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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.926 of 2006
and
M.P.No.1 of 2006

Shalitheen (Died)

2.Kathiya Bee

3.B.Apsara Banu

4.Shakila

5.Appas

6.Salina Begam

... Appellants

(Appellants 2 to 6 brought on record as LRs of the deceased sole Appellant vide order of this Court dated 09.01.2020 made in CMP.No.22880, 22885 and 22882 of 2019 in S.A.No.926 of 2006)

Vs

1.Maria Bibi (Died)

2.Tamil Nadu Housing Board,
rep. by its Executive Engineer,
Tatabad,
Coimbatore - 12.

... Respondents

PRAYER: Second Appeal filed under Section 100 C.P.C. against the judgment and decree of the Appellate Authority cum Subordinate Judge's Court at Coimbatore dated 26.10.2005 in A.S.No.80 of 2005 confirming the Judgment and Decree of the I Additional District Munsif Court at Coimbatore. Dated 08.04.2005 in O.S.No.1080 of 1997.

For Appellant : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondent 1 : Died

For Respondent 2 : Mr.R.Jayaseelan



JUDGMENT
(Heard through video conferencing)

This second appeal has been filed challenging the concurrent findings of the courts below.

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2. The first Appellant(deceased) is the plaintiff in the suit O.S.No.1080 of 1997 on the file of the District Munsif Court, Coimbatore. The said suit was filed seeking for cancellation of the decree passed in O.S.No.175 of 1990 on the file of the District Munsif Court, Coimbatore in favour of the first respondent/first defendant. The suit O.S.No.175 of 1990 was filed by the first respondent against the Appellant and the second respondent for redemption of mortgage and for delivery of possession in her favour. The said suit came to be decreed exparte in favour of the first respondent by the District Munsif Court, Coimbatore on 26.08.1994. An application was also filed thereafter by the first Appellant (deceased) to set aside the exparte decree dated 26.08.1994 passed against him by the District Munsif Court, Coimbatore in O.S.No.175 of 1990. Thereafter an execution petition was also filed by the first respondent in E.P.No.49 of 1995 to execute the judgment and decree dated 26.08.1994 passed in her favour against the first Appellant (deceased) and the second respondent in O.S.No.175 of 1990. A section 47 CPC application filed by the first Appellant (deceased) which has been numbered as E.A.No.492 of 1997 filed in E.P.No.49 of 1995 filed by the first respondent to execute the judgment and decree dated 26.08.1994 has also been dismissed by the District Munsif Court, Coimbatore on 09.11.1998. After the dismissal of the said execution application, the first Appellant/plaintiff (deceased) has filed the present suit in O.S.No.1080 of 1997 on the file of the District Munsif Court, Coimbatore which is the subject matter of this second appeal seeking to cancel the judgment and decree dated 26.08.1994 passed in favour of the first respondent against the first Appellant by the District Munsif Court, Coimbatore in O.S.No.175 of 1990.

3. The case of the first Appellant/plaintiff is that he was put in possession of the suit schedule property by the first respondent by availing a loan of Rs.4,500/-. It is the case of the first Appellant/plaintiff that the first respondent was an allottee of the suit schedule property under the second respondent herein. According to the first Appellant/plaintiff, the decree obtained by the first respondent/plaintiff on 26.08.1994 in O.S.No.175 of 1990 is null and void as without repaying the loan amount to him, the said decree has been obtained. Under those circumstances, the Appellant/plaintiff has sought for cancellation of Judgment and decree dated 26.08.1994 passed in O.S.No.175 of 1990.



4. The first respondent/first defendant in the suit O.S.No.1080 of 1997 who is the plaintiff in O.S.No.175 of 1990 has categorically denied the allegations of the first Appellant/plaintiff as seen from the written statement.

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5. Issues were also framed by the Trial court and after trial, by judgment and decree dated 08.04.2005 passed in O.S.No.1080 of 1997, the District Munsif Court, Coimbatore dismissed the suit filed by the first Appellant/plaintiff holding that the first Appellant/plaintiff does not have any right, title or interest over the suit schedule property and holding that the suit is not maintainable in view of the fact that already judgment and decree has been passed by the District Munsif Court, Coimbatore in O.S.No.175 of 1990 against the Appellant/plaintiff who was the first defendant in that suit.

