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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.07.2019

DELIVERED ON :24.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

S.A.(MD)No.121 of 2009

P.V.Sankar

.. Appellant/Defendant

Vs.

Ayyavu

.. Respondent/Plaintiff

Prayer : This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 06.08.2008 made in A.S.No.57 of 2007 on the file of the learned Subordinate Judge, Sivagangai, upholding the Judgment and Decree dated 8.12.2006 made in O.S.No.57 of 2006 on the file of the Principal District Munsif, Manamadurai.

For Appellant : Mr.N.Tamilmani

For Respondent : Mr.R.Ayyanar

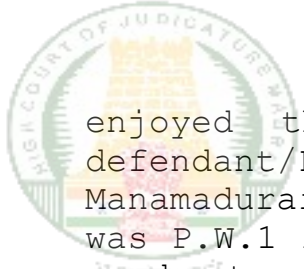
JUDGMENT

This appeal is filed against the judgment and decree made in A.S.No.57 of 2007, dated 06.08.2008 on the file of the learned Subordinate Judge, Sivagangai, confirming the judgment and decree made in O.S.No.57 of 2006, dated 08.12.2006, on the file of the learned Principal District Munsif, Manamadurai.

2.The appellant is the defendant and the respondent is the plaintiff in the suit. The respondent filed a suit for a right of redemption of mortgage. The suit was decreed by the trial Court. Against which, the defendant filed an appeal, before the Sub Court, Sivagangai, in A.S.No.57 of 2007 and the same was dismissed by the first Appellate Court. Against which, the appellant preferred this Second Appeal.

3.The case of the plaintiff is as follows:

The plaintiff purchased the property from one Jeyachandran on 29.10.2002. The vendor Jeyachandran mortgaged the property with the defendant for a sum of Rs.7,000/- and the defendant



enjoyed the property on the basis of the mortgage. The defendant/P.V.Sankar filed a suit before the District Munsif, Manamadurai, in O.S.No.145 of 2002. The present defendant, who was P.W.1 in the suit in O.S.No.145 of 2002 had deposed that he is ready to hand over the possession on payment of the mortgage amount. The plaintiff filed a suit in O.S.No.124 of 2004 for a prayer of declaration of title and for recovery of possession. The suit was decreed on 02.08.2005 granting a relief of declaration of title alone. The suit was dismissed for a prayer of recovery of possession, with an observation that the plaintiff is having right of redemption of mortgage, hence, on the basis of that decree, the plaintiff filed a suit for redemption of mortgage.

4.The case of the defendant is that the sale deed, dated 22.02.2002 is not valid. The deed was executed as a sham and nominal document, there was no endorsement as to the mortgage in the sale deed. No right of redemption was given to the plaintiff in the sale deed. The mortgage was denied in the previous proceedings. The plaintiff is estopped by conduct. Since the sale deed did not give any right of redemption, the plaintiff was estopped by deed and prayed the suit to be dismissed.

5.Before the trial Court P.W. 1 was examined and Ex.P.1 and Ex.P.2 were marked on the side of the plaintiff. No witness was examined and no document was marked on the side of the defendant.

6.The trial Court, after considering the documents and oral evidence, decreed the suit. Against which, the defendant preferred an Appeal before the Sub Court, Sivagangai, in A.S.No.57 of 2007.

7. In the grounds of first Appeal, in A.S.No.57 of 2007, it is stated as follows:

The judgment and decree of the trial Court is against law and the suit property was not mortgaged with the defendant. Even though the defendant admitted the mortgage in the previous proceedings, thereafter, the defendant denied the same. For declaration of title sale deed is a necessary document and that when the sale deed has not been filed, the judgment of the trial Court was wrong. No right of redemption was given in the sale deed. The vendor was not examined as a witness and prayed the appeal to be allowed.

8.In the first Appellate Court the following issues were framed:-

- (i) whether the appeal is to be allowed?
- (ii) whether there are the relief to the appellant?

<https://hcservices.ecourts.gov.in/web/index.html>

9.After hearing both sides, the first Appellate Court



dismissed the appeal. Against which, the appellant preferred this Second Appeal.

10. The grounds of the Second Appeal is as follows:

Both the Courts below ought to have dismissed the suit in toto, since the plaintiff did not produce the alleged sale deed; There is no made over given to the plaintiff by the predecessors in title; The mortgage was not admitted and the suit cannot be filed on the basis of an oral mortgage; The plaintiff was estopped by conduct and the Courts below ought to have dismissed the suit on the principal of non joinder of necessary party.

