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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.No.428 of 2019

and

C.M.P.Nos.6398 of 2019 & 6383 of 2020

K. Rajendran

... Appellant/Appellant/Plaintiff

Vs.

The Special Officer
Rep. by Chennai Metropolitan
Co.Op. Housing society Limited,
No.38, Ritherdon road,
Vepery,
Chennai-07

... Respondent/Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of CPC to set aside the judgment and decree in A.S.No.382 of 2014 dated 19.09.2018 on the file of V Additional City Civil Judge, Chennai confirming the judgment and decree in O.S.No.304 of 2011 dated 15.07.2014 on the file of III Assistant City Civil Judge, Chennai.

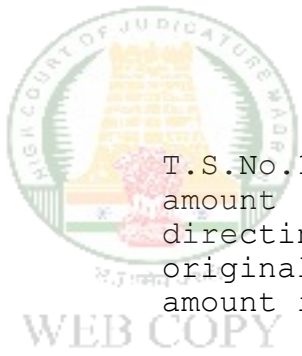
For Appellant : M/s.G.Appavu

For Respondent : Mr.M.R.Murugan

J U D G M E N T

This Second Appeal is filed challenging the judgment and decree in A.S.No.382 of 2014 on the file of the learned V Additional City Civil Court, Chennai, confirming the judgment of the learned II Assistant City Civil Court in O.S.No.304 of 2011.

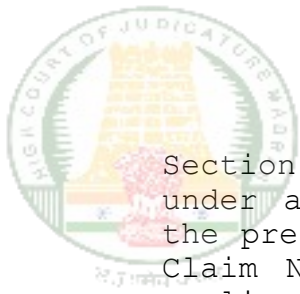
2. The appellant as the plaintiff, filed the suit in O.S.No.304 of 2011 seeking the relief of redemption of mortgage dated 24.09.1997 in Document No.5890 of 1997 on the S.R.O. Sembiam, in respect of the plot No.C-344, in S.No.383/1, in



T.S.No.145, to an extent of 2400 Sq.ft, after determining the amount payable towards discharge of mortgage dues, consequently directing the defendant to cancel mortgage deed and return the original title deed relating to the property, on deposit of the amount in the Court and for costs.

3. The case of the appellant/plaintiff is that this property was allotted by the Periyar Nagar Government Servants Co-operative House Site Distribution Society Limited. Sale deed in favour of the plaintiff was executed on 02.07.2004. To satisfy the terms and conditions of lease cum Sale agreement in constructing house on the plot, plaintiff approached the defendant for housing loan. On verification of documents, defendant had sanctioned loan of Rs.3,00,000/- on September 1997. Plaintiff executed a registered mortgage deed in favour of the defendant on 24.09.1997 in Document No.5890 of 1997. Plaintiff became a member of defendant society by paying share capital of Rs.21,000/- and loan was granted repayable in 18 years at the rate of Rs.4575/-p.m. Plaintiff has been repaying the loan periodically to the tune of Rs.5,89,405/-. When the Plaintiff is admittedly paying loan amount, there was no necessity for the defendant to refer the matter to Arbitrator. The plaintiff appeared before the arbitrator and explained the repayments made by him. However, defendant sent an auction notice fixing the sale of the property dated 26.08.2010. On verification, plaintiff found that an award was passed in Arbitration Proceedings by Co-operative Sub-Registrar Arbitration & Execution, dated 07.03.2003 for a sum of Rs.6,13,237/- with interest at 19 % per annum. Despite the request made by the plaintiff to furnish copy of the award, it was not granted. Plaintiff had filed W.P.No.19591 of 2010 and was granted interim injunction in M.P.No.1 of 2010 and was saved auction proceedings. The Government of Tamil Nadu had scaled down the interest and penal interest by various Government orders. The award is illegal, null and void and unenforceable. Plaintiff is liable to pay only a sum of Rs.1,23,832/-. Therefore the suit is filed for the aforesaid reliefs.

