



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21.09.2017

Coram

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The HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A(MD)No.465 of 2015

and

M.P(MD)No.3 of 2015

Sithi Fathima .. Appellant/Appellant/Defendant

Vs.

Raju .. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree, dated 12.08.2014 passed in A.S.No.5 of 2014 on the file of the Principal District Court, Ramanathapuram, confirming the Judgment and Decree, dated 19.09.2013 passed in O.S.No.124 of 2010 on the file of the Sub Court, Ramanathapuram.

For Appellant : Mr.R.Jegadeeswaran

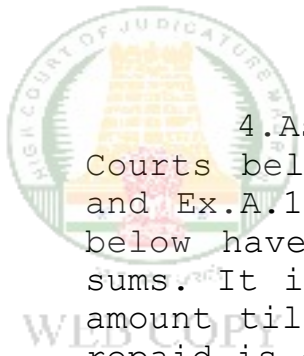
For Respondent : Mr.H.Velava Dhas

JUDGMENT

The second appeal arises against the Judgment and Decree, dated 12.08.2014 passed in A.S.No.5 of 2014 on the file of the Principal District Court, Ramanathapuram, confirming the Judgment and Decree, dated 19.09.2013 passed in O.S.No.124 of 2010 on the file of the Sub Court, Ramanathapuram.

2.The appellant, who is the defendant has lost before the Courts below, had filed the above Second Appeal. The suit is for recovery of money based on mortgage deeds.

3.The plaintiff has stated that on 10.08.2009, he had paid a sum of Rs.1,00,000/- to the defendant as loan and got Ex.A.1 executed. The defendant has also admitted the execution of Ex.A.1-mortgage deed. Even in the reply notice-Ex.A.6, the defendant had admitted that there was a mortgage deed executed by him, after receiving a sum of Rs.1,00,000/- from the plaintiff. There is yet another mortgage deed, dated 18.12.2009, which was also executed by the defendant and borrowed a sum of Rs.50,000/- which was also marked as Ex.A.2.



4.As the defendant himself has admitted the borrowal, the Courts below have held that the mortgage deed is true and valid and Ex.A.1 and Ex.A.2 were admitted by the defendant, the Courts below have held that the defendant is liable to repay the said sums. It is also admitted that the defendant had never repaid any amount till such time the suit is filed. The period agreed to be repaid is one year. However, the defendant had not paid any amount as interest to the said period and the suit is also filed on 20.12.2010, which is after one year giving sufficient time for the defendant to pay the amount.

5.Pending appeal also several Mediations tried giving opportunity to the defendant to repay the amount, but the defendant has not settled any amount.

6.The learned counsel for the respondent/plaintiff submitted that at the time of admission, there was a conditional order passed on payment of Rs.1,00,000/-, as the condition precedent for grant of stay. Even the said order was not complied with. After preliminary decree is passed, the respondent has initiated final decree proceedings, however, in view of the pendency of the appeal, it is stated that there is no progress.

7.As the execution of the mortgage deeds are admitted and the passing of consideration is also found to be in favour of the plaintiff, the suit was decreed and confirmed by the Appellate Court. As there is no question of law arising for consideration in the Second Appeal under Section 100 C.P.C., the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To

1.The Principal District Judge, Ramanathapuram.

2.The Subordinate Judge, Ramanathapuram.

3.The Section Officer, V.R Section,

Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.R.Jegadeeswaran, Advocate, SR.No.80804

+One cc to Mr.H.Velavadhas, Advocate, SR.No.80798

ps

RL/6C/2P/MR/KKR/SAR2/20/10/2017

S.A (MD) No.465 of 2015