

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2016

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

SECOND APPEAL No. 734 of 2015

The Madras Purasawalkam Hindu  
Janopakara Saswatha Nidhi Ltd.,  
rep. by its Director,  
No. 168, Vellala Street,  
Purasawalkam, Chennai - 64. ...Appellant

Vs.

1. D. Jagadevan
2. J. Padmini
3. Varma and Company,  
Government Auctioneers  
and Estate Agents,  
Old No. 159, Mint Street,  
Chennai - 600 079. ...Respondents

Prayer: Second Appeal as against the judgment and decree dated 19.09.2013 passed in A.S. No. 440 of 2010 on the file of the VI Additional City Civil Court, Chennai reversing the judgment and decree in O.S. No. 8841 of 2006 dated 23.01.2009 passed by the VIII Assistant City Civil Court, Chennai.

For Appellant :: Mr.M. Devaraj

For Respondents:: Mr.V. Raghavachari  
for R1 & R2  
R3 given up

WEB COPY  
J U D G M E N T

The first defendant in O.S. No. 8841 of 2006 on the file of the VIII Assistant Judge, City Civil Court, Chennai is the appellant herein. Respondents 1 and 2 herein are the plaintiffs in the suit and the 3<sup>rd</sup> respondent is the 2<sup>nd</sup> defendant in the suit.

2. The plaintiffs filed the suit for redemption of mortgage registered under Document No. 1010/95 on the file of Sub-Registrar, Triplicane, dated 23.08.1995; to have the same reconveyed to the plaintiffs; to direct the 1<sup>st</sup> defendant to hand over the title deeds of the suit schedule mentioned property to the plaintiffs directing the 1<sup>st</sup> defendant to produce true and correct accounts of the loan account No. EN 0139 and loan account No. ES 0177 to the plaintiffs and for costs. The Trial Court, by decree and judgment dated 23.01.2009, decreed the suit partly by ordering that the plaintiffs are entitled to get accounts for resolving the dispute between the parties and dismissed the suit with regard to the prayer for redemption of mortgage. As against the same, the plaintiffs filed an appeal in A.S. No.440 of 2010. The VI Additional Judge, City Civil Court, Chennai, by decree and judgment dated 19.09.2013, allowed the appeal setting aside the decree and judgment of the Trial Court in so far as the dismissal of prayer for redemption is concerned and passed a preliminary decree for redemption on payment of amount due under the mortgage with interest @ 6% p.a. from the date of plaint till the date of payment of entire amount by the plaintiffs. The Lower Appellate Court further directed that the actual amount due from the plaintiffs shall be decided in the final decree application. Aggrieved by the rate of interest granted by the Lower Appellate Court for the period commencing from the date of filing of the suit, the appellant has come up with this second appeal.

3. This second appeal has come up today for admission. Heard the learned counsel for the appellant, learned counsel for respondents 1 and 2 and also perused the records carefully. The 3<sup>rd</sup> respondent has been given up in the second appeal.

4. The case of the plaintiffs is that the mortgage of the suit property to the appellant is by means of a registered mortgage deed dated 31.08.1995. Though they were ready and willing to redeem the mortgage by paying the amount due, the 1<sup>st</sup> defendant was not ready to receive the money and therefore, the present suit was filed.

5. The appellant contested the suit. It disputed the amount due from the plaintiffs as claimed by the plaintiffs.

6. Based on the above pleadings, the Trial Court framed appropriate issues. On the side the plaintiffs, the 1<sup>st</sup> plaintiff was examined as P.W.1 and as many as 4 documents were marked. On the side of the defendants, one Mr.P. Ramanan was examined as D.W.1 and as many as 7 documents were marked. Taking into consideration of the above, the Trial Court

dismissed the suit with regard to redemption of mortgage, which was reversed by the Lower Appellate Court.

7. In this second appeal, as already pointed out, the appellant has got no grievance with regard to the preliminary decree directing redemption of mortgage on payment of amount due from the plaintiffs under the mortgage. The appellant is aggrieved only with respect to the rate of interest decreed for the period commencing from the date of filing of the suit. According to the learned counsel, the Lower Appellate Court ought to have granted interest for the period commencing from the date of filing of the suit at the rate as agreed upon under the mortgage. But, without assigning any reason, drastically, the Lower Appellate Court has reduced the rate of interest to 6% per annum, it is contended.

