IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.10.2016

PRONOUNCED ON : 19.10.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
S. A.No.110 of 2011
and
M.P.No.1 of 2011

George Town Co-Operative Bank Ltd.,
Rep.by its General Manager
No.62, Krishnappa Agraharam St,
Chennai - 600 079. ... Appellant/ Defendant

Vs.

1.R.Radha
2.R.Senthilkumar
3.R.Varalakshmi
4.R.Sundaramoorthy ... Respondents/ Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 20.07.2010 made in A.S.No.439 of 2009 on the file of Fast Track Court - V, Chennai confirming the decree and Judgment made in O.S.No.3440 of 2002 dated 07.07.2006 on the file of XI Assistant Judge, City Civil Court at Chennai.

For Appellant : M/s.Sugumar R.Rajulu

For Respondents : Mr.S.Venkatesan

JUDGMENT

Impugning the Judgment and Decree dated 20.07.2010 made in A.S.No.439 of 2009 on the file of Fast Track Court - V, Chennai confirming the decree and Judgment made in O.S.No.3440 of 2002 dated 07.07.2006 on the file of XI Assistant Judge, City Civil Court, Chennai, the defendant has preferred this second appeal.

2. The suit has been laid by the plaintiffs against the defendant Bank for declaration that the impugned mortgage deed dated 29.04.1999 is null and void and for mandatory injunction directing the defendant to return the original title deeds of the suit property to the plaintiffs.

3. The parties are referred to in this second appeal, as per their ranking in the trial Court, for the sake of convenience.

4. The plaint averments are briefly stated as follows:

The plaintiffs received a notice from the Arbitrator/Deputy Registrar of Co-operative Societies, which was addressed to late T.Raman, requesting to attend the hearing dated 18.12.2001, with reference to the recovery of Rs.8,09,910/- alleging as if T.Raman was the guarantor for M/s. Karuna Metal Industries. After the receipt of the notice, the second plaintiff appeared before the Arbitrator to ascertain the facts, with reference to which, the above said notice has been issued. On enquiry, the second plaintiff was informed that the deceased T.Raman, the husband of the first plaintiff and the father of plaintiffs 2 to 4 had stood as guarantor for the money advanced to one M/s. Karuna Metal Industries for Rs.6,15,000/- and that, he had executed a mortgage deed dated 29.04.1999 registered under Document No.1922 of 1999 evidencing deposit of title deeds of the properties described in the plaint schedule. According to the plaintiffs, T.Raman had expired on 09.05.1997 and therefore, he could not have executed any document on 29.04.1999. On the direction of the Deputy Registrar of Co-operative Societies, the plaintiffs produced the death certificate and the legal heirship certificate of deceased T.Raman and requested for return of documents. Only after getting the information from the bank, the plaintiffs came to know about the alleged mortgage deed and deposit of title deeds and on coming to know that the title deeds were missing, the second plaintiff preferred a police complaint for necessary investigation of fraudulent transaction made by the defendant bank. The plaintiffs further issued a notice to the defendant calling upon the bank to return the original title deeds of the deceased T.Raman, but, the defendant bank did not respond to the notice. Hence, the suit.

5. The averments contained in the written statement filed by the defendant bank are stated as follows:

The suit is not maintainable. The suit has been laid by the plaintiffs in collusion with M/s. Karuna Metal Industries. According to the defendant bank, one R.Manivannan, the sole proprietor of M/s. Karuna Metal Industries approached the defendant bank on 11.03.1999 for sanction of loan of Rs.10,00,000/- for development of his business and he offered two sureties and apart from these two sureties, collateral security was offered by Manivannan of land admeasuring 122 cents in Survey No.272/1 in Andarkuppam Village, Block No.4 of Kadappakam owned by T.Raman and accordingly, the hypothecation deed and surety bond had been signed by T.Raman and the original title deeds of the above said property along with other Revenue documents were deposited and the same was registered as Document No.1922/99 and after completing the formalities, the loan was sanctioned to M/s. Karuna Metal Industries for a sum of Rs.6,15,000/-. The defendant bank was not aware that T.Raman had died on 09.05.1997. The plaintiffs case that they are not aware, as to how the document of title relating to the suit property came into the possession of M/s. Karuna Metal Industries is unbelievable and the plaintiffs have also lodged the police complaint belatedly and the plaintiffs have not come to the Court with clean hands and therefore, the suit is liable to be dismissed.

6. In support of the plaintiffs' case PW1 was examined and Exs.A1 to 8 were marked. On the side of the defendant, DW1 was examined. No document was marked.

7. On a consideration of the oral and documentary evidence, adduced by the respective parties, the trial Court was pleased to decree the suit.

8. The defendant, aggrieved over the Judgment and Decree of the trial Court, preferred the first appeal and the first appeal was also dismissed. As against the same, the present second appeal has been filed by the defendant bank.

