum of Rs.7,00,000/- from ICICI Bank towards the sale consideration for the property taken by her in the auction sale. However she was not able to state the date on which the loan was sanctioned by the ICICI Bank to her. Though she would have stated that her husband did not borrow any amount from the respondents 1 and 2/defendants 1 and 2, she has carefully avoided any reference to her attestation in the mortgage deeds, certified copies of which have been produced as Exs.B2 and B3.

14. One Nagarajan son of the appellant/plaintiff was sought to be examined as DW3. He made a statement in his evidence containing just three sentences that his father Ramanujam did not borrow any amount from the first respondent/first defendant and that his father did not owe any amount to the first respondent/first defendant. The said evidence is contrary to the fact admitted by the appellant/plaintiff, who is none other than his father. When a letter written by him was shown to him, he admitted the same to be one written by him, but some how or other an adjournment was sought for, for his further examination. Subsequently, he did not turn up, as a result of which, the evidence on the side of the respondents herein/defendants came to be closed.

15. Ex.B1 is a certified copy of the mortgage deed dated 12.12.2002 executed by Nagarajan in favour of one R.Venkatraman representing Park Town Benefit Fund Limited, Chennai. From the recitals found therein it is found that the said property mortgaged under the original of Ex.B1 had been purchased by Chandra, wife of the appellant/plaintiff in an auction held on 20.06.2000 and as per her request, the sale deed came to be executed in favour of her

nominee, namely her son Nagarajan. For the said purchase under the original of Ex.B1, a total consideration of Rs.7,00,000/- had been paid in the following manner:

Paid in cash on 20.06.2000 at the time of auction	: Rs.2,00,000/-
Paid by way of a cheque bearing No.223159 dated 30.11.2002 drawn on ICICI Bank	: Rs.5,00,000/-

Having emerged as the highest bidder offering a sum of Rs.7,00,000/- she had paid only a sum of Rs.2,00,000/-. Within two months thereafter, namely 21.08.2000, Rs.7,50,000/- was borrowed by the appellant/plaintiff under the originals of Exs.B2 and B3. Balance sale consideration as per auction sale was paid by her only subsequent to the execution of the originals of Exs.B2 and B3 - Mortgage Deeds. The same will make it clear that there was need for the appellant/plaintiff to make the borrowal. The admission made by the appellant/plaintiff that he not only signed the documents that had been prepared in full, but also signed in the office of the Sub Registrar, Kodambakkam, will make it clear that the appellant/plaintiff knowingly executed the originals of Exs.B2 and B3 - mortgage deeds.

16. Exs.B2 and B3 contain a clause conferring a right on the mortgagees to bring the property for sale under Section 69 and 69-A of the Transfer of Property Act, 1882. Section 69 provides that the mortgagee or any person acting on behalf of the mortgagee, subject to the provisions of the said section shall have power to sell the mortgaged property or any part thereof without the intervention of the court, if the conditions in the section are complied with. For better appreciation, Section 69 is reproduced hereunder:

"69. Power of sale when valid.-(1) A mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section have power to sell or concur in selling the mortgaged property or any part thereof, in default of payment of the mortgage-money, without the intervention of the Court, in the following cases and in no others, namely:-

(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist or a member of any other race, sect, tribe or class from time to time specified in this behalf by the State Government, in the Official Gazette;

(b) where a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed and the mortgagee is the Government;

(c) where a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed and the mortgaged property or any part thereof was, on the date of execution of the mortgage-deed, situate within the towns of Calcutta, Madras, Bombay, or in any other town or area which the State Government may, by notification in the Official Gazette, specify in this behalf.

(2) No such power shall be exercised unless and until -

(a) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(b) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

(3) When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(4) The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances, if any, to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior encumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(5) Nothing in this section or in section 69-A applies to powers conferred before the first day of July, 1882."

17. Sub section (1)(c), which has been highlighted, is the relevant provision. According to it, where a power of sale without the intervention of court is expressly conferred on the mortgagee by the mortgage-deed and the mortgaged property or any part thereof was, on the date of execution of the mortgage-deed, situated within the towns of Calcutta (now Kolkatta), Madras (now Chennai), Bombay (now Mumbai) or in any other town or area which the State Government may, by notification in the Official Gazette, specify in this behalf, such mortgagee shall have the power to sell the mortgaged property or part thereof without the intervention of court.

18. Admittedly, the suit property situates within the city of Chennai. The mortgage deeds also have expressly conferred such a power of sale on the mortgagees without the intervention of court. The said power of sale was sought to be exercised by causing the issuance of Ex.A1-Auction Notice dated 21.09.2001. Sub section (2) provides a check to such power stating that no such power shall be exercised unless and until a notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or a part thereof, for three months after such service. From the pleadings made in the written statement of the respondents 1 and 2, it is obvious that a notice in writing demanding payment was made by a letter dated 21.09.2001. A reading of sub-section (2) will make it clear that in case the power of sale is sought to be exercised for the non-payment of the principal, then notice in writing has to be given demanding the payment of the principal money within three months period and if the principal amount or part thereof remains not paid by the mortgagors at the end of three months from the date of service of such notice, then the property can be brought for sale. In case of non-payment of interest amounting to not less than 500 rupees and the interest for three months has become due and remain unpaid, then even without such a notice the power of sale can be exercised.

