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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.887 of 2006
and
M.P.No.1 of 2006

Kirubakaran .. Appellant/4th Defendant

Vs.

1.M/s.Eatern Minerals and Chemicals (P) Limited,
Rep.by its Director,
20, Cathedral Garden Road,
Nungambakkam,
Chennai-600 034.1st Respondent/Plaintiff

2.Mrs.Suseela Devi

3.M.P.PArthasarathy Mudaliar

4.Anand Sekar .. Respondents 2 to 4/
Defendant 1 to 3

PRAYER: Appeal Suit is filed under Section 96 of C.P.C against the judgment and decree dated 15.09.2006 passed by the Additional District Judge cum Fast Track Judge No.I, Chengalpattu in O.S.No.491 of 2004.

For Appellant : Ms.Devie Soccalingame for
M/s.R.Syed Mustafa

For Respondents : Mr.S.Raghunathan for R1
Notice dispensed with for R2

J U D G M E N T

This Appeal Suit is filed against the judgment and decree of the trial Court in the suit filed for recovery of money towards the goods sold and delivered and secured by three simple mortgages in respect of the suit property executed by the defendants 1 to 3 on 08.06.1989, 22.03.1989, 18.07.1991 respectively.



2. The short point involved in this appeal is that the 1st respondent was distributor of Electron Brand Fluorescent tubes, Lamps and Fittings. They appointed the appellant as their retail seller of the products and supplied goods on credit. As a security for the goods sold and delivered, the appellant mortgaged the suit property initially for a sum of Rs.1,00,000/- on 18.06.1989; subsequently for a sum of Rs.50,000/- on 22.03.1989 and for a sum of Rs.1,38,000/- on 18.07.1991. As per the plaint, on the date of filing the suit, the defendants 1 to 3 paid only a sum of Rs.32,803/-. Suppressing the factum of mortgage, they sold the property to the 4th defendant. Having coming to know about that, the plaintiff has caused notice to the defendants 1 to 4 on 09.11.1992. However, the notice did not evoke any action on the defendants. Hence, the suit was laid.

3. Earlier the suit was filed before the Sub Court, Poonamallee and the same has been numbered as O.S.No.577 of 1999, later it was transferred to Fast Track Court, Chengalpattu and renumbered as O.S.No.491 of 2004.

4. The plaintiff prayed for the following relief in the said suit:-

"1.To pass a preliminary decree on directing the defendants to pay a sum of Rs.8,33,203/- within the date fixed by this Hon'ble Court.

2.To pass final decree in case of default in payment of the amount within the time fixed by the Court direct to sell the plaint schedule property in public auction for the satisfaction of the decree amount.

3.Direct the defendants to pay the cost of the suit and

4.pass such other order orders as this Hon'ble Court deems fit and proper and render justice."

5. The defendants 1 to 3/the principal borrower and guarantors for the mortgage remained exparte before the trial Court, the subsequent purchaser, the 4th respondent herein alone contested the suit by filing written statement. In the written statement, the 4th respondent had doubted the genuineness of the mortgage deed alleged to have been agreed entered by his vendors in favour of the plaintiff and also pleaded that he is a bonafide purchaser for the valuable consideration without knowledge about the mortgage, therefore, the suit is not maintainable as against him.



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6. The trial Court framed the following issues based on the pleadings:

"1. Whether the suit filed within the period of limitation?

2. Whether the 4th defendant a bonafide purchaser for valuable consideration without prior knowledge of the mortgage?

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

4. What relief the plaintiff is entitled?"

7. On behalf of the plaintiff one Bhavanishankar was examined as PW.1. He is the Director of the plaintiff's company. Six exhibits were marked in support of the suit claim. On behalf of the defendants, the 4th defendant was examined as DW.1 and nine exhibits were marked.

