

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.11.2017
CORAM
THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA
S.A.No.575 of 2017
and
C.M.P.No.14374 of 2017

Saraswathi

... Appellant/Appellant/
Defendant

..vs..

Jaganmohandoss (died)

1. Hamsaveni
2. Renuka
3. Sujatha
4. Hemalatha
5. Varadarajan
6. Dhanajeya Muniraj

... Respondents/Respondents/
Plaintiffs

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree dated 30.09.2013 and made in A.S.No.33 of 2012 on the file of the Sub Court, Dharapuram, dismissing the appeal and confirming the judgment and decree dated 29.11.2011 and made in O.S.No.264 of 2006 on the file of the District Munsif Court, Dharapuram.

For Appellant : Mr.N.A.Nissar Ahmed

For Respondents : Mr.R.Asokan

J U D G M E N T

The unsuccessful defendant is the appellant. The suit is filed by the plaintiffs for redemption of mortgage deed dated 05.05.1986 and for directing the defendant to pay the mesne profits and also to render accounts.

2. It is the case of the plaintiffs that the first plaintiff appeared to have borrowed a sum of Rs.15,000/- (Rupees fifteen thousand only) under a registered mortgage deed dated 05.05.1986 stipulating time for repayment as four years. The mortgage deed provided the payment of interest every month at the rate of 12% per annum, and that after the mortgage deed was executed, it was decided between the plaintiffs and defendant that possession of the mortgage property be handed over to the defendant, so that she can enjoy the same in lieu of interest

and not to pay the monthly interest. Accordingly, the suit property was delivered to the defendant and the said arrangement was also reduced to writing under an agreement. It is stated that as per Section 9(5) of the Tamil Nadu Debt Relief Act, 1979 (Act 40/1979), where the mortgagor has been in possession of the whole of the property mortgaged to him, for an aggregate period of ten years or more, then the mortgage deed shall be deemed to have been wholly discharged with effect from the expiry of the period of 10 years. Therefore, the plaintiff had contended that the entire mortgage got wiped out with effect from 05.05.1996. As the defendant is not entitled to claim any relief under the mortgage deed or under the subsequent agreement, the suit has been filed for recovery of possession.

3. The suit was resisted by the appellant/defendant contending that Act 40/1979 is not applicable to the facts of the present case and that the plaintiffs cannot claim any benefits under the same. The other allegation made in the plaint is that the defendant was causing damage to the property and the same was also denied by the defendant.

4. Before the trial Court, on the side of the plaintiffs, four witnesses were examined as P.W.1 to P.W.4 and as many as 5 documents have been exhibited as Ex.A1 to Ex.A.5. On the side of the defendant, one witness was examined as D.W.1 and no documents were marked.

5. Considering the oral and documentary evidence adduced on both sides, the trial Court had decreed the suit and the same was confirmed by the lower appellate Court in A.S.No.33 of 2012. Aggrieved by the same, the defendant has filed this Second Appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

7. The Courts below had concurrently held that as per Section 9(1) of the Tamil Nadu Debt Relief Act (Act 40 /1979), the plaintiffs are not entitled to the benefits of the Act and that the plaintiffs have to pay the amount borrowed, namely, Rs.15,000/- and on such payment, the defendant has to restore the possession to the plaintiffs. The plaintiffs had not challenged the said possession nor they have appealed against the dismissal of the other reliefs claimed in the plaint. It is also held that the plaintiffs had not adduced any evidence with respect to the alleged damages caused to the property in possession of the defendant. Admittedly, the defendant is in possession of the property, and as per the subsequent agreement, the defendant had adjusted the interest by virtue of her possession. The only outstanding amount payable is Rs.15,000/- , which has to be paid by the plaintiffs to the defendant and on

such payment, they shall recover the possession from the defendant. As the said findings rendered by the Courts below are correct, there is no reason to interfere with the same in the absence of any question of law arising for consideration in the above Second Appeal.

8. In the result, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Sub Judge, Dharapuram,
2. The District Munsif Judge, Dharapuram.

+1 cc to M/s.N.A.Nissar Ahmed Advocate sr 84469

+1 cc to M/s.R.Asokan Advocate sr 84884

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