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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1058 of 2009

and

M.P.No.1 of 2009

1.E.Rajamanicka Mudaliyar (deceased)

2.Anjalammal (deceased)

*3.T. Kamatchi ...Appellants/Appellants/Defendants

[* Appellant T.Kamatchi brought on record as LR's of the Deceased Appellants E.Rajamanicka Mudaliyar and Anjalammal, vide order of court dated 17.12.2020 made in CMP.13341,13343 & 13347/2020 in SA.1058/2009 (GJJ)]

Vs.

T.Tamaraiselvam

...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 20.06.2008 in A.S.No.65 of 2007 on the file of the Subordinate Judge, Kancheepuram partly allowing the appeal and partly confirming the Judgment and Decree dated 18.01.2006 in O.S.No.627 of 2004 on the file of the Principal District Munsif, Kancheepuram.

For Appellants : Mr.R. Ganesh Babu

For Respondent : Served - No appearance

JUDGMENT

The defendants who have lost before the Courts below are the appellants before this Court.

2.The Second Appeal arises against the Judgment and Decree in A.S.No.65 of 2007 on the file of the learned Sub Judge, Kancheepuram in and by which the learned Sub Judge had confirmed the Judgment and Decree of the learned Principal District Munsif, Kancheepuram, in O.S.No.627 of 2004.

3.The suit O.S.No.627 of 2004 was filed by the respondent herein seeking recovery of a sum of Rs.97,000/- with interest @ 2% per annum on the sum of Rs.50,000/- from the date of Plaint



till the date of payment, in default, the plaintiff to apply for final decree directing the sale of the mortgaged property and also seek for the balance in case the sale proceeds are found insufficient to discharge the Decree amount.

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4.The case of the plaintiff was that the defendants had approached the plaintiff for a loan and they had jointly borrowed a sum of Rs.50,000/- and agreed to repay the sum of Rs.50,000/- together with interest @2% per month. As a security, they had executed a registered Mortgage Deed dated 25.08.1999. The plaintiff would submit that contrary to the assurance, the defendants had not paid any amount to the plaintiff. Therefore, the appellants have approached this Court.

5.The appellants as defendants had filed a Written Statement admitting the execution of the Mortgage Deed, but however, contending that they had in all repaid a sum of Rs.13,500/- which amount has not been given to credit in the suit. That apart, the defendants also raised the plea of limitation.

6.The learned District Munsif, Kancheepuram, had framed the following issues:

(1)Whether the defendants had initially borrowed a sum of Rs.50,000/- from the plaintiff on mortgage of the suit property?.

(2)Whether the defendants paid Rs.14,500/- towards the debt? and

(3)To what relief sought?

However, the issues were later re-cast as follows:

(1)Whether the defendant has borrowed a sum of Rs.50,000/- from the plaintiff and created a mortgage of the suit property?

(2)Whether the plaintiff is entitled for interest at the rate of 2% per annum from the date of Plaint?

(3)Whether the plaintiff is entitled for decree of mortgage for Rs.50,000/-?

(4)Whether the plaintiff is entitled for Preliminary Decree against the defendant for the balance decree amount?

(5)To what relief?

7.The plaintiff had examined himself as P.W.1 and one Nagavel was examined as P.W.2 and had marked Ex.A.1 - Mortgage



Deed. On the side of the defendants, one Radhakrishnan had been examined as D.W.1 and Ex.B.1 to Ex.B.5 were marked.

8.The trial Court on considering the evidence on record held that the defendants had proved the payment of Rs.11,250/- including the expenses for registering the Mortgage Deed and held that the defendants were liable to repay a sum of Rs.35,750/-. As regards the limitation, it was found against the appellant since the suit is one for mortgage and had been filed within a period of three years. Challenging the said Judgment and Decree, the appellants had filed A.S.No.65 of 2007 on the file of the learned Sub Judge, Kancheepuram. The plaintiff had not filed any Cross Appeal.

9.The Appellate Court has modified the Decree only with reference to cost since the trial Court has awarded costs for the entire sum of Rs.50,000/- and not on Rs.35,750/-. In all other respects, the Judgment and Decree of the trial Court was confirmed. Challenging the same, the appellants are before this Court.

10.Mr.R. Ganesh Babu, learned counsel who appeared on behalf of the appellants would submit that the property in question belonged to the Temple and therefore, the very mortgage was not a valid mortgage and the decree is a nullity. Except for the above arguments, no other arguments were put forth on the side of the appellants.

11.A perusal of the records would show that in the Written Statement filed by the defendants, the only defence that was taken was that the appellant had repaid a portion of the amount and that the suit was barred by limitation. The argument now put forward has been argued for the first time only before this Court. The respondent/plaintiff though served has not entered appearance either through person or through pleader.

12.Though the argument is taken for the first time the fallacy in the same has to be pointed out since the suit is only with reference to the superstructure which has been constructed by the appellants and the schedule in Ex.A.1 - Mortgage Deed describes the property that is mortgaged as the leasehold right to the site and absolute right to the building constructed thereon. The mortgage clearly describes the site as belonging to the Arulmigu Ekambaranathar Temple, Kancheepuram. Therefore, the arguments put forward by the appellants that the suit as filed is not maintainable is totally unsustainable. The suit has been filed only on the basis of Ex.A.1 - Mortgage Deed.

Considering the above, no Substantial Question of Law has been made out and consequently, the Second Appeal is dismissed



and the Judgment and Decree of the learned Sub Judge, Kancheepuram, in A.S.No.65 of 2007 is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions is closed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

1.The Subordinate Judge,
Kancheepuram.

2.The Principal District Judge,
Kancheepuram.

+1cc to Mr.R.Ganesh, Advocate, S.R.No.29501

S.A.No.1058 of 2009
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GPL(CO)
SB(29/11/2021)