6. Aggrieved by the Judgment and Decree dated 08.04.2005 passed by the District Munsif Court, Coimbatore in O.S.No.1080 of 1997, the first Appellant/plaintiff preferred the regular first Appeal before the Sub Court, Coimbatore in A.S.No.80 of 2005. By judgment and decree dated 26.10.2005, the lower appellate court also confirmed the findings of the trial court and dismissed the appeal. Aggrieved by the same, this second appeal has been filed.

7. This Court at the time of admission of this second appeal on 23.08.2006 formulated the following substantial questions of law:

"a) Whether the courts below are correct in law in concurrently non-suiting the appellant on the basis of an exparte decree passed in an earlier suit?

b) Whether the Courts below are correct in law in not considering the fact that the 1st respondent has no right, title or interest over the suit property and consequently in the light of Ex.A1 ought not the Courts below have decreed the suit as prayed for?

c) Whether the Courts below being the final Court of fact is correct in law in not independently applying its mind to the evidence on record?"

8. Admittedly, the first respondent (deceased) was an allottee of the suit schedule property under the Tamil Nadu Housing Board, the second respondent herein. It is also an admitted fact that the first Appellant/plaintiff was put in possession in the suit schedule property only by the first respondent(deceased). The first Appellant/plaintiff was also a party to the earlier proceedings initiated by the first



respondent/plaintiff in O.S.No.175 of 1990 on the file of the District Munsif Court, Coimbatore seeking for redemption of mortgage and also for delivery of possession. It is also an admitted fact that an exparte decree came to be passed against the first Appellant/plaintiff in O.S.No.175 of 1990. The first Appellant/plaintiff has himself admitted that he had also filed an application to set aside the exparte decree dated 26.08.1994 passed in O.S.No.175 of 1990. Thereafter, E.P.No.49 of 1995 has been filed by the first respondent(deceased) to execute the exparte decree dated 26.08.1994 passed in her favour against the first Appellant/plaintiff in O.S.No.175 of 1990. An application filed under section 47 of CPC has also been filed by the first Appellant/plaintiff in E.A.No.492 of 1997 challenging the exparte decree dated 26.08.1994 passed in O.S.No.175 of 1990. E.A.No.492 of 1997 filed by the Appellant/plaintiff has also been dismissed by the District Munsif Court, Coimbatore on 09.11.1998. All the aforementioned facts have not been disputed by the first Appellant/plaintiff. If aggrieved, instead of challenging the earlier decree passed against him in O.S.No.175 of 1990, the Appellant/plaintiff has chosen to file a fresh suit against the first respondent who is the plaintiff in O.S.No.175 of 1990 and in whose favour, a decree has already been passed against the first Appellant/plaintiff for redemption of mortgage as well as for possession which will amount to res judicata.

9. Unless and until the Court which passed the decree on the face of it lacks inherent jurisdiction or fraud has been established, a party cannot seek to set aside the decree passed by a competent court. It is not in dispute that the court which passed decree in O.S.No.175 of 1990 in favour of the first respondent herein is a competent court and is having inherent jurisdiction to decide the lis. As seen from the evidence available on record, fraud has also not been established by the first Appellant/plaintiff. Both the courts below have concurrently held that the first Appellant/plaintiff is not entitled for the relief sought for in the plaint in O.S.No.1080 of 1997 on the file of the District Munsif Court, Coimbatore.

10. There are no debatable issues of law involved in this second appeal. The trial court as well as the lower appellate court has rightly non-suited the first Appellant/plaintiff on the basis of exparte decree dated 26.08.1994 passed in favour of the first respondent in O.S.No.175 of 1990 which has attained finality. The trial court and the lower appellate court has correctly considered Ex.A1 and has applied its mind independently and only thereafter has rejected the contentions of the first Appellant/plaintiff. The substantial questions of law formulated by this Court at the time of admission of this second appeal are answered against the Appellant as there are no substantial question of law involved.



11. In the result, the findings of the courts below are hereby confirmed and this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge's Court
at Coimbatore

2.The I Additional District
Munsif Court at Coimbatore

3.The Section Officer,
V.R Section, High Court,
Madras.

+1cc to M/s.Saravabhauman Associates, Advocate, S.R.No.36751

S.A. No.926 of 2006

SMI (CO)
SB(02/12/2021)