Reserved on :08.03.2019
Pronounced on :20.03.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.390 of 2012 &
M.P.No.1 of 2012

Mr.Y.L.Veerabadra @ Y.L.Chenna Veerabadra
... Appellant/Defendant

Vs

Mr.A.Mohammed Farook ... Respondent/Plaintiff

Prayer:- Second Appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 04.11.2011 passed in A.S.No.9 of 2011 on the file of the District Judge and Appellate Authority, Nilgiris, Udagamandalam reversing the judgment and decree dated 14.12.2010 in O.S.No.43 of 2009 on the file of the Sub Court, Udagamandalam.

For Appellant : Ms.V.Anuradha

For Respondent : Mr.A.S.Balaji

JUDGMENT

Aggrieved over the first appellate Court judgment in allowing the appeal and decreeing the suit filed by the plaintiff for recovery of money, opposing the preliminary decree passed, the present second appeal has been filed.

2. The parties are arrayed as per their own ranking before the trial Court.

3. Brief facts of the case of the plaintiff is as follows :

The defendant borrowed a sum of Rs.50,000/- from the plaintiff on 01.05.1997 for his business purpose and undertook to repay the amount along with interest at the rate of 3.5% per mensum with quarterly rests from the date of borrowing till repayment and in evidence of which, he executed a promissory note in favour of the plaintiff on 01.05.1997. Besides, he also created an equitable mortgage in respect of the immovable property measuring to an extent of 0.10 acres situate in R.S.No.3897 of Ootacamund Town together with the godown situate thereon bearing Old No.104C, New Door No.73 Old Ward No.12, New Ward No.22 and deposited title deeds of the said property. On 02.05.1997 by letter of confirmation, the defendant confirmed the Equitable Mortgage. In spite of repeated demands, the defendant failed to repay the amount. Hence the suit.

4. It is the contention of the defendant that in the month of May, he requested the plaintiff to advance a sum of Rs.50,000/- loan and accordingly the plaintiff agreed to pay Rs.50,000/-. However, the defendant denied the allegation that he had agreed to pay interest at the rate of 3.5% per mensum at quarterly rests. and the same is a figment of imagination. At no point of time this defendant had any intention to create mortgage. It is his further contention that though the plaintiff's father was a tenant under this defendant in respect of Door No.104, the plaintiff took over the premises and continued the tenancy and adjusted the rent towards the amount borrowed by the defendant. As such entire loan and interest was wiped out long back. The defendant insisted for return of the original documents and the plaintiff is dodging on some pretext or the other as if the defendant owes the suit claim. Hence, prayed for dismissal of the suit.

5. The trail Court framed the following issues :

1. Whether the plaintiff is entitled for a preliminary decree as prayed for?

2. Whether there is any intention to create mortgage by the defendant?

3. Whether the suit is barred by limitation?

4. To what other relier?

6. On the side of the plaintiff, P.W.1 was examined and Ex.A.1 to Ex.A.10 were marked. On the side of the defendant, D.W.1 was examined and no document was marked on the side of the defendant.

7. The trial Court dismissed the suit on the ground that the suit promissory note has not been proved and the suit is barred by limitation. However, the first appellate Court reversed the finding by holding that by depositing the title deeds, the defendant has created equitable mortgage. Aggrieved over the same, the present second appeal has been filed.

8. This Second Appeal is pending in the stage of admission. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent at the stage of admission itself.

9. The learned counsel appearing for the appellant submitted that Ex.A.5 letter of confirmation cannot be treated as a mortgage and confirmation of equitable mortgage is not admissible in evidence since the transaction has took place on the same day. Therefore, the same is not admissible in evidence. Therefore, the contention of the learned counsel for the appellant is that the first appellate Court has not properly appreciated the evidence and documents. Hence, submitted that the judgment of the first appellate Court is liable to be interfered. In support of his submissions, he has relied upon the judgment of this Court in Ponnusway Vs. V.Santhammal and 7 others reported in 1998 (2) Law Weekly 251.