8. Learned counsel for respondents 1 and 2 would vehemently oppose this claim and according to him, the rate of interest as ordered by the Lower Appellate Court is in tune with Section 34 CPC.

9. I have considered the above submissions.

10. At the outset, I should say that there is no question of law, much less, any substantial question of law, warranting admission of this second appeal. There is no perverse finding recorded by the Lower Appellate Court warranting interference. Section 34 of the Code of Civil Procedure mandates that the Court may order for further interest at such rate not exceeding six per cent, per annum, as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit. Thus, there is no ceiling on the power of the Court to grant interest. As per this provision, the Court has been empowered to pass a decree granting interest not exceeding only 6%. But, the proviso to the said provision empowers the Court to grant interest exceeding 6%, but not exceeding the contractual rate of interest in respect of commercial transactions. Here, in this case, there is no pleading by the appellant that the loan in question was in connection with any commercial transaction. In the absence of any pleading and in the absence of any issue framed in respect of the same, the Lower Appellate Court was right in awarding interest @ 6% per annum in tune with Section 34 CPC. In such view of the matter, I do not find any merit in the second appeal.

9. In the result, the second appeal fails and the same is dismissed. No costs.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nv

To

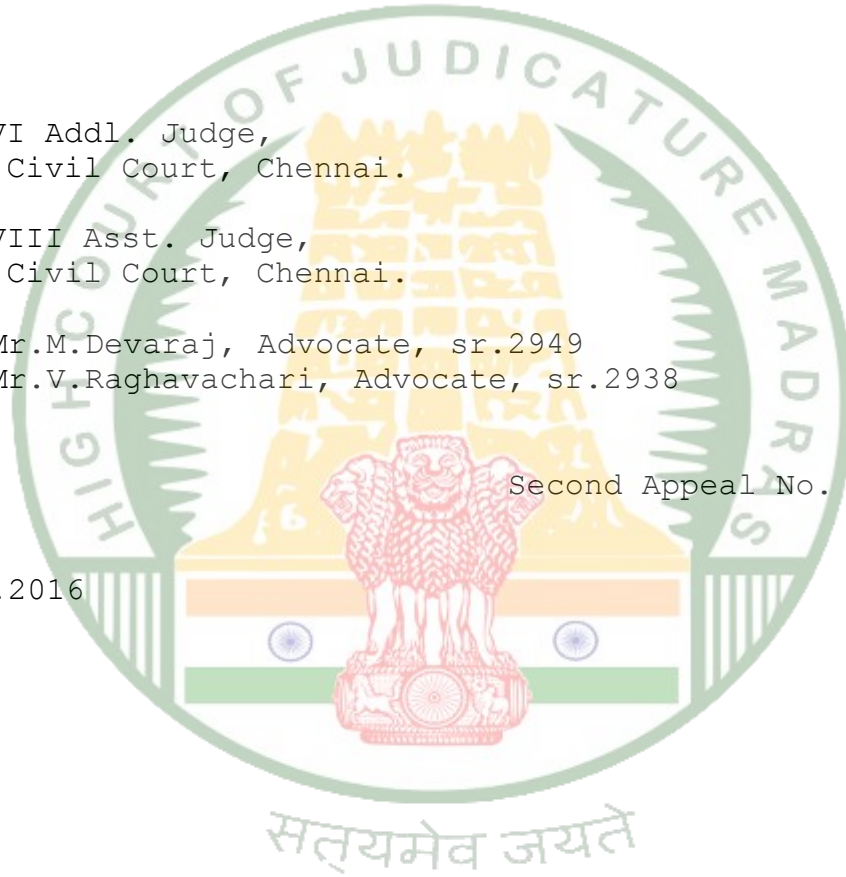
1. The VI Addl. Judge,  
City Civil Court, Chennai.
2. The VIII Asst. Judge,  
City Civil Court, Chennai.

+1 cc to Mr.M.Devaraj, Advocate, sr.2949

+1 cc to Mr.V.Raghavachari, Advocate, sr.2938

Second Appeal No. 734 of 2015

ala co  
kra 15.02.2016



WEB COPY