

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.01.2019

Pronounced on : 25.01.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.1326 of 2001

Munusamy

... Appellant/Plaintiff

Vs

1.Rajarathinam

2.David

3.Easu Raju

4.Santhanaraj

5.Rajammal

6.Sellammal

7.Arokkiyammal ... Respondents/Defendants 2 to 8

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the Subordinate Court, Bhavani in A.S.No.120 of 1999 dated 30.08.2000 confirming the judgment and decree of the Additional District Munsif Court, Bhavani, in O.S.No.382 of 1993 dated 27.01.1999.

For Appellant : Mr.N.Manokaran

For RR1 to 4 : Mr.M.Muthukannan

For RR5 to 7 : Dismissed vide order dated 08.12.2009

JUDGEMENT

The plaintiff in O.S.No.382 of 1999 on the file of the Additional District Munsif Court, Bhavani, is the appellant herein.

2.O.S.No.382 of 1999, had been filed by the plaintiff Munusamy, against the defendant Thavamani for redemption of a mortgage dated 28.02.1973. By judgment dated 25.01.1999, the learned Additional District Munsif, Bhavani, dismissed the suit. Thereafter, the plaintiff had filed A.S.No.120 of 1999 before the Subordinate Court, Bhavani. By judgment dated 30.08.2000, the appeal was dismissed.

3.Challenging that judgment, the plaintiff had filed the present Second Appeal. The Second Appeal had been admitted on 06.09.2001, on the following two substantial questions of law:

1. Whether the findings of the Courts below are correct in law in holding that the suit properties are the ancestral properties of the defendants, especially when the execution of the mortgage has been admitted?

2. Whether the Courts below are right in holding that the description of property in Ex.B1 (Sale Deed) and Ex.A1 (Mortgage Deed) are one and the same?

O.S.No.382 of 1993 (The Additional District Munsif Court, Bhavani):-

4. The plaintiff, Arumugam claimed that the suit property namely, house at Adi-Dravida Street, Bhavani Town, had been mortgaged with the defendant Thavamani, on 28.02.1973, for a sum of Rs.700/-. A mortgage deed was also executed. The principle amount was to be repaid with 1% interest per month within five years. It is the case of the plaintiff, that he paid interest till the year 1980. Thereafter, he leased out the property to the defendant for adjustment of the principle and interest amount. The plaintiff shifted to Bangalore. He then issued a notice dated 21.12.1992. The defendants issued a reply notice. The plaintiff thereafter filed the suit seeking redemption of the mortgage.

5. It must also be mentioned that pending the suit the defendant Thavamani died and her legal representatives were brought on record.

6. One of the legal representatives, the second defendant filed written statement. In the written statement, the execution of the mortgage deed was denied. It was also denied that the defendants were put in possession only in the year 1980. It was also stated that the plaintiff had no title over the suit property. It was stated that the suit property was the self acquired property of Chinnasengodan. He purchased the property on 08.08.1906. He was the maternal grandfather of the defendant Thavamani. The defendant had inherited the property as his descendant. It was stated that the deceased defendant was an illiterate lady and the plaintiff had approached her for a loan of Rs.700/-. He had stated that he would mortgage his property. However taking advantage of the illiteracy of the defendant, the suit schedule property which belonged to the defendant was described in the schedule of property in the mortgage deed. It was stated that the plaintiff had also filed R.C.O.P.No.2 of 1993, as if he was the landlord and the defendant was a tenant. That proceeding was dismissed for

default on 20.12.1995. It was not restored. It was stated that the suit should be dismissed.

7.By judgment dated 25.01.1999, the learned Additional District Munsif, Bhavani, observed that the plaintiff had not established that he was the title holder of the suit property or that he had permitted the defendant to be in possession from 1980. He had not produced any document to show either title or possessory right over the suit property. It was stated that the defendant was the owner of the suit property. The suit was dismissed.

A.S.No.8 of 1995 (Subordinate Court, Bhavani):-

8.The plaintiff filed the said first appeal. By judgment and decree dated 30.08.2000, the learned Subordinate Judge also confirmed the findings on facts of the learned Additional District Munsif and held that the plaintiff had not proved title over the suit property and had not proved that possession was given in 1980 to the defendant pursuant to the mortgage deed. It was also found that the defendants were the owners of the suit property. The appeal was also dismissed.

