



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.103 of 2012

A.Krishna Samy Naicker ... Appellant/Appellant/Plaintiff

Vs.

1. A.Bagavathi Ammal

2. V.Kanagavalli

3. S.Shanmuga Parvathi

... Respondents/
Respondents/Defendants

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 29.06.2010 passed in A.S.No.7 of 2009 on the file of the Principal District Judge, Thoothukudi, confirming the Judgment and Decree dated 07.01.2009 passed in O.S.No.13 of 2007 on the file of the Subordinate Judge, Kovilpatti.

For Appellants : Mr.P.Subbaraj

For R-1 to R-3 : No appearance.

J U D G M E N T

The plaintiff in O.S.No.13 of 2007 on the file of the Sub Court, Kovilpatti, is the appellant in this second appeal.

2. The case of the plaintiff is that on 24.09.1998 defendants 1 and 2 borrowed a sum of Rs.1,50,000/- from the plaintiff and executed Ex.A.1 Mortgage Deed with respect to the schedule property. It was a registered mortgage. The mortgagors agreed to redeem the mortgage within a period of four years from the date of mortgage. They agreed to pay interest at 12% p.a. The case of the plaintiff is that the defendants neither paid any interest nor they came forward to redeem the mortgage. Instead, they sold the property in favour of the third defendant vide Ex.A.5 dated 28.02.2007. When the plaintiff became aware of the same, he caused to issue Ex.A.2 notice dated 06.03.2007. The defendants sent a reply Ex.A.4 dated 12.03.2007 containing untenable averments. Since the terms and conditions for discharging the mortgage was not complied with, the plaintiff filed



the aforesaid suit. In the said suit, defendants 1 and 2 remained ex-parte. The third defendant alone entered appearance through counsel and she denied the claim of the plaintiff. The plaintiff examined himself as P.W.1 and marked Ex.A.1 to Ex.A.5. The husband of the third defendant was examined as D.W.1 and Ex.B.1 and Ex.B.2 were marked. The learned trial Judge vide Judgment and Decree dated 07.01.2009, decreed the suit substantially. The defendants were directed to pay the mortgage amount of Rs.1,50,000/-. As regards interest, the defendants were directed to pay on the mortgage amount at 12% with effect from 28.02.2007. In other words, the plaintiff was denied interest from the date of mortgage that is on 24.09.1998. Aggrieved by the denial of interest for the aforesaid period, the plaintiff filed A.S.No.7 of 2009 before the Principal District Court, Thoothukudi. By Judgment and Decree dated 29.06.2010, the Judgment and Decree of the trial Court was confirmed and the first appeal was dismissed. Challenging the same, this second appeal came to be filed.

3. This second appeal was admitted on the following substantial question of law:-

“ Whether the Courts below are justified in directing the respondents to pay interest only from 28.02.2007, instead of, from the date of execution of mortgage deed? ”

4. Though the respondents have been served and their names have been printed in the cause list, there is no appearance on their behalf through counsel.

5. There is no dispute about the validity of the mortgage deed created in favour of the plaintiff vide Ex.A.1. In fact the Courts below have concurrently found in favour of the plaintiff. The only question that arises for my consideration is whether the Courts below are justified in denying payment of interest to the plaintiff for the period from the date of execution of mortgage till the date of sale in favour of the third defendant, namely, S.Shanmuga Parvathi. As rightly pointed out by the learned counsel for the appellant, defendants 1 and 2 remained exparte before the trial Court. It is not their case that they had paid interest to the plaintiff. No evidence has been adduced to show payment of interest for the aforesaid period. When there is no evidence adduced by the defendants indicating payment of interest for the period from the date of mortgage, the Courts below were absolutely not justified in presuming that the plaintiff would have received interest. There is no legal basis for invoking such presumption against the plaintiff and in favour of the defendants. Therefore, I interfere with the Judgment and Decree of the Court below to the extent there is denial of interest to the plaintiff in respect of the aforesaid period. The substantial question of law is answered in favour of the plaintiff.



6. This second appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

PMU

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To:

1. The Principal District Judge,
Thoothukudi.
2. The Subordinate Judge,
Kovilpatti.

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The Record Keeper,
V.R.Section,

Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1 CC to M/s.P.SUBBARAJ, Advocate (SR-16785[F] dated 21/04/2021)

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KMK(CO)

TR(30.06.2021) 3P 6C