IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

A.S.No.259 of 2017

1.C.Selvaraj

2.S.Maheswari ... Appellants/Plaintiffs

-vs-

1.C.Jayakumar

2.A.Ramakrisha Rao

3.R.Savithri Bai

4.M/s.Central Bank of India,
Represented by its Chief Manager,
Cross-Cut Road branch,
Coimbatore – 641 012.

5.The Recovery Officer,
Debts Recovery Tribunal,
Cauvery Complex,
No.1670, Trichy Road,
Ramanathapuram,
Coimbatore 641 045. ... Respondents/Defendants

Appeal filed against the Judgment and Decree dated 21.04.2017 made in O.S.No.161 of 2012 on the file of the V Additional District Judge, Coimbatore.

For Appellants : Mr.R.Bharath Kumar

For Respondents : Mr.T.M.Hariharan (R4)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

The appeal has been filed against the dismissal of suit filed by the appellant seeking declaration of plaintiffs' title to the suit property and restraining defendants 4 and 5, from interfering with their peaceful possession and also declare the alleged mortgage of the suit property by the 3rd defendant in favour of the 4th defendant on 24.11.1999 as invalid and unenforceable.

2.The property originally belonged to one Mr.A.Ramakrishna Rao, who is the 2nd defendant/2nd respondent herein, who borrowed money by mortgaging the property in favour of the South Indian bank. After mortgaging the property, he settled the property in favour of Mrs.R.Savithri bai, who is the 3rd defendant/3rd respondent herein. After settlement, the 3rd defendant/3rd respondent availed loan from the Central Bank of India/4th respondent by mortgaging the property. After the mortgage, the 2nd respondent/2nd defendant cancelled the settlement deed in favour of the 3rd defendant/3rd respondent and sold the property to one Mr.C.Jayakumar, who is the 1st defendant/1st respondent, who in turn sold the property to the appellants/plaintiffs. Because of the action taken by the bank, the bonafide purchasers went before the Civil Court, which dismissed the suit filed by the appellants. Consequently, the appeal has been preferred by the appellants.

3.The only contesting party is the 4th respondent/4th defendant, even before the trial Court and this Court. The other parties remained exparte.

4.Pending disposal of the above appeal suit, the matter was referred to Mediation Centre, before which the matter has been settled as evident from Mediation Report dated 22.06.2018. A perusal of Mediation Report as well as settlement agreement dated 22.06.2018 entered into between the appellants and the 4th respondent/4th defendant would prove that at the time of availing of loan by Mr.A.Ramakrishna Rao from the 4th respondent/Central Bank of India, one Mr.R.Vijayakumar signed as a mortgagor and the subject property was shown as security by the respondents 2 and 3/defendants 2 and 3.

5.Mr.R.Vijayakumar, who is the borrower from the 4th respondent bank is present before this court and filed an affidavit to the effect that he paid a sum of Rs.63,00,000/- to discharge the mortgage by making use of the money paid by the appellants and declared that Rs.63,00,000/-, was paid by the appellants to him, which was in turn paid by him to the 4th respondent/bank to discharge the mortgage created by him in respect of suit property. He made it clear that he did not pay any money from his pocket and he has paid only appellants money . Paragraph 5 of the affidavit is extracted as follows:

> "5. I state that since the appellants herein are neither borrowers nor guarantors, the 4th respondent herein has refused to accept the repayment from the appellants herein directly. While so, the appellants herein have given a sum of Rs.63 lakhs to me in order to discharge the mortgage and I have paid sum to the 4th respondent herein and the Mortgage has been completely discharged and the suit property is free from all encumbrances."

Though the appellants are not borrowers or mortgagors for the loan obtained from the 4th respondent, the appellants paid the entire amount of Rs.63,00,000/- to Mr.R.Vijayakumar, who discharged the loan borrowed by him, making use of the money given by the appellants. Since the money due to the 4th respondent was paid by the appellants through Mr.R.Vijayakumar, the suit is decreed as prayed for in respect of prayer No.1. As far as prayer No.2 is concerned, as money was already paid by the appellants through Mr.R.Vijayakumar to the 4th respondent and the mortgage is already discharged, the same has become infructuous.

6.Since the matter has been settled before the Mediation Centre, the Appellants are entitled to refund of entire Court fee paid by them.

7.Since the original documents have been received from the trial court for the Appeal suit, the registry is directed to send the entire papers along with documents to the trial Court and the trial Court shall return the documents within a period of one week on filing of application by the appellants.

Accordingly, this Appeal is disposed of. No costs.

*The Xerox Copy of Mediation Agreement enclosed

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sai

To

1.The V Additional District Court,
  Coimbatore.

2.The Record Keeper,
  VR Section, High Court, Madras.

+1cc to M/S.R.Bharath kumar, Advocate Sr.87611
+1cc to M/S.T.M.Hariharan, Advocate Sr.87788

A.S.No.259 of 2017

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srg 02/04/2019