11. In this Second Appeal, the following substantial questions of law were framed by this Court:-

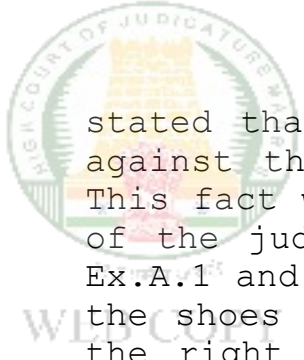
"(I). When civil Court concludes that the defendant is in possession of the suit property, whether the plaintiff is barred to file fresh suit against the same defendant for "Redemption of Othi" that too on pending suit the plaintiff denied the possession of the defendant?"

"(II). Whether the plaintiff will not be barred "Principle of Estoppel by conduct" when he denying the possession of the defendant?"

Issue No. I:

12. On the side of the appellant, it is stated that the respondent is alleged to have purchased the property from one Jeyachandran on 25.10.2002. In the year 2004, this respondent filed a suit in O.S.No.124 of 2004 for declaration and for recovery of possession. The relief of declaration was granted to the respondent herein, however, the relief of recovery of possession was dismissed by the Court. Thereafter, the respondent filed the present suit in O.S.No.57 of 2006 and has filed only the judgment and decree of the suit in O.S.No.124 of 2004. The respondent did not file any other documents. The alleged sale deed was not filed by the respondent. The vendor Jeyachandran was not a party to the suit, he was not even examined as a witness. There was no made over in the sale deed, giving a right for the respondent to redeem the mortgage. No power deed was given to the respondent by the vendor. In O.S.No.124 of 2004, the respondent herein claimed title through the sale deed and claimed that this appellant was an unauthorised occupant. Hence, the respondent is estopped by his conduct and by deed and both the Courts below have failed to consider these aspects.

13. On the side of the respondent, it is stated that in O.S.No.145 of 2002, the appellant herein was examined as P.W.1 and in his cross examination, he has admitted that he was in enjoyment of the property as a mortgagor and he was ready to vacate the premises on payment of the mortgage amount. The filing of O.S.No.145 of 2002 was not denied by the appellant herein. It is



stated that the respondent filed the suit in O.S.No.124 of 2004, against this appellant and his title was declared in that suit. This fact was also not denied by the appellant herein and the copy of the judgment and decree in O.S.No.124 of 2004 were marked as Ex.A.1 and Ex.A.2. When a property was sold the purchaser get into the shoes of the vendor and the rights of the vendor will become the right purchaser. No specific endorsement to that effect is necessary. Hence, the trial Court, in O.S.No.124 of 2004, has specifically observed that the respondent herein has to take separate steps for redemption of the mortgage. Hence, the substantial question of law raised by the appellant is not acceptable.

Issue No.II:

14.On the side of the appellant, it is stated that the respondent is barred under the principles of estoppel by conduct. On the side of the appellant, it is stated that in O.S.No.124 of 2004, the respondent took a specific stand denying the mortgage deed and by denying the mortgage deed, the respondent is estoppel by conduct to claim redemption of mortgage. On the side of the respondent, it is stated that the right of redemption is not available to the respondent on the basis of the judgment in O.S.No.124 of 2004.

15.A perusal of the records reveals that the appellant himself has admitted the mortgage in O.S.No.145 of 2005 and he has admitted that he was ready to hand over the possession on payment of the mortgage amount. The appellant is also estopped by his conduct. Hence, the principle of estoppel by conduct is acceptable for the case of the appellant and the second issue raised by the appellant is not acceptable.

16.In the above circumstances, all the substantial questions of law are not acceptable. There is nothing sufficient enough to interfere with the orders of the Courts below.

17.Hence, the Second Appeal is dismissed by confirming the judgment and decree passed by the learned Sub Judge, Sivagangai, A.S.No.57 of 2007, dated 06.08.2008, confirming the judgment and decree passed by the learned Principal District Munsif, Manamadurai, in O.S.No.57 of 2006, dated 08.12.2006.

18.The respondent is directed to deposit the mortgage amount before the learned Principal District Munsif, Manamadurai, if not paid earlier, within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellant is directed to hand over the possession of the suit property within a period of one month therefrom.



19. With the above directions, this Second Appeal is dismissed. No costs.

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Sd/-

Assistant Registrar (AD-I)

Sub Assistant Registrar (CS)

To

1. The Subordinate Judge,
Sivagangai.
2. The Principal District Munsif,
Manamadurai.

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.N.TAMILMANI, Advocate (SR-77353[F] dated
24/07/2019)

+1 CC to M/s.R.AYYANAR, Advocate (SR-78083[F] dated 26/07/2019)

order made in
S.A. (MD) No.121 of 2009
24.07.2019

Ls

AE/ (06.08.2019) 5P 7C