IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :14.12.2020
Pronounced on :17.12.2020

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No.1026 of 2010
and
M.P.No.1 of 2010

S.Parthasarathy ... Appellant /Plaintiff

/versus/

1.The Paraspara Sahaya Nidhi (Perambur) Ltd.,
Rep.by its Executive Director,
No.2, Bharathi Road,
Perambur, Chennai 600 011.

2.The Sub Registrar,
Sembiam S.R.O.,
Chennai 600 011.

3.The District Collector,
Chennai 600 001. ... Respondents/Defendants

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the decree and judgment passed in A.S.No.172 of 2009 dated 06.04.2010 on the file of III Additional Judge, City Civil Court at Chennai, confirming the decree and judgment passed in O.S.No.5487 of 2007 dated 22.08.2008 on the file of the I Assistant Judge, City Civil Court, Chennai dismissing the above suit and praying to set aside the same.

For Appellant :Mr.D.Arvindan for
Mr.V.Baskaran

For Respondents :Mr.M.Krishnaswamy for R1
Mr.T.M.Pappiah, Spl.G.P for R2
Mr.N.Manikandan, Spl.G.P(CS)for R3

JUDGMENT

(The case has been heard through video conference)

The appeal is by the plaintiff in the original suit. Having suffered dismissal at the hand of trial Court as well by the first appellate Court, the second appeal is filed against the concurrent findings.

2.Suit filed for a preliminary decree to order the first defendant to cancel the two mortgage deeds vide, document No.3623 of 1989, dated 02/09/1989 and document No.2998 of 1990 dated 11/10/1990 and permanent injunction restraining the first defendant from claiming any amount from the plaintiff towards the loan account of L.P. No.134 and L.PNo.144.

3.The case of the plaintiff:

The plaintiff mortgaged his self-acquired property at No.C.363, III Cross Road, Jawahar Nagar, Chennai 600 082 with the 1st defendant Nidhi and raised loan of Rs.50,000/- on 02/09/1989 and executed a simple mortgage deed duly registered. He re-paid Rs.40,000/-along with accrued interest towards his first loan of Rs.50,000/-. Again, he raised loan of Rs.30,000/- on 11/10/1990 and executed second simple mortgage deed. So far he has paid more than Rs.2,00,000/-. The first defendant has not issued any receipts for the payment. Surprisingly, a registered notice was received from the first defendant on 10/07/2006 claiming a sum of Rs.84,653.20 towards the first loan and Rs.5,07,365.75 for the second loan. When he rushed to the first defendant office and enquired, they agreed to settle the both the loans for Rs.1,30,000/- . Accordingly, the plaintiff paid Rs.50,000 on 31/07/2006, Rs.30,000/- on 30/08/2006 and Rs.50,000/- on 25/03/2007. After receiving the said amount, the first defendant failed to discharge the mortgage. The 1st defendant also failed to give receipt for these payments. The plaintiff is not liable to pay any amount to the 1st defendant towards the L.P account No.134 and L.P account No.144. So, the first defendant has to cancel the two mortgage and release the title documents. Further more, any claim of the first defendant is barred by limitation.

4.The case of the defendants :

The plaintiff has not come out with clean hands or true facts. The plaintiff availed loan of Rs.50,000/- on 02/09/1989 and Rs 30,000 on 11/10/1990. He mortgage his property and agreed to pay interest at the rate of 18%. As per the terms of the loan agreement, the loan period was 7 years. He agreed to pay the interest every month and in case of failure to pay the interest, the interest due will be treated as arrears for the subsequent month and for that amount, interest at the rate of 18% will be charged. After availing the first loan of Rs.50,000/- mortgaging his property, he paid Rs.40,000/- towards the principal and the entire interest was due. He availed further loan of Rs.30,000/- and created second mortgage on 11/10/1990. Thereafter, the plaintiff did not pay any interest or principal. He completely neglect to pay the residual principal and the accrued interest. When the 1st defendant sought for auction sale of the mortgaged property, the plaintiff through his brother filed a collusive suit and citing pendency of that suit, obstructed the 1st defendant from recovery of the mortgage money. The said suit came to an end, when S.A.No.1551/1996 disposed against the plaintiff. Thereafter the 1st defendant issued auction notice dated 18/07/2006, to avoid the auction, the plaintiff made a part payment and gave a request to waive compound interest and penal interest and undertook to pay 50% of the balance claim amount on or before 15/06/2006, without prejudice to the proposal he paid Rs.50,000/- and the same was received by the 1st defendant. The plaintiff did not act as per his undertaking and the auction notice was issued again on 02/03/2007. While fact being so, in his plaint, the plaintiff had falsely claimed that he has discharged the entire mortgage loan and entitled for cancellation of mortgage deeds dated 02/09/1989 and 11/10/1990.

5.In fact, as per the statement of accounts, as on 31st March, 2008, the plaintiff is liable to pay: For the First loan of Rs.50,000 (02/09/1989): Principal: Rs.10,000: and interest Rs.57,084.20: For the Second loan of Rs.30,000 (11/10/1990): Principal Rs.30,000 and interest Rs.5,66,466.65. The baseless suit is therefore liable to be dismissed.

6.The trial Court framed the following issues:-

1) Whether any amount due to the defendant ?
2) Whether the plaintiff is entitled for the decree ?

7.On the side of the plaintiff, he was examined as PW-1 and 9 exhibits were marked as Exs.A-1 to Ex A-9. On behalf of the defendants, the Executive Director of the 1st defendant was examined as DW-1, and 20 exhibits were marked as Ex. B1 to Ex.B-20.

