

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

S.A.No.538 of 2015
and
C.M.P.No.3439 of 2016

K.Susila

...Appellant/Plaintiff

..Vs..

Thirumurugan Permanent Fund Ltd.,
Rep.by its Managing Director,
S.Sethu,
No.6-C, MIG-Central Avenue,
M.K.B.Nagar,
Vyasarpadi, Chennai - 600 039.

...Respondent/Defendant

Prayer:- Appeal filed under Section 100 C.P.C., praying to set aside the Judgment and Decree dated 09.12.2013 passed in A.S.No.198 of 2013 on the file of the Learned VI Additional Judge, City Civil Court, Chennai reversing the Judgment and Decree dated 11.03.2013 made in O.S.No.8570 of 2010 on the file of the Learned XI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.M.Kamalanathan
For sole Respondent : M/s.Sarojini

JUDGMENT

This petition is filed under Order 23 Rule 3 of the Code of Civil Procedure to dispose of the Second Appeal in terms which are set out in the petition.

2. The Memorandum of Second Appeal has been directed as against the judgement and decree dated 11.03.2013 on the file of the VI Additional Judge, City Civil Court, Chennai and made in A.S.No.198 of 2013, reversing the judgement and decree of the suit in O.S.No.8570 of 2010 on the file of the XI Assistant Judge, City Civil Court, Chennai.

3. The appellant herein is the plaintiff. It appears from the records that the appellant had filed the Original Suit in O.S.No.8570 of 2010 as against the respondent herein/defendant on the file of the XI Assistant Judge, City Civil Court, Chennai and thereby sought the relief of redemption of the suit schedule property from the respondent as there is no mortgage amount due by the respondent and to direct the respondent to deliver all the documents in his possession to the appellant/plaintiff as mentioned in the 'B' schedule of the suit property, as there is no due in respect of mortgage loan and also for granting permanent injunction. The suit was originally decreed. Then the respondent has filed the first appeal, which was partly allowed, against which, the appellant/plaintiff has come before this Court with this Second Appeal.

4. During the pendency of the Second Appeal, the appellant/plaintiff has taken out the above petition in C.M.P.No.3439 of 2016, under Order 23 Rule 3 of the Code of Civil Procedure to dispose the Second Appeal in terms set out in the petition, as the parties have got the matter settled out of Court.

5. In paragraph No.5 of the petition itself, the appellant has stated the terms of settlement, which reads as follows:-

(i) On the payment of Rs.1,00,000/- (Rupees One lakh only) paid by the Appellant in the name of the Mrs.Sarojini Govindan, learned counsel for the respondent vide Cheque No.706653, dated 02.02.2006 drawn on Indian Bank, Harbour Branch, Chennai, the two suit mortgages in Document No.1260 of 1990 dated 13.08.1990 and 1400 of 1994, dated 04.07.1994 both registered in the office of the Sub-Registrar, Royapuram, Chennai for the sum of Rs.15,000/- and Rs.65,000/- respectively hereby stand cancelled.

(ii) A sum of Rs.20,000/- (Rupees Twenty thousand only) deposited on 05.01.2011 by the Appellant/Plaintiff in the suit in O.S.No.8570 of 2010 on the file of the Hon'ble XI Judge, City Civil Court, Chennai shall be withdrawn by the Appellant.

(iii) The Original documents of Title and the cancelled two Mortgage Deeds in respect of the above two mortgages handed over at the time of the two mortgages to the Respondent are returned to the Appellant as they duly discharged.

6. Both the learned counsels jointly submitted that the Second Appeal may be disposed of in the above terms, as the mortgage was duly discharged.

7. Keeping in view of the fact, this Court finds that the Second Appeal may be disposed of in the above terms.

8. The Second Appeal is disposed of in terms set out in the petition. The terms set out shall form part of the decree. There shall be no order as to costs

Sd
Assistant Registrar, (CS-VI)
True coy
Sub Assistant Registrar.

To

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

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

+ 2 ccs to Mr.M.Kamalanathan, Advocate SR 17076

+ 1 cc to Mr.K.Govindan, Advocate SR 17058

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