8. The trial Court after perusing the sale deed (Ex.A.6) relied by the 4th defendant to establish himself as a bonafide purchaser and encumbrance certificates-Ex.A.5 and Ex.B.4 to Ex.B.6 held that the 4th defendant is not a bonafide purchaser, he has not vigilantly scrutinized the title documents before he purchased. Further, the trial Court has also took exception on the conduct of the 4th defendant, for challenging the validity of the mortgage deeds Ex.A1 to Ex.A3, to which he had no personal knowledge.

9. Being aggrieved by the judgment and decree, the present appeal is filed on the ground that the 4th defendant purchased the suit property on 03.01.1992 being fully satisfied that there was no encumbrance over the property. The original title deed of the property was not in possession of his vendor and she has given a public notice in the local daily on 28.07.1990 about the loss of the title deed. Being satisfied with the title of his vendor through the patta Ex.B2 and the parent document Ex.B1, to which the vendor has derived title, he purchased the property and he is in possession and enjoyment of the property. The Tax Register was muted in his name by the Tambaram Municipality vide Ex.B7 and electricity service has also been transferred in his name vide Ex.B8. When he obtained



encumbrance for a period of 30 years, it did not reveal any mortgage executed by the defendants 1 to 3 in favour of the plaintiff. The suit filed in the year 1999 for the transaction of the year 1992 is barred by limitation. However, the Court below has not considered the issue and held against the defendants.

10. The point for determination whether the appellant/4th defendant in the suit was the bonafide purchaser of the suit property.

11. The learned counsel for the appellant rely upon the recital found in the sale deed and entries found in the encumbrance, to establish the appellant was the bonafide purchaser. The encumbrance Ex.B4 to Ex.B6 are not for the period of 30 years as contended by the defendants in the written statement. Ex.B.5 is between 05.12.1986 to 16.09.1989, Ex.B.6 is between 15.02.1989 to 15.03.1990. Ex.B.4 is between 01.07.1977 to 28.01.1992. Ex.B5 is dated 16.02.1989 and Ex.B.6 is dated 15.03.1990. The defendants admit that these two encumbrances were not obtained by him but was shown by the vendor. The applicant name shown as Suseela Devi who is the 1st defendant in the suit. So, it is clear that the appellant has not applied for encumbrance on his own before purchasing the property or verified the title document. No doubt Ex.B4-encumbrance has been issued on the application of the defendants. The Sub Registrar certified that after purchase of the property by Susheela Devi and Annammal in the year 1997, the next entry shown is the transfer by one Susheela Devi in favour of the 4th defendant. When the title document was not available and the paper publication was issued for the public announcement about the loss of document, the defendant ought to have been more vigilant before purchasing the property. Even if one presumed that he has bonafidely entered into sale agreement and the mortgage deed was not brought to his knowledge at the time of sale atleast on receipt of the suit summon he should have contacted his vendor to verify and sought to rectify the defects and charge in the property sold in the sale deed Ex.A6. It is admitted by the 4th defendant in the cross examination that he had not met his vendor and enquired about the suit and bailing him out from the litigation as promised in the sale deed. Except the plead that he is a bonafide purchaser for valid consideration and put in possession of the property there is no documents to infer or prove this plea. If he was really a bonafide purchaser unknowingly purchased the property, he should have shown adequate care required for an average purchaser of property.



12. Regarding the plea of limitation though no issue was framed in spite of ground raised in the written statement, since the suit prayer is based on the mortgage deed, the period of limitation is 12 years for foreclosure and the relief sought is a preliminary decree to that effect and subsequently for final decree for recovery and put the mortgage property into sale. Hence this Court does not find any force in the submissions of the appellant regarding the limitation.

13. In the said circumstances, this Court finds no merit to interfere the findings of the trial Court. Hence this Appeal Suit is dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

rpl

To

The Additional District Judge cum Fast Track Judge No.I,
Chengalpattu.

+1cc to Mr.R.Syed Mustafa, Advocate, S.R.No.11279

+1cc to Mr.S.Ragunathan, Advocate, S.R.No.11298

A.S.No.887 of 2006
& M.P.No.1 of 2006

BS (CO)
CB(02/08/2021)