

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.647 of 2018

&

C.M.P.No.20016 of 2018

1.State Bank of India
Ammamet Branch
Salem - 636 003
Rep. by its Branch Manager

2.State Bank of India
RASMECC
First Floor, Kottai Main Road,
Salem - 636 001
Rep. by its Asst. General
Manager, Mr.T.Ramasamy. Appellants

Vs

1.Mrs.G.Sundrambal
2.Mr.S.Balamuruganandam Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed by Principal Subordinate Judge, Salem dated 15/09/2017 passed in A.S.No.65 of 2016 confirming the Judgment and Decree of Principal District Munsif, Salem passed in O.S.No.1047 of 2010 dated 20.08.2016.

For Appellants : Mr.Ganesh.M.L
For Respondent 1 : Mr.B.Vasudevan

Judgment

The above Second Appeal arises against a concurrent Judgment and Decree passed in O.S.No.1047 of 2010 on the file of the Principal District Munsif, Salem, filed by the 1st respondent herein against the appellant Bank for the following relief:

"Directing the defendants by a decree of Mandatory Injunction to return the documents mentioned in the schedule hereunder to the plaintiff within the time fixed by the Court."

2.The plaintiff had contended that on the instructions of the Bank, to whom the plaintiff had gone to obtain the Housing Loan, she had handed over the original documents pertaining to her property to the panel lawyer of the Bank. He has been impleaded as 3rd defendant in the suit. The original documents have gone missing. Despite, the plaintiff's request to the bank to return the documents, the Bank did not accede to the said request. Thereby, constraining the plaintiff to file a suit in question.

3.The appellant Bank had filed a written statement denying their negligence and stating that the 3rd respondent was responsible for the loss. Infact, they had at one point stated that the documents were not handed over by the plaintiff. The 3rd defendant, however, filed a written statement admitting the receipt of the original documents on the instructions of the bank and also stated that the documents have been forwarded back by him to the Bank and it was the Bank which had misplaced the said documents.

4.The suit was decreed in favour of the plaintiff and challenging the Judgment and Decree the Bank had filed an appeal before the Subordinate Judge, Salem, in A.S.No.65 of 2016 and the learned Subordinate Judge also concurred with the finding of the Trial Court and dismissed the appeal. Challenging the concurrent Judgment and Decree the appellant Bank is before this Court.

5.Though, this Court was initially inclined to dismiss the Second Appeal out of right, however, taking into consideration the hardship that the plaintiff had been put through on account of the documents being misplaced and also considering the fact that the plaintiff should be protected from any claim being made on the property by reason of the documents falling into the wrong hands, this Court deems it fit to issue the following directions to the appellant Bank:

a)The appellant Bank shall forthwith issue a letter to the plaintiff stating that the documents which were handed over by her to the 3rd defendant on the instructions of the 2nd defendant has been lost by them.

b)They shall obtain certified copies of all the original documents they were handed over to them at their cost and expense and shall make an endorsement on these document that the original documents were lost at their end.

c)The Bank shall obtain all these documents at their expense and hand over the same to the plaintiff.

d)The plaintiff was asked to pay sum of Rs.15,000/- to the Bank for obtaining the legal opinion, which is yet to be returned by the Bank.

e)Considering the fact that the Bank has not returned the money, though the loss was at their end, this Court deems it fit to direct them to pay a sum of Rs.25,000/- to the plaintiff/1st respondent.

7.The entire exercise will be completed by the Bank within one month from the date of receipt of a copy of this order. This order shall also be served on the concerned Sub-Registrar Office for effecting necessary entry regarding the loss of the original documents in Book I Register and to prevent any third party claim over the property.

The Second Appeal is disposed of on the above lines. However, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The Principal Subordinate Judge,
Salem

2.The Principal District Munsif,
Salem

+1 CC to Mr.M.L. Ganesh, Advocate sr 86499.

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