

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 15.12.2017

Coram:-

The Hon'ble Mr. Justice P.VELMURUGAN

Second Appeal No.336 of 2000

Subramanya Gounder (Died)

2.Kaliammal
3.Amsaveni
4.S.Murugaiyan
5.Vasagi
6.Rajalakshmi

... Appellants

(Appellants 2 to 6 are brought on record as
legal representatives of the deceased
sole appellant vide order of Court
dated 01.03.2007 made in C.M.P.Nos.13161 & 13162 of 2004)

vs.

Manavalan @ Seethapathi (died)

2.Mrs.S.Mala
3.Dr.S.Lakshmibady
4.S.Kokilavani

... Respondents

(Respondents 2 to 4 are brought on record as
legal representatives of the deceased
sole respondent vide order of Court
dated 01.03.2007 made in C.M.P.Nos.11276 to 11278 of 2000)

Second Appeal filed under Section 100 CPC., as against
the Judgment and Decree dated 19.11.1996 made in A.S.No.25 of
1996 passed by the Principal Sub Court at Pondicherry, reversing
the Judgment and Decree dated 12.08.1993 passed in O.S.No.1331
of 1987, by the II Additional District Munsif at Pondicherry.

For Appellants : Mr.T.Sathiyamoorthi
For T.P.Manoharan

For R1 : Died
For R2 to R4 : No Appearance

J U D G M E N T

The present second appeal has been filed by the
defendant/appellant against the Judgment and Decree dated

19.11.1996 made in A.S.No.25 of 1996 passed by the Principal Sub Court at Pondicherry, reversing the Judgment and Decree dated 12.08.1993 passed in O.S.No.1331 of 1987, by the II Additional District Munsif at Pondicherry.

2. The suit was filed based on mortgage deed dated 26.04.1967. Even while examining witnesses, the plaintiff has marked the mortgage deed dated 26.04.1967, as Ex.A1. The only defence taken by the defendants is that the suit is barred by limitation.

3. The trial Court has framed the following issues:-

(i) Whether it is true that on 26.04.1967, the plaintiff had executed of an usufructuary mortgage deed of the suit property in favour of the defendant since the defendant has agreed to discharge the prior mortgage of Rs.80/- and had paid Rs.220/- to the plaintiff?

(ii) Whether it is true that the defendant gave reply notice demanding the plaintiff to pay Rs.300/- and he is ready to hand over possession?

(iii) Whether the suit is barred by the law of limitation?

(iv) Whether it is true that the Government of Pondicherry has granted patta in the name of the defendant in respect of the suit property?

(v) Whether the plaintiff is entitled to a judgment and decree as prayed for?

(vi) To what relief the parties are entitled?"

After completing the pleadings and framing of issues, in order to prove the case of the plaintiff, on the side of the plaintiff one witness P.W.1 was examined and Exs.A1 to A10 were marked. On the side of the defendants D.W.1 to D.W.3 were examined and Exs.B1 to B7 were marked. After hearing the arguments, while answering, with regard to first issue, the trial Court held that the Mortgage Deed dated 26.04.1967 has not been proved and with regard to second issue, viz., Whether the suit is barred by limitation, for which the trial Court has taken into consideration Mortgage Deed dated 10.08.1955 under Ex.A2 and held that the suit is barred by limitation.

4. Aggrieved against the same, the plaintiff had filed the first appeal before the Principal Sub Court at Pondicherry. The

first appellate Court while considering the facts that the respondent / defendant in his reply notice dated 15.05.1981 description of the mortgaged property has not been disputed and also has not questioned the mortgage deed. He has only cited with reference to the payment and other conditions for payment. Therefore, taking into consideration all these things, the respondent / defendant has not disputed the description of the property and also Ex.A1, the mortgage deed, the first appellate Court reversed the judgment passed by the trial Court.

5. Aggrieved against the judgment of the first appellate Court, the respondent / defendant has filed the Second Appeal. Pending appeal, appellant as well as respondent died and their legal representatives have been brought on record.

6. Suit filed based on the Mortgage deed dated 26.04.1967. Exchange of notices were not disputed. Respondents / Defendants admitted the Mortgage deed, issuance of notices and reply notices. Therefore, it is well settled that admitted fact need not be proved. The only question raised before the first appellate Court was that the suit is barred by limitation. Admittedly, date of execution of Mortgage deed is 26.04.1967, the date of filing the suit is 10.09.1987. As per Article 61 of the Limitation Act, 1963, thirty years for filing the suit by a mortgagor to redeem or recover possession of immovable property mortgaged, when the right to redeem or recover possession accrues. Therefore, the suit is well within time. As far as proof of Ex.A1 execution of Mortgage deed dated 26.04.1967 is concerned since, the defendants have not specifically denied the documents more so over they have admitted the document Ex.A1, as per provisio to Section 68 of the Indian Evidence Act, 1872 need not examine one of the attestors and prove the same. Therefore, based on the pleadings, oral and documentary evidence, first appellate Court set aside the decree and judgment of the trial Court. There is no specific reasons to interfere the judgment of the first appellate Court.

7. Since this is the Second Appeal, at the time of admission, this Court has to be satisfied that is there any substantial question of law exists? Since the first appellate Court is the final Court for fact finding, especially, when there is no disputes with reference to the facts and findings given in respect of the same, this Court is not inclined to go into the factual finding of the first appellate Court. Time and again reiterated by the Hon'ble Apex Court that while admitting the Second Appeal, the High Court has to frame substantial question of law. If substantial question of law exists, the substantial question of law has to be first framed, then only appeal has to

be admitted for hearing arguments to answer the substantial question of law. Now at this stage, this Court does not find existence of any substantial questions of law. Therefore, the Second Appeal is not maintainable and as such, the Second Appeal is dismissed at the stage of admission itself. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Sub Judge
The Principal Sub Court,
Pondicherry,
 2. The District Munsif
The II Additional District Munsif,
Pondicherry.
- +1 CC to Mr.T.P. Manoharan, Advocate sr 89495.

VGI (CO)
SP(12/02/2018)

Second Appeal No.336 of 2000

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