19. In this case, it is the clear and categorical case of the respondents 1 and 2/defendants 1 and 2 that no amount was paid either towards repayment of the principal or towards payment of interest in respect of the mortgage loans secured by the originals of Exs.B2 and B3. It is also not the case of the appellant/plaintiff that he paid any interest for the amount borrowed on the mortgage created under the originals of Exs.B2 and B3-Mortgage-Deeds. The debts were incurred on 21.08.2000. Till the date of auction notice viz. 21.09.2001 no payment was made towards interest or towards principal. The agreed interest as per the documents is 24% per annum. Even a month's interest shall be

Rs.15,000/-, which shall be several times more than Rs.500/-. It is a fact proved and not disputed that for more than three months, the interest was not paid and it became due. Hence as per section 69(2) (b), the mortgagees (respondents 1 and 2/defendants 1 and 2) are entitled to exercise the power of sale without the intervention of court conferred on them under the mortgage-deeds, copies of which have been marked as Exs.B2 and B3. The steps taken by the respondents 1 and 2/defendants 1 and 2 through the third respondent for bringing the property for sale in public auction is in accordance with the procedure contemplated and in compliance of the conditions stipulated in Section 69 of the Transfer of Property Act, 1882. As against the exercise of such a power conferred on the respondents 1 and 2, the appellant/plaintiff seems to have approached the court with the suit for bare injunction without even coming forward to deposit the amount due under the mortgage and without even seeking redemption of mortgage. Till the disposal of the suit by the trial court, the appellant/plaintiff was not prepared to pay the amount due under the mortgages and get the property redeemed. Hence, the trial court did not commit any error of mistake in holding that there was no violation of Section 69(2) of the Transfer of Property Act. The foregoing discussions will make it clear that there is no violation of Section 69(2) of the Transfer of Property Act and that the property was sought to be brought for sale in public auction under Section 69(2)(b) of the Transfer of Property Act, 1882 for which no notice is needed especially when it is an admitted fact that the appellant/plaintiff (mortgagor) had not paid any amount towards the interest on the mortgage debts. It is obvious from the pleadings of the appellant/plaintiff and the evidence adduced on his behalf that he was not prepared even on the date of filing of the suit to discharge the mortgage debt by making payment. The lower appellate court was also correct in confirming the same. Accordingly the first substantial question of law formulated in this second appeal is answered holding that the notice for public auction was validly issued under Section 69(2) (b) of the Transfer of Property Act, 1882 and there was no violation of Section 69(2) of the Transfer of Property Act, 1882.

20. The second substantial question of law has been formulated on the basis of the contention raised on behalf of the appellant/plaintiff that the burden of proving due execution of the mortgage deeds and the borrowal was on the respondents 1 and 2/defendants 1 and 2 and that without considering the strength of the evidence adduced on their side in proof of due execution of the mortgage deeds and also in proof of the alleged loan transaction, the courts below have erroneously cast the burden on the appellant/plaintiff to prove the fraud played in getting the mortgage deeds executed by the appellant/plaintiff and also the burden of proving his contention that the said mortgage deeds were sham and nominal deeds, as it was promised by the first respondent not to be acted upon as mortgage deeds. In this regard, as pointed out supra, it is the appellant/plaintiff, who has come forward with

the suit for permanent injunction on the basis of his plea that he did not borrow any amount from the second respondent/second defendant and he did not borrow the amount quoted in the mortgage deeds executed in favour of the first and second respondents. It is also his contention that a fraud was played upon him in bringing the mortgage deeds into existence by making him sign the documents and also the papers for the registration of the documents without his knowing the contents of the documents. Though the appellant/plaintiff would have admitted that he had borrowed some amount from the first respondent/first defendant and repaid a part of it, he had not given clear particulars as to 'how much was paid towards interest? and how much was paid towards principal? and how much was the amount due?' as on the date of filing of the suit. The appellant/plaintiff having known the fact that he had signed the documents and the registration papers for registering the documents had not chosen to get the certified copies of the documents to know the contents and file a suit for setting aside the same. Without seeking a decree setting aside the mortgage deeds or declaring the mortgage deeds to be null and void, the appellant/plaintiff has simply come forward with the suit for injunction not to bring the property for sale in public auction in exercise of the power conferred under the mortgage deeds under Section 69 of the Transfer of Property Act.