9. The first plaintiff is the wife and plaintiffs 2 to 4 are the sons of the deceased T.Raman. According to the plaintiffs, the deceased T.Raman had died on 09.05.1997. According to the plaintiffs, on receipt of notice from the Arbitrator/Deputy Registrar of Co-operatives Societies, which was addressed to the deceased T.Raman, with reference to a transaction pertaining to recovery of Rs.8,09,910/-, for which, the deceased T.Raman stood as a guarantor for one M/s. Karuna Metal Industries, the plaintiffs came to know that the defendant bank had obtained registered mortgage deed dated 29.04.1999 registered under Document No.1922/99 evidencing the deposit of title deeds by deceased T.Raman, which according to the plaintiffs is false. It is the case of the plaintiffs that when the deceased T.Raman had expired on 09.05.1997, there is no occasion for him to have executed a document on 29.04.1999 and therefore, according to the plaintiffs, the defendant bank, in collusion with the proprietor of M/s. Karuna Metal Industries, had created the above mentioned mortgage deed and therefore, the plaintiffs have come forward with the suit for declaration that the above said mortgage deed is null and void and also, for a direction to the defendant bank to return the original title deeds of the suit property lying with the defendant bank.

10. Per contra, it is the case of the defendant bank that deceased T.Raman, had executed the mortgage deed, in question, agreeing to stand as guarantor for money advanced to M/s. Karuna

Metal Industries and accordingly, deposited the title deeds of his properties with the defendant bank and inasmuch as the defendant bank is not aware of the death of T.Raman on 09.05.1997, according to the defendant bank, the plaintiffs, in collusion with the proprietor of M/s. Karuna Metal Industries viz., R.Manivannan, have filed the false suit and hence, the suit is liable to be dismissed.

11. The fact that the deceased T.Raman had died on 09.05.1997 has been established by the plaintiffs by producing his death certificate, which has been marked as Ex.A5. Ex.A5 has not been specifically denied in the written statement filed by the defendant bank. A perusal of Ex.A5 would go to show that Janaki Raman of Andar Kuppam Village S/o. Thonthoni Naickar had died on 09.05.1997. To evidence that T.Raman had alias name Janaki Raman, the plaintiffs have marked the legal heirship certificate issued by the competent authority as Ex.A6. A perusal of Ex.A6 would go to show that it pertains to T.Raman @ Janaki Raman S/o. Late Thanthoni Nayakar of Andar Kuppam Village. Therefore, from a conjoint reading of Exs.A5 and A6, it could be safely concluded that T.Raman @ Janaki Raman had expired on 09.05.1997. Now, according to the defendant bank, T.Raman stood as a guarantor, for the loan received by M/s. Karuna Metal Industries and that, he had executed a registered mortgage deed by depositing his title deeds on 29.04.1999. When the plaintiffs have prima facie established that T.Raman @ Janaki Raman had expired on 09.05.1997, as rightly found by the Courts below, the defendant bank should have made some endeavor to establish that it was only T.Raman, who had stood as guarantor for the loan advanced to M/s. Karuna Metal Industries on 29.04.1999. However, no acceptable evidence has been put forth by the defendant bank to show that T.Raman was alive on 29.04.1999 and that, he had appeared before the bank on 29.04.1999 and stood as guarantor for the loan advanced to M/s. Karuna Metal Industries and that, he had deposited his title deeds with the defendant bank on 29.04.1999.

12. The best person to speak about the same would be the Manager of the defendant bank, who had witnessed the transaction directly. However, the defendant bank has chosen to examine DW1, who has clearly admitted that he is not aware of the loan transaction between the defendant bank and M/s. Karuna Metal Industries. According to DW1, he has appeared before the Court to tender his evidence in the matter as directed by the higher authorities and that, he is not personally acquainted with the concerned loan transaction. Therefore, it can be seen that the evidence of DW1 would not, in any manner, be useful to hold that T.Raman had appeared before the defendant bank on 29.04.1999 and deposited the title deeds with the bank agreeing to stand as guarantor for the loan advanced to M/s. Karuna Metal Industries. The copy of the registered mortgage deed has been

exhibited as A3. A perusal of Ex.A3 would go to show that along with title deeds, other Revenue records pertaining to the properties, in question, were also deposited. Therefore, it can be seen that, as rightly argued by the plaintiffs counsel, the bank would be in a position to adduce the best and acceptable evidence with reference to the transaction by producing the original documents pertaining to the loan transaction inclusive of mortgage deed said to have been executed by T.Raman on 29.04.1999. However, for the reasons best known to the defendant bank, no steps have been taken by the bank to produce the original documents lying in the custody of the bank pertaining to the loan transaction.

