

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.691 of 2000
and
C.M.P.No.1187 of 2007

G.Baskaran, representing on his behalf and on behalf of the entire body of creditors for their benefit and for his benefit as a representative, representing the entire body of creditors in I.P.No.1/1980 on the file of the Subordinate Judge of Tiruvannamalai. ... Appellant

...Versus...

- 1.Chinnamani
- 2.Saraswathi
- 3.Surega
- 4.Manjula
- 5.Rajan Pillai

- 6.The Official Receiver,
Tiruvannamalai,
District Court Compound,
Tiruvannamalai - 606 601.

- 7.Sri Dhanalakshmi Finance Corporation,
Rep. by its Managing Partner, having
his office at Polur - 606 803. ... Respondents

Prayer: This Second Appeal has been filed under Section 100 of C.P.C., against the Judgment and Decree dated 22.12.1999 made in A.S.No.128 of 1998 on the file of Principal District Court, Tiruvannamalai confirming the Judgment and Decree dated 06.08.1998 made in O.S.No.87 of 1994 on the file of Subordinate Court, Tiruvannamalai.

For Appellant :: M/s.Sarvabhauman Associates

For R5 & R7 :: Mr.T.R.Rajaraman

For R1 to R4 & R6 :: No appearance

JUDGMENT

The plaintiff in O.S.No.87 of 1994 on the file of the Subordinate Court, Tiruvannamalai is the appellant herein.

2. The said Suit was dismissed by Judgment and Decree dated 06.08.1998. The plaintiff then filed A.S.No.128 of 1998 on the file of the Principal District Court, Tiruvannamalai. The said First Appeal was also dismissed by Judgment and Decree dated 22.12.1999. The plaintiff had then filed the present Second Appeal.

3. The Second Appeal had been admitted on the following substantial questions of law:

- "(i) Whether both the Courts below overlooked the provisions of Sections 28(2) and 28(8) of the provincial Insolvency Act?
- (ii) Whether the Courts below went wrong in holding that D.5 who is a party to the insolvency proceedings, is not bound to obtain a sale deed from the insolvent pending the insolvency proceedings?
- (iii) Whether the Courts below misconstrued the evidence and came to the conclusion that the suit is barred by limitation?"

4. The plaintiff-G.Baskaran representing himself and the entire body of creditors for their benefit and for his benefit as a representative, representing the entire body of creditors in I.P.No.1 of 1980 on the file of the Subordinate Judge of Tiruvannamalai had filed O.S.No.87 of 1994 against Chinnamani, Saraswathi, Surega, Manjula, Rajan Pillai and also the Official Receiver, having Jurisdiction of T.S.District, Vellore seeking a Judgment and Decree that the sale in favour of the 5th defendant held on 23.01.1980 and confirmed on 01.09.1992 in E.P.No.308 of 1981 in S.O.S.No.97 of 1976 is not valid in law and for a direction against the 5th defendant to hand over the said property to the 6th defendant and for other reliefs.

5. According to the plaintiff, he was the 22nd respondent in I.P.No.1 of 1980 on the file of the Subordinate Court, Tiruvannamalai.

6. The 5th defendant-Rajan Pillai had purchased the suit property in Court auction in E.P.No.308 of 1981 in S.O.S.No.97 of 1976 on 23.01.1980 which was confirmed on 01.09.1992 for a sum of Rs.1,004/-. The suit property was a Tailor Shop, bearing door No.54 and comprised partly in T.S.No.948 and partly in T.S.No.947, measuring North to South 11 ½ feet on the Western

side and 10 ½ feet and Eastern side and East to West 73 ¾ feet, out of a total extent of 824 sq.ft., in Big Bazaar Street, Tiruvannamalai Town.

7. The plaintiff claimed that the said sale has to be set aside. This suit was dismissed as stated in the Judgment dated 06.08.1998 by the Subordinate Court, Tiruvannamalai. The appeal in A.S.No.128 of 1998 was also dismissed by the Principal District Court, Tiruvannamalai by Judgment dated 22.12.1999.

8. As stated in the above, the plaintiff had filed in the present Second Appeal. Pending the Second Appeal, the plaintiff-G.Baskaran died. The Suit had been filed in representative capacity and as is seen from the memo referred to infra, the said G.Baskaran had received his claim in full and final settlement.

9. A memo had been filed by the learned counsel for the 5th and 7th respondents which is as follows:

"The Appellant has received his principal sum of Rs.25,000/- vide cheque No.354933 dated 30.03.1996 drawn on Thiruvannamalai Lakshmivilas Bank towards all his dues as full and final settlement without any further claim from the insolvent in the proceedings in I.P.No.1 of 1980, on the file of the Subordinate Judge of Thiruvannamalai. The Photostat of the receipt for the above payment and full and final settlement which was furnished to the counsel by my client is annexed to this memo."

10. It is thus seen that the appellant-Baskaran had received his principal sum of Rs.25,000/- vide cheque No.354933 dated 30.03.1996 drawn on Lakshmivilas Bank, Tiruvannamalai in full and final settlement of his claim. Along with the memo, the copy of the receipt for the payment of full and final settlement was also filed in this Court. It had also been signed by the appellant.

11. The learned counsel for the respondent also stated that the Insolvency Petition in I.P.No.1 of 1980 had reached its logical conclusion and the entire issues have been settled. As a matter of fact, the claims of all other creditors have been settled.

12. In view of the above, I hold that nothing further survives in the Second Appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Principal District Court,
Tiruvannamalai.

2.The Subordinate Court,
Tiruvannamalai.

3.The Section Officer, VR Section,
Madras High Court.

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.4809

+1cc to Mr.TR.Rajaraman, Advocate SR.No.5725

S.A.No.691 of 2000 and
C.M.P.No.1187 of 2007

RR(CO)
GMY(09/05/2019)

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