21. In this regard, at the cost of repetition, it is pointed out that DW1 has deposed in clear terms that she contributed a sum of Rs.4,00,000/- and the second respondent contributed a sum of Rs.3,50,000/- and a total sum of Rs.7,50,000/- was lent to the appellant/plaintiff for which, he executed the mortgage deeds for the amounts contributed by the first respondent and the second respondent respectively. It is also pertinent to note that the wife of the appellant/plaintiff herself was one of the attestors of the mortgage-deeds. The respondents 1 and 2 have also by adducing evidence through Ex.B1 and the testimony of DW2, who is none other than the wife of the appellant/plaintiff that the appellant/plaintiff was in need of money at the time of execution of the mortgage-deeds, as the property had been purchased by his wife in a public auction held by Park Town Benefit Fund Ltd on 20.06.2000 for a sum of Rs.7,50,000/- out of which only a sum of Rs.2,00,000/- had been paid. When such is the case, the judgment of the Hon'ble Supreme Court in Subhra Mukherjee & Anr. vs. Bharat Coking Coal Ltd. & Ors. reported in AIR 2000 SC 1203 and the judgment of a learned single judge of this court in Minor Palanivelu and 2 others vs. Sadasiva Padayachi (Died) and 7 others reported in 2000 (2) CTC 486 have been cited on behalf of the appellant/plaintiff in an attempt to show that the burden of proof was wrongly cast on the appellant/plaintiff.

22. In Subhra Mukherjee & Anr. vs. Bharat Coking Coal Ltd. & Ors. reported in AIR 2000 SC 1203, a sale deed executed by two of the directors of the company in favour of their wives after a number of years from the date of alleged payment of consideration

of Rs.7,000/-, which, according to the view of the Supreme Court, was a meager sum, was claimed to be a sham and nominal deed. In the said case, the resolution of the board of directors authorising the sale in favour of the wives of the directors of the company who had no independent source of income on their own, was found to be anti-dated when third party interest was also involved. The Supreme Court pierced the veil of incorporation and held that the transaction was not proved to be a genuine one and the same was created anti-dating the resolution. The purchasers under the disputed document filed a suit for declaration of their title and for permanent injunction restraining the defendant therein, which was a Government company, from interfering with their possession. Under the said circumstances alone, the Supreme Court held that the plaintiffs therein had not proved the transaction of sale to be bona fide and genuine, which made it unnecessary for the defendant therein to prove that the sale transaction was sham and nominal or fictitious. The facts of the said case are different from the facts of the case on hand. Hence the said judgment of the Hon'ble Supreme Court can be distinguished and held to be inapplicable to support the case of the appellant herein/plaintiff.

23. The learned counsel for the appellant/plaintiff also relied on a judgment of this court in Minor Palanivelu and 2 others vs. Sadasiva Padayachi (Died) and 7 others reported in 2000 (2) CTC 486. The facts of the said case are different from the facts of the case on hand. The learned counsel for the appellant has miserably failed to point out the ratio decided therein, which is sought to be made applicable to the case on hand. However, the learned counsel for the appellant argued that since the respondents 1 and 2 claimed that the debt was incurred for payment of the sale consideration for the purchase made by the wife of the appellant in a public auction conducted by Park Town Benefit Fund Ltd, she should have been made a party and that if at all the respondents 1 and 2/defendants 1 and 2 had any remedy, the same shall be against the wife of the appellant/plaintiff and against the property purchased by her in the public auction held on 20.06.2000. This court is not in a position to countenance the above said contention of the learned counsel for the appellant. When an amount was borrowed by a person for giving it to another person for the purpose of purchasing a property, the creditor shall not have any right in the property thus purchased unless subsequent to such purchase a mortgage in respect of such is created in his favour. On the other hand, when one property is mortgaged for raising funds for purchasing another property, the mortgagor cannot later on contend that the mortgagee cannot proceed against the property mortgaged and that he has to proceed against the property purchased out of the amount borrowed under the mortgage deed. As the contention raised on behalf of the appellant is the same as indicated above, it cannot be countenanced. There is no statutory provision or any other principle of law supporting the said contention raised by the learned counsel for the appellant. The courts below have not offended the principles of law regarding the

burden of proof and they have rendered a correct and concurrent finding that the appellant/plaintiff had not proved his entitlement to get the relief of injunction sought for. The question framed as second substantial question of law is answered accordingly against the appellant/plaintiff.

24. In light of the foregoing discussions, this court holds that the appellant has not made out a case for interference with the concurrent judgments and decrees of the courts below; that there is no merit in the second appeal and the same deserves to be dismissed with cost.

In the result, the second appeal is dismissed with cost, confirming the judgments and decrees of the courts below.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

asr/-

To

1.The III Additional Judge,
City Civil Court, Chennai

2.The VIII Assistant Judge,
City Civil Court, Chennai

Copy to

The Section Officer
VR Section,
High Court, Madras

2. The Registrar
City Civil Court
Chennai

1 cc to Mr.K.P. Gopalakrishnan, Advocate, sr. 2153

S.A.No.595 of 2006

JP (CO)
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