4. The respondent filed written statement claiming that the suit filed for redemption of mortgage is unsustainable and unreasonable. Plaintiff had not challenged the order dated 07.03.2003 made in Claim No.138 of 2002-2003. Civil Court has no jurisdiction to entertain the suit in view of specific bar under Section 156 of Tamil Nadu Cooperative Societies Act, 1983. After availing mortgage loan of Rs.3,00,000/- and executing mortgage deed dated 24.09.1997, plaintiff has not really paid the equated monthly instalments. The delay in paying EMI would attract penal interest of 1.5 % per annum. Plaintiff is a chronic defaulter. Therefore, this case was referred under



Section 90 of the Act for passing award by competent authority under a resolution dated 13.12.2002. The Arbitrator followed the prescribed procedure and passed an award dated 07.03.2003 in Claim No.138 of 2002-2003 directing the plaintiff and his co-applicant to pay Rs.6,13,237/- with interest at the rate of 19 % per annum. Plaintiff is well aware of the proceedings. Plaintiff sent letter to the defendant undertaking repayment of due amount through letter dated 19.12.2003. On 26.06.2004 he paid Rs.10,000/- as part payment and prayed time to make the balance amount and therefore the execution proceedings was postponed. Thus suit has no merits and barred by law. Instead of challenging the award passed in ARC.No.138 of 2002-2003, this suit was filed only to delay the proceedings.

5. The Trial Court has framed the following issues on the basis of above said pleadings:-

1. Whether the plaintiff is entitled for redemption of the mortgage dated 24.09.1997 on directing the defendant to cancel the mortgage deed and return the original title deeds of the suit property?

2. Whether the remedy to plaintiff is only under the T.N.Co-operative Societies Act 1963?

3. Whether the suit is not maintainable without challenging the order passed in ARC.No.138 of 2003-2004?

4. To what other relief the plaintiff is entitled for?

6. During trial before the Trial Court, plaintiff was examined as PW1 and Exs. A1 to A6 were marked. Defendant was examined as DW1 and Exs. B1 to B36 were marked. On considering the rival submissions, the learned Trial Court Judge found that the suit is not maintainable under Tamil Nadu Co-operative Societies Act 1963 and dismissed the suit. In the appeal also, the learned First Appellate Judge found that the suit is barred under Tamil Nadu Co-operative Societies Act 1963 and therefore the dismissal of the suit was confirmed and the appeal was dismissed. Now the appellant is before this Court by filing Second Appeal.

7. The learned counsel for the appellant submitted that the appellant is prepared to pay the amount and he has taken steps to address the respondent to reduce the interest and penal interest, so that he can pay the amount. Nothing on merits canvassed before the Court. Section 156 of Tamil Nadu Co-operative Societies Act 1983 reads as follows:

Section 156: "Bar of jurisdiction of Civil Courts:-Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this act by an arbitrator, a liquidator, the registrar or an officer authorized or empowered



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by him the tribunal or the Government or any officer subordinate to them shall be liable to be called in question in any Court and no injunction shall be granted by any Court in respect of anything which is done or intended to be done by or under this act."

8. Admittedly, the defendant in this case is society established under Tamil Nadu Cooperative Societies Act. There is no dispute with regard to the availing of loan from the society by executing a mortgage. Only case of appellant is without default in paying loan amount arbitration proceeding was initiated and award in ARC.No.138 of 2003-2004 had been passed. If at all, the appellant is aggrieved against the arbitration proceedings, he ought to have proceeded under the provisions of Tamil Nadu Co-operative Societies Act. Absolutely, he has no right in seeking the relief of redemption of mortgage in Civil Court. Under Section 156 Tamil Nadu Cooperative Societies Act, jurisdiction of the Civil Court is barred so far as the matter is governed by Tamil Nadu Cooperative Societies Act. Both the Courts rightly found that the suit is not maintainable before the Civil court and rightly dismissed the suit. This Court has no reason to interfere with the judgments of the Courts below. There is no substantial question(s) of law involved in this Second Appeal. Thus, the judgment of the learned First Appellate Court in A.S.No.382 of 2014 is confirmed and this Second Appeal is dismissed.

9. Now it is submitted that the appellant is willing to repay the amount. The respondent is directed to accommodate the appellant and facilitate the payment of award amount with subsequent interest, if permissible, so that he can pay the amount due to the respondent and save the property. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

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1. The V Additional Judge,
City Civil Court,
Chennai.
2. The III Assistant Judge,
City Civil Court,
Chennai.
3. The Special Officer
Rep. by Chennai Metropolitan
Co,Op. Housing society Limited,
No.38, Ritherdon road,
Vepery,
Chennai-07

Copy to:
The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.M.R.Murugan, Advocate, S.R.No.62847

+1cc to Mr.G.Appavu, Advocate, S.R.No.62732

S.A.No.428 of 2019

PVS (CO)
SU (30/05/2022)