S.A.No.1326 of 2001:

9.The plaintiff then filed the present Second Appeal. The Second Appeal had been admitted on 06.09.2001, on the two following substantial questions of law:

1.Whether the findings of the Courts below are correct in law in holding that the suit properties are the ancestral properties of the defendants, especially when the execution of the mortgage has been admitted?

2.Whether the Courts below are right in holding that the description of property in Ex.B1 (Sale Deed) and Ex.A1 (Mortgage Deed) are one and the same?

10.Heard arguments advance by Mr.M.Manokaran, learned counsel for the appellant and Mr.M.Muthukannan, learned counsel for the first to fourth respondents. The appeal had been dismissed against the fifth to seventh respondents on 08.12.2009.

11. For the sake of convenience, the parties would be referred as plaintiff and defendants.

12.The plaintiff had filed the suit in O.S.No.382 of 1993

on the file of the District Munsif Court, Bhavani, seeking redemption of a mortgage dated 28.02.1973. It was the claim of the plaintiff that he had borrowed a sum of Rs.700/- from the defendant Thavamani and had executed the mortgage deed. Ex.A1 was the certified copy of the copy of the mortgage deed which was filed as a document in R.C.O.P.2 of 1993, which was filed by the plaintiff against the defendant claiming to be the landlord. The registration copy of the mortgage deed from the Sub-Registrar office had not been produced.

13.Both the Court below have consistently found that the plaintiff had not established title to the suit property. Ex.B1 was a certified copy of a sale deed dated 08.08.1906. It was found that the property mentioned in the schedule in Ex.A1, Mortgage Deed was similar to the property mentioned in the schedule in Ex.B1, sale deed. It was observed that the property had been originally purchased under Ex.B1 by Chinnasengodan on 08.08.1906. His daughter Muniammal and her husband Kuruppan lived in the suit property along with Chinnasengodan. After the death of Chinnasengodan, Muniammal and her husband Kuruppan lived in the suit property. After their death, their daughter, the defendant Thavamani, inherited the property as the legal heir.

14.Both the Courts below have concurrently held that the plaintiff had not established his title to the suit property. He had also not produced any document to show that he was in possession till the year 1980 and had handed over possession only then to the defendant. The defendant produced Exs.B3 to B5 which are tax receipts to show possession. Both the Courts below had also concurrently held that there no evidence was produce to show that defendants were put in possession only in the year 1980. There was also no evidence produced to show that till the year 1980 the plaintiff was in possession. Both the Courts below had concurrently held that the plaintiff was not entitled for redemption of the alleged mortgage. It was also found that the property mentioned in Ex.A1 and Ex.B1 was one and the same and actually belonged to the defendant.

15.The first substantial question of law was whether the findings of the Court below that the suit property was the ancestral property is correct, particularly when mortgage had been admitted. A careful reading of the pleadings and evidence shows that only the factum of mortgage had been admitted. It was clearly stated that the plaintiff had taken advantage of the illiteracy of the first defendant and had surreptitiously included the property of the first defendant in the schedule to the mortgage deed. It is an act of fraud. Consequently, I hold that both the Courts below were correct in holding that the property was ancestral property of the defendant and that the

plaintiff has no title over the same. The defendant had admitted that the plaintiff borrowed Rs.700/- and a mortgage deed was executed. But the property in the mortgage deed was that of the defendant. Hence the document itself is void. An owner of a property cannot mortgage his property to himself.

16.The second substantial question of law was whether the description of the property in Ex.B1 and in Ex.A1 were one and the same. Again this is an issue of fact and it has been concurrently and consistently held by both the Courts below, that the property described in Exs.A1 and Ex.B1 was one and the same and there cannot be any dispute about it.

17.In view of the above findings, I hold that no reason to interfere with the judgment of the Trial Court and First Appellate Court had been made out by the appellant. Hence, the Second Appeal is dismissed, with costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Smv

To

- 1.The Subordinate Court, Bhavani
- 2.The Additional District Munsif, Bhavani
- 3.The Section Officer, VR Section,
Madras High Court.

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 6267
+1cc to Mr.M.Muthukannan, Advocate, S.R.No. 5929

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SJ(CO)
GN(09/05/2019)