13. Now, the plaintiffs have prima facie established that the deceased T.Raman @ Janaki Raman had expired on 09.05.1997. Therefore, when it is the specific case of the defendant bank that they had advanced loan to M/s. Karuna Metal Industries and that, the proprietor of the above said Industries had offered T.Raman as the guarantor for the loan transaction, on coming to know of the stand of the plaintiffs, as rightly argued, the defendant bank should have taken steps, available to them, in the eyes of law, as against the proprietor of M/s. Karuna Metal Industries, as to how come the said T.Raman stood as guarantor for the loan received by the Industries. However, till date, the bank has not taken any action as per law against M/s. Karuna Metal Industries. The reasons for the same has not been forth coming.

14. According to the plaintiffs, only on receipt of the notice issued by Deputy Registrar of Co-operative societies, they came to know about the alleged loan transaction and immediately, they had produced the death certificate and legal heir ship certificate before the Deputy Registrar of Co-operative Societies, despite the same, the defendant bank did not come forward to produce the document of title pertaining to the suit properties. Therefore, the plaintiffs filed the present suit.

15. Before the institution of the suit, the plaintiffs have also issued pre-suit notice to the defendant bank calling upon them to produce the title deeds, after detailing the death of the deceased T.Raman. Despite the same, the defendant has not cared to give any reply notice.

16. The counsel for the defendant bank contended that the plaintiffs have not filed the legal heirship certificate along with the plaint and therefore, the defendant bank was unable to dispute the genuineness of the legal heirship certificate marked as Ex.A6. However, as rightly argued by the counsel for the plaintiffs, only after due notice, the legal heirship

certificate has been marked as Ex.A6. Prima facie, from Ex.A6, it can be seen that T.Raman @ Janaki Raman, who had died on 09.05.1997 had left the plaintiffs as his legal heirs. Therefore, on coming to know Ex.A6, as rightly found by the courts below, the defendant bank should have taken steps to examine the Revenue authorities, as to how, the legal heirship certificate, exhibited as A6, has come to be issued. However, the defendant has not endeavoured to examine the Revenue Authorities to dispute the genuineness of the Ex.A6.

17. A cumulative reading of the above facts would go to show that the defendant bank had not placed any material to hold that T.Raman had appeared before the bank on 29.04.1999 and agreed to stand as guarantor for the loan advanced to M/s. Karuna Metal Industries and also, deposited the title deeds of his properties with the bank for the said loan transaction. On the other hand, the plaintiffs have, prima facie, established that T.Raman @ Janaki Raman had expired on 09.05.1997 and therefore, there would be no occasion for T.Raman @ Janaki Raman to execute the alleged mortgage deed on 29.04.1999. Inasmuch as the plaintiffs came to know about the above said transaction, only after receipt of the notice from the Deputy Registrar of Co-operative Societies, it can be seen that immediately, thereafter, the plaintiffs have produced the death certificate and legal heirship certificate before the concerned authorities and also, lodged the complaint before the police against the defendant bank in connection with the alleged fraudulent transaction. That apart, prior to filing of the suit, the plaintiffs have also issued pre-suit notice to the defendant bank. Despite all the factors, the defendant has not cared to repudiate the case of the plaintiffs by producing the original documents in the custody of the defendant bank and also, to show their bona fides, the defendant bank has not taken any legal action against M/s. Karuna Metal Industries for the alleged loan transaction. It can be seen that, as rightly argued by the plaintiffs' counsel, inasmuch the defendant bank is aware that T.Raman @ Janaki Raman had not executed the mortgage deed in question, it has not taken any steps to initiate necessary legal action against M/s. Karuna Metal Industries and accordingly, unable to dispute the case of the plaintiffs.

18. The counsel for the defendant Bank relied upon the decision reported in 1995 Supp (4) Supreme Court Cases 534 (Sundra Naicka Vadiyar (Dead) By LRS. and Another Vs. Ramaswami Ayyar (Dead) by his LRs.) in support of his case. However, as rightly argued by the plaintiffs counsel, the above authority would not be, in any manner, applicable to the facts and circumstances of the present case.

19. Considering the above facts, it can be seen that inasmuch as the plaintiffs have established that T.Raman @

Janaki Raman had expired on 09.05.1997, he could not have executed the mortgage deed in question on 24.09.1999. It can be seen that the plaitniffs are entitled to obtain the reliefs of declaration and mandartory injunction as prayed for.

20. In toto, it can be seen that no substantial questions of law are involved in this second appeal and therefore, the second appeal does not merit acceptance. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

sms

To

1. Fast Track Court - V,
   Chennai.

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

Copy to

The Record Clerk
VR Section,
High Court, Madras

1 cc to Mr.Sugumar R.Rajulu, Advocate, sr. 58869
3 ccs to Mr.S.Venkatesan, Advocate, Sr. 58875

S. A.No.110 of 2011
and
M.P.No.1 of 2011

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