



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.457 of 2020
and CMP No.9744 of 2020

N.Kishorekumar

... Appellant/Cross Appellant/Plaintiff

Vs.

1. Nehru Vivekanandan

2. The Manager,
Canara Bank,
Park Road Branch,
Erode.

... Respondents/Respondent/Defendant

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and decree, dated 17.12.2019 made in Cross Appeal in A.S.No.25 of 2018 on the file of the learned Principal Sub Court, Erode, confirming the Judgment and decree, dated 10.01.2018 made in O.S.No.388 of 2011 on the file of the learned I Additional District Munsif Court, Erode.

For Appellants : Mr.N.Manokaran.

J U D G M E N T

The suit is one for permanent injunction and mandatory injunction.

2. The plaintiff would contend that the suit property originally belonged to the 1st defendant. The 1st defendant had put up a terraced house in the suit property by borrowing monies from the 2nd defendant and other private creditors. It is also stated that the 1st defendant is an employee of the 2nd defendant bank. The 1st defendant had entered into an agreement of sale agreeing to convey the suit property to the plaintiff for a sum of Rs.4,50,000/- on 23.04.2003 and had received a sum of Rs.4,00,000/- as advance. Subsequently, on 23.04.2003, the 1st defendant had executed a registered Power of Attorney in favour



of one Ravi to deal with the property. The said Ravi had executed a sale deed in favour of the plaintiff on 19.05.2005, conveying the suit property to the plaintiff after receiving the balance sale consideration. After the said purchase, since the 1st defendant attempted to interfere with the possession of the plaintiff and the 2nd defendant threatened action for recovery of money due under the Mortgage, the plaintiff had come to Court with the following prayers:

- (i) Granting permanent injunction restraining the 1st defendant, his men and agents from trespassing into the suit property ("A" Schedule) or interfering in any manner with the plaintiff's peaceful possession and enjoyment of the same;
- (ii) Granting a mandatory injunction directing the 2nd defendant bank to return back the original documents mentioned in B Schedule which has been deposited by the 1st defendant after receipt of the balance loan amount if any, within a time stipulated by the Honourable Court, failing which such other action that this Honourable Court think fit and proper under the circumstances of the case.

3. The 1st defendant resisted the suit contending that the plaintiff has obtained title through the Power of Attorney which was obtained by fraud. It was also contended that the extension of the agreement by 30 months was not agreed to by the 1st defendant. The 2nd defendant remained exparte.

4. The trial Court rejected the defence of the 1st defendant and decreed the suit for the first relief sought for. As regards the second relief, the trial Court found that the proper remedy is redemption and not a suit for a mandatory injunction. In view of the bar under Section 41(h) of the Specific Relief Act, the trial Court dismissed the suit in respect of the second relief sought for. Aggrieved, the 1st defendant preferred an appeal in A.S.No.25 of 2018 and the plaintiff preferred a Cross appeal.

5. The Appellate Court agreed with the conclusions of the trial Court and dismissed the appeal and the cross objections, confirming the Judgment and decree of the trial Court. The plaintiff who had partially succeeded in the suit, has come up with the second appeal, questioning the refusal of the second relief by the trial court and appellate Court.

6. I have heard Mr.N.Manokaran, learned counsel appearing for the appellant.

7. I am convinced the dismissal of the suit for the relief of mandatory injunction by the Courts below is perfectly



justified. Even a student of law, who has got a basic knowledge of law, would know that the remedy of the plaintiff in this case, is a suit for redemption and not a suit for mandatory injunction. It is rather disgusting that such a suit had been filed and has been prosecuted in appeal also by the learned counsel for the plaintiff. This is a classic case where the ignorance of the counsel had really prejudiced his client. I have no hesitation in observing that this is a case where liberty should be given to the appellant to proceed against his counsel who filed a suit as well as the cross objections in the appeal seeking the relief of mandatory injunction directing the Mortgagee to receive the mortgage money and return the documents. I therefore see no question of law, much less a substantial question of law in this appeal. The appeal therefore fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS)

// True Copy//

Sub Assistant Registrar

vum

To

1.The I Additional District Munsif Court, Erode.

2.The Principal Sub Court, Erode,

+1cc to M/S.N.Manokaran, Advocate, S.R.No.35249

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BP (CO)
SU(11/08/2021)