10. The learned counsel appearing for the respondent submitted that the entire borrowal and signing of the documents have been admitted by the defendant. The promissory note has also been admitted and letter handing over the title deeds has also been executed by the defendant. Hence, submitted that the documents does not require any registration and the above document evidence mortgage already created and therefore submitted that the first appellate Court has correctly passed a preliminary decree and hence, prayed for dismissal of this Second Appeal. In support of his contentions, he relied upon the judgments in

United Bank of India Ltd. Vs. Messers Lekharam Sonaram and Co. and others reported in AIR 1965 Supreme Court 1591

R.Thimmaiyyan Vs. SMT Chits and Finance Corporation, Coimbatore 641 104 reported in 2017 (5) CTC 633

Ponnusway Vs. V.Santhammal and 7 others reported in 1998 (2) LW.251

11. This Second Appeal is admitted on the following substantial questions of law :

1. Whether Ex.A.5 Letter of Confirmation deed confirm equitable mortgage created on 01.05.1997 is required to be registered and inadmissible in evidence?

12. The suit has been filed for recovery of money based on Ex.A.5 and also Ex.A.1 promissory note said to have been executed on 01.05.1997. Ex.A.1 is a promissory note dated 01.05.1997. The execution of the promissory note is not seriously disputed in the written statement. The signature in Ex.A1 has also not been disputed. Similarly borrowal of a sum of Rs.50,000/- in the month of May has also not been disputed by the defendant. The main contention of the defendant is that he has only signed the blank papers. Further the entire allegation in the written statement clearly indicate that he has entrusted the document as a collateral security. His only contention is that he had no intention to create equitable mortgage.

13. Now, it has to be analysed whether Ex.A.2 falls within the ambit of Section 17 of the Registration Act. The defendant also admitted handing over of the title deeds, which has been marked as Ex.A.3, Ex.A.4 and Ex.A.6. Ex.A.2 clearly indicate that the memorandum has been executed to evidence the deposit of the documents by way of collateral security for the due payment. Ex.A.5 letter dated 02.05.1997 also confirms the deposit of title deeds with intent to create collateral security for due payment of Rs.50,000/-. Ex.A.1 is a promissory note executed on 01.05.2007. On the same day title deeds were handed over for collateral security. Ex.A.5 is a confirmation of such deposit with an intention to create an equitable mortgage.

14. In this regard, it is useful to refer the judgment of the Honourable Apex Court in United Bank of India Limited Vs. Messrs Lekharam Sonaram and Co. and Others reported in AIR 1965 in Supreme Court 1591 wherein it has been held that in the absence of essentials of the mortgage in the letter confirming the deposit of title deeds, the same does not require any registration. Similarly in State of Haryana and Others Vs.Navir Singh and others reported in 2013 (6) CTC 234, the Full Bench of Honourable Apex Court has held that memorandum recording mortgage by deposit of title deeds was a mere document recording transaction and did not create/extinguish any right or liabilities, payment of stamp duty and registration of the same is not compulsory.

15. From the above settled position of law, when this Court looked at the documents, Ex.A.2 is only mere deposit of title deeds and Ex.A.5 is only a letter recording the deposit of title deeds creating equitable mortgage. It is a letter of recording of the concluded contract already entered into. Mere evidencing the past transaction does not require registration. From the

above settled position of law, the contention of the learned counsel appearing for the respondent cannot be countenanced in this regard. Ex.A.5 is only a letter confirming the concluded contract for deposit already effected. Hence, the substantial question of law is answered against the appellant.

16. Accordingly, the judgment and decree of the first appellate Court is modified in respect of interest alone. The interest is reduced from 12% to 6% from the date of suit till the date of realization. With the above modification, this Second Appeal is dismissed. Consequently, the connected miscellaneous petition is closed. No cost.

17. Though the pleadings show that the respondent is squatting over the property as a tenant and it appears that he is not paying any rent, Since this transaction is an independent transaction, it is for the appellant to work out his remedy to vacate the respondent as per law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The District Judge and Appellate Authority, Nilgiris.
   Udagamandalam.

2. The Subordinate Judge,
   Udagamandalam.

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

+2 cc's to M/s.V.Anuradha, Advocate, Sr.No. 26420
+1 cc to Mr.A.S.Baalaji, Advocate, Sr.No. 26990

Judgment in
Second Appeal No.390 of 2012

sai(co)
CSL/28.05.2019