IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.07.2019

PRONOUNCED ON : 05.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No. 704 of 2019

The Madras Purasawalkam Hindu
Janopakara Saswatha Nidhi Ltd.,
No.168, Vellala Street,
Purasawalkam, Chennai - 84.
... Appellant/1st Defendant in Trial Court

Vs.

1. M. Munusamy

2. Vamana Auctioners
Room No.137, OS Buildngs,
No.1, E.K. Guru Street,
Periamet, Chennai - 600 003.

3. Mr.Bazalool Rahaman.
...Respondents/Plaintiffs and Defendant 1, 2 in Trial Court

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 04.07.2018, made in A.S.No.441 of 2010, on the file of the 7th Additional City Civil Judge, Chennai confirming the judgment and decree in O.S. No.6725 of 2006, dated 31.07.2008, on the file of the 12th Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. M.Devaraj

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 04.07.2018, passed in A.S.No.441 of 2010, on the file of the 7th Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 31.07.2008, passed in O.S. No.6725 of 2006, on the file of the 12th Assistant Judge, City Civil Court, Chennai.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The plaintiff has levied the suit for redemption.

4. From the case projected by the plaintiff, it is seen that he has borrowed two loans from the first defendant and according to the plaintiff, he has paid various sums towards the loan obtained by him and also paid in excess to the first defendant and also admitted that he had been granted another loan of Rs.2,00,000/- with interest and though he has been regular in the payment of the amount borrowed by him and paid in excess towards interest, the plaintiff is liable to pay only Rs.1,37,253/- in all and furthermore, the plaintiff also pleaded that he has also taken another loan of Rs.3,00,000/- carrying interest by mortgaging the abovesaid property and towards all the three loans, it is stated that only a sum of Rs.1,50,000/- is due towards penal interest and on the other hand, it is stated by the plaintiff that the first defendant has created more accounts as if the plaintiff has borrowed various amounts from him and on the other hand, the plaintiff is not liable to pay the sums projected by the first defendant and on the other hand, the first defendant, without providing an opportunity to the plaintiff to verify the accounts, attempted to bring the property for auction without any basis and in fact, brought the property for auction on 24.07.2006. However, the same is illegal and unlawful and not binding upon the plaintiff and hence, it is the case of the plaintiff that he is ready to redeem the property by paying the amounts due with interest and hence the suit.

5. The first defendant had resisted the plaintiff's case contending that the plaintiff has not been regular in the repayment of the loans obtained from him and disputed the claim of the plaintiff that he has been regular in the payment of the loan borrowed and also disputed the case of the plaintiff that he has paid in excess and on the other hand, according to the first defendant, the plaintiff has discharged only some loan accounts and irregular in the payment of instalments and contended that he has not created any new accounts vis-a-vis, the plaintiff's transaction with the first defendant and on the other hand, put forth the case that inasmuch as the plaintiff had failed to pay the amounts due under the mortgages, the suit property had been brought for auction sale and sold. The plaintiff has failed to honour the demand notice to pay the amounts due and despite the opportunity provided to the plaintiff to verify the accounts and discharge the mortgage, the plaintiff has failed to comply with the same and inasmuch as the plaintiff has not come forward to redeem the entire mortgages with reference to the suit property, according to the first

defendant, the suit laid by the plaintiff is liable to be dismissed.

6. Based on the materials placed on record, both oral and documentary, the trial Court was pleased to hold that the plaintiff is entitled to redeem the mortgages on the payment of the sum with interest as determined by it and accordingly disposed of the plaintiff's suit and the first appellate Court had also concurred with the judgment and decree of the trial Court. Aggrieved over the same, the first defendant has preferred the present second appeal.

7. It is mainly put forth by the first defendant's counsel that the trial Court has, without any basis, analysed the amounts due in respect of the mortgage transaction without appreciating the amounts actually paid by the plaintiff and the discharge given by the defendants and inasmuch as the calculation adopted by the trial Court in determining the amounts due under the mortgages and the payments made by the plaintiff and the liability of the plaintiff to pay the amounts with interest as agreed to, accordingly contended that the calculation of the amounts due to be paid by the plaintiff in respect of the mortgages as determined by the trial Court and the first appellate Court is without any basis and not on the agreed terms between the parties qua the mortgages and accordingly contended that the judgment and decree of the Courts below need interference.

8. On the other hand, considering the materials placed on record, it is found that the Courts below had noted the evidence adduced by the witnesses as well as the amount discharged by the plaintiff towards the mortgages and also considering the fact that the purchase of the mortgaged property by the third defendant for a sum of Rs.52,00,000/- but he had paid only 25% to the first defendant and the remaining amount having not been paid and furthermore, when as could be seen from the calculation arrived at by the trial Court, the plaintiff is found to be liable to pay only the sum as determined by it with interest and in toto, when it is found that the calculation arrived at by the trial Court and as affirmed by the first appellate Court is based upon the payments already made by the plaintiff and the interest due to be paid under the mortgages as agreed to and the Courts below having also determined the sum due to be paid by the plaintiff and the quantum of interest as per the provisions of law pertaining thereto and the decision of the Apex Court with reference to the payment of interest, in all, it is seen that the trial Court as well as the first appellate Court are justified in ordering the redemption of mortgages on the payment of the sum as determined by them with subsequent interest. In such view of the matter, the abovesaid issues involved in the

matter centering on the factual matrix and the reasonings and conclusions of the Courts below for accepting the same not suffering from any irrationality or perversity, in my considered opinion, there is no reason warranting interference to the concurrent judgment and decree of the Courts below. In all, it is found that no substantial question of law is involved in the second appeal, accordingly, the same is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The 7th Additional Judge,
   City Civil Court, Chennai.

2. The 12th Assistant Judge,
   City Civil Court, Chennai.

Copy To : The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.M.Devaraj, Advocate SR.No.56283

+1cc to Mr.M.Rajasekhar, Advocate SR.No.54239

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SVI(CO)
GMY(13/09/2019)