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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

S.A.No.760 of 2007
and M.P.No.1 of 2007

Navalpur Balamurugan Benefit Fund Ltd.,
rep. by its Manager Mr.M.Selvaraj
No.155, M.B.T.Road, Navalpur,

Ranipet, Vellore District. ..Appellant/Appellant/Plaintiff

vs.

Mr.R.Munirathnam Naidu ..Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 CPC, against the decree passed by the Principal District Judge, Vellore on 09.11.2006 in A.S.No.33 of 2006 confirming the decree dated 31.8.2005 passed by the Subordinate Judge, Ranipet, Vellore District in O.S.No.199 of 2000.

For Appellant : Ms.S.Vijaya Lakshmi
For Respondent : Mr.Arun Anbumani

JUDGMENT

(This case was heard through Video Conferencing)

This Second Appeal has been filed challenging the concurrent findings of the Courts below.

2.The Appellant is the plaintiff in the Suit O.S.No.199 of 2000 on the file of the Subordinate Court, Ranipet, Vellore District. They have filed a suit for recovery of a sum Rs.1,64,970/- together with interest and costs against the respondents/defendants. The basis for the claim is that the respondents/defendants availed loan from the plaintiff by executing the mortgage deed dated 12.03.1997. However, as seen from the written statement filed by the respondents/defendants in the suit, they have alleged that only under coercion and undue influence, the alleged mortgage deed was executed and they have also alleged that fraud has been played upon them by the



Appellant by getting the mortgage deed executed. They have also denied the receipt of any consideration under the alleged mortgage deed.

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3. By Judgment and Decree dated 31.08.2005 in O.S.No.199 of 2000, Subordinate Court, Ranipet, Vellore District dismissed the suit filed by the Appellant.

4. Aggrieved by the same, the Appellant/plaintiff preferred an appeal before the Principal District Court, Vellore in A.S.No.33 of 2006.

5. The Lower Appellate Court by its Judgment and Decree dated 09.11.2006 in A.S.No.33 of 2006 confirmed the findings of the Trial Court and dismissed the appeal.

6. Aggrieved by the same, the Appellant/plaintiff has preferred this Second Appeal.

7. Heard Ms.S.Vijaya Lakshmi, learned counsel for the Appellant and Mr.Arun Anbumani, learned counsel for the respondent.

8. The Second Appeal was admitted by this Court on 03.08.2010 on the following substantial questions of law.

(a) Is not the admission of execution of a mortgage deed and registered in the Sub Registrar Office is a sufficient proof acknowledging the debt.

(b) Is not the admission of the mortgage deed give rise to a presumption that the executor is bound to discharge the loan.

(c) Is not the admission of the signature of the executant of the mortgage deed tantamounts to imputing knowledge of the contents of the document?

9. This Court has perused and examined the impugned judgments of the Trial Court as well as the Lower Appellate Court. Both Courts have concurrently held that the Appellant/plaintiff has not proved the debt as no independent witness was examined and the attesting witness to the alleged mortgage deed Ex.A3 has also not been examined as a witness.



11.It is the case of the respondents/defendants that they never borrowed any money in the mortgage deed under Ex.A3. They have alleged in the written statement that the said mortgage deed was obtained under threat and coercion and the Appellant/plaintiff has played fraud upon them by getting the mortgage deed executed in their favour.

13. Both the Courts below have rightly appreciated the evidence available on record and only thereafter have rejected the claim of the Appellant/plaintiff. Therefore, this Court is of the considered view that the issues raised by the Appellant in the Second Appeal are only factual issues which have been correctly considered by the Courts below and there is no scope for interference as this Court can entertain any Second Appeal only when there are substantial questions of law involved.

15. The substantial questions of law formulated by this Court on 03.08.2010 at the time of admission of this Second Appeal are answered against the Appellant/plaintiff as they do not deserve any merit. Accordingly, the Second Appeal is dismissed with costs.

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To

1.The Principal District Judge, Vellore.

2.The Subordinate Judge, Ranipet, Vellore District.

+1CC to M/s.S.Vijayalakshmi, Advocate, SR.No. 30903

S.A.No.760 of 2007

GPL(CO)

B.VC (23/09/2021)