



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.497 of 2012
and M.P.No.1 of 2012

G.K.Gokulraj,
S/o.G.Kanakaraj,
Rep.by Sathyababa Nidhi Limited.

...Appellant/2nd Defendant

Vs.

1.S.Gurunathan

2.C.Mani,
S/o.M.Chokalingam,
Rep.by his Power agent,
G.Prabakar

...Respondents/Plaintiff & 1st Defendant

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 18.08.2011 passed in A.S.No.95 of 2010 on the file of the Principal District Court, Cuddalore, reversing the Judgment and Decree, dated 30.10.2010 passed in O.S.No.90 of 2008 on the file of the I Additional Subordinate Court, Cuddalore.

For Appellant : Mr.P.Mathivanan

For Respondents : Mr.R.Gururaj (for R1)

J U D G M E N T

The 2nd defendant is the appellant in the present Second Appeal. The respondent/plaintiff filed a suit for declaration of title, injunction and in alternative for recovery of possession.

2. According to the plaintiff, the Central Bank of India, initiated action against the 1st defendant under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act, 2002) for recovery of due credited under the mortgage by deposit of title deeds by the 1st defendant. Pursuant to the initiation of recovery proceedings, auction was conducted on 19.02.2007 in which the plaintiff became a successful bidder for a sum of Rs.4,10,000/- on 26.03.2007. A sale certificate was issued and the same was registered on 09.07.2008. Possession was handed over to him. The suit property being a vacant site, handing over the vacant possession was recorded by the bank. While the matter stood this, the 1st defendant through his



Power of Attorney registered the sale deed on 26.03.2007, which according to the plaintiff, is not correct and the 1st defendant is not entitled to do so and the sale made was not for a valid consideration as it was sold only for a nominal sum of Rs.50,000/- and hence, the sale was collusive and fraudulent. Further, the 2nd defendant is a resident of Chennai and has no connection with Cuddalore and hence he has not taken possession and the sale deed is sham and nominal and therefore, the plaintiff filed a suit for declaration and injunction and in the alternative for recovery of possession.

3. The 1st defendant remained exparte. The 2nd defendant filed a written statement, in which he has denied all the averments made in the plaint and that the conduct of the 1st defendant in executing the Memorandum of title deeds is fraudulent and the recovery proceedings said to have been initiated by the bank is only an imagination and no such proceedings were initiated on the date of purchase. While he approached the Registrar's office to find out the encumbrance, it was found that there is no encumbrance with respect to the property and the alleged mortgage by deposit of title deed was not reflected in the Encumbrance Certificate. The original title deed, dated 16.03.1989 of the 1st defendant was handed over to the 2nd defendant and therefore, following the procedure, he purchased the property with bonafide intention. Therefore, the sale deed made in favour of the plaintiff is fraudulent and collusive and on that ground, he sought for dismissal of the suit.

4. The trial Court framed appropriate issues. The plaintiff has entered into the box, let in evidence as P.W.1 and marked documents as Exs.A1 to A12. On the side of the defendants, Exs.B1 to B3 were marked and no evidence was adduced.

5. After trial, the trial Court dismissed the suit on the ground that the plaintiff has not proved his title and that he became the owner of the property as per the SARFAESI Act, 2002. When the 2nd defendant has purchased the property by following Section 58 of the Transfer of Property Act, the sale cannot be found fault with. The trial Court further found that marking of the original Title Deeds, Ex.B3 probablise the case of the 2nd defendant and therefore, the plaintiff is not entitled to the relief sought for.

6. Upon appeal, the first appellate Court found that the SARFAESI proceedings were followed, and as per the procedure laid down in SARFAESI Act, the property was sold in auction in accordance with law in favour of the plaintiff and that the plaintiff is entitled to equity and the relief sought for by him. The 1st defendant /1st respondent remained exparte in the appellate proceedings also. Aggrieved over the reversal finding of the first appellate Court, the 2nd defendant has preferred this Second Appeal.



of Rs.50,000/-, whereas Ex.A6 reveals that the property was sold for a sum of Rs.4,10,000/- in a public auction which leads us to infer the sale deed made under Ex.A7 for a nominal sum of Rs.50,000/- on the very same date of auction is sham and nominal and made with an intention to defeat the plaintiff's right. In that view of the matter, the 2nd defendant cannot be said to be a bonafide purchaser and he got the title conveyed in his favour.

11. The first appellate Court has elaborately discussed the procedure adopted by the bank under the SARFAESI Act. The first appellant Court has also relied on the Judgment of the Hon'ble Supreme Court in Vannarakkal Kallalathil Sreedharan Vs. Chandramaath Balakrishnanan and anr. reported in 1990 (3) SCC 291 and also discussed the provisions under SARFAESI Act, 2002 to set aside the Judgment of the trial Court. The Judgment and the first appellate Court is based on reasons and I do not find any discrepancy warranting interference with the same. The questions of law raised in the Memorandum of grounds of appeal is mere questions of fact to be proved by the defendants. As already stated that none of the defendants have entered into the box to prove their stand. Therefore, I do not find any substantial question of law much less substantial question of law arise to enable me to entertain the second appeal. There is no merits in the Second Appeal and accordingly it is dismissed at the admission stage itself. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge, Cuddalore.

2.The I Additional Subordinate Judge, Cuddalore.

3.The Section Officer,
VR Section, Madras High Court, Chennai.

+1cc to Mr.P.Mathivanan, Advocate SR. No. 56492

S.A.No.497 of 2012 and
M.P.No.1 of 2012

SR (CO)

PR (02/06/2022)