8.Based on the admission of the plaintiff that on the date of examining him as witness, he owe Rs.6,63,000/- and as per the statement of account Ex.B-20, relied by the defendants the due as on 31/07/2008 was Rs.7,11,232.95. There is no evidence produced by the plaintiff to show that he had discharged the loan amount as claimed in the plaint. Hence, the trial Court dismissed the suit.

9.On appeal, the first appellant Court after re-appreciating the evidence confirmed the trial Court judgment.

10.In this second appeal, the learned counsel for the appellant/plaintiff submitted that the Courts below erred in dismissing the suit for redemption of mortgage. The respondents/defendants did not file yearwise statement to prove its claim. The interest calculated at the rate of 18% is exorbitant and usurious. Without any break of detail, the Courts below accepted the respondents/defendants plea that the appellant/plaintiff is liable to pay Rs.7,11,232.95 as on 31/07/2008. The Courts below failed to appreciate the fact that there was a mutual agreement between the parties to settle for Rs.1,30,000/- and the appellant/plaintiff paid Rs.50,000/- on 31/07/2006 in terms of the agreement and the balance on subsequent dates. Further more, he also contended that the 1st defendant right to recover the mortgage loan is barred by limitation. Therefore, urged this Court to formulate Substantial Questions of Law and hold in favour of the appellant.

11.Per contra, the learned counsel for the respondents/defendants submitted that, both the Courts below on facts have concurrently held that, the plaintiff had failed to prove that he has discharged the mortgage loan. Contrarily, he on oath during the cross examination admits that he owe Rs.6,63,000/-.The plea of limitation is not sustainable since, the attempts for bringing the mortgage property for sale since 09/08/1994 had been obstructed by the plaintiff citing the pendency of the suit filed by his brother in respect of the mortgaged property, without impleading the mortgagee. When the said suit came to a logical end, after dismissal of S.A.No.1551/1996, auction notice was issued to the appellant/plaintiff on 18/07/2006. The appellant acknowledging his debt offered one time settlement vide his letter dated 31/07/2006, Ex.B 17. The limitation commences from the date of Ex.B-17. The appellant has filed the suit for redemption with false averment in which the courts have held that the appellant is not entitled to redeem the property without discharging the mortgage loan of Rs.7,11,232.95 as on 31/07/2008.

12.On considering the rival submissions and careful perusal of the evidence, this Court finds no question of law much less substantial question of law. The plaintiff in the suit claims that the entire mortgage got discharged, as per the settlement arrived between the parties. Admitted payment itself is not in tune with the alleged terms of the settlement offered by the appellant in his letter dated 31/07/2006. He had given an undertaking that 50% of the due amount will be paid on or before 15/09/2006 but he has not paid the amount even after 12/03/2007. The suit is filed on 03/09/2007 as if he has discharged the entire mortgage loan.

13.From the evidence and exhibits, it is clearly established that the loan availed in the year 1989 and 1990 under the mortgage with specific agreement that the interest will be charged at 18% and in case of default, the interest will be added to the subsequent month due and penal interest will be charged for the default interest. From Ex.B-2 to Ex.B-9, it is well proved by the respondents that their attempt to recover the money due through selling the mortgage property as per Section 69 of the Transfer of Property Act, 1882 got aborted on the intervention of the plaintiff on one pretext or another.

14.In the absence of any formidable question of law, which could be substantial for consideration, the only concession this Court can show to the appellant is in respect of the pendent lite interest in exercise of the power under Order 34, Rule 11 of the Civil Procedure Code. The appellant though come to Court with false claim of discharge and failed to produce evidence to prove discharge, at the same time he has fairly admitted his liability in the cross examination.

15.From the statement of account submitted by the respondents, this Court finds that for the loan of Rs.50,000/- borrowed on 02/09/1989, the appellant at the end of August, 2007 has paid a sum of Rs.69,298 and a balance sum of Rs.60,452.50 is due and payable. Similarly, the loan of Rs.30,000/- borrowed on 11/10/1990, as on the end of August, 2007, he has paid Rs.96,573/- and a balance sum of Rs.5,37,501.45 is due and payable. Substantial payments are made only between 31/07/2006 and 25/03/2007.

16.The appellant herein has valued the suit, as per Section 33(8) of the Tamil Nadu Court Fee and Suit Valuation Act, 1955 and has paid Court Fee accordingly. His prayer is couched to pass a preliminary decree, to cancel the mortgage deeds and grant permanent injunction. However, the relief is in fact for redemption of the mortgage. Since it is held that the appellant has not cleared the mortgaged loan, he is not entitled for the relief sought, unless he clears the mortgage loan.

17.In such circumstances, taking note of the fact that the 1st respondent is a financial institution and responsible to pay the depositors at the agreed interest rate and the plea of the learned counsel for the appellant for the Court to exercise the power under Order 34, Rule 11 of the Civil Procedure Code, the rate of interest from the date of filing till the date of realisation shall be 9 % simple interest for the sum of Rs.5,97,953.95 (Rs.60,452.50 for the first mortgage and Rs.5,37,501.45 for the second loan) to be paid within 3 months from the date of Judgment. Failing to pay will entitle to the 1st respondent to proceed under Section 69 of the Transfer of Property Act, 1882 for recovery.

18.Accordingly, the Second Appeal is disposed on the above terms. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

1.The III Additional Judge,
City Civil Court,
Chennai.

2.The I Assistant Judge,
City Civil Court, Chennai.

+1cc to Mr.S.Vasudevan, Advocate Sr.41527
+2cc to Mr.D.Aravindan, Advocate Sr.41532
+1cc to the Government Pleader Sr.41805 and 42284

S.A.No.1026 of 2010
and
M.P.No.1 of 2010

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