BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date :23.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

A.S(MD).No.199 of 2020
and
C.M.P.(MD)No.7118 of 2020

1.S.Shenbagaraman

2.S.Sudalai Muthu

3.S.Rathnakumari

4.S.Sivasubramanian

5.S.Mariappan

6.S.Eswaramoorthy

7.S.Sabari .. Appellants/Defendants 1 to 7

Vs.

1.J.Johnson Rajasekaran .. 1st Respondent/Plaintiff

R.Sree Rengathammal (Died) .. 8th Defendant

2.S.Indra .. 2nd Respondent/9th Defendant

PRAYER: Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of Civil Procedure Code, to set aside the Judgment and decree made in O.S.No.44 of 2016, dated 30.07.2020 on the file of the Additional District Court (Fast Track Court), Tenkasi, allow the above appeal.

For Appellants : Mr.S.Kumar
For R1 & R2 : No appearance

J U D G M E N T

This first appeal is directed against the Judgment and decree dated 30.07.2020 made in O.S.No.44 of 2016 on the file of the Additional District Court(FTC), Tenkasi. The appellants are the defendants 1 to 7 in the suit. The suit was filed by the first respondent herein namely Johnson Rajasekaran. The suit was instituted on the basis of Ex.A1 to Ex.A3 registered mortgage deeds.

2.The case of the plaintiff was that the mortgagor Rengathammal is the absolute owner of the suit schedule property. She had borrowed a sum of Rs.3,00,000/- on 25.07.2003 and executed

Ex.A1-mortgage deed. She then borrowed a further sum of Rs.1,75,000/- on 01.08.2003 and executed Ex.A2-mortgage deed. A further sum of Rs.4,00,000/- was borrowed on 16.10.2006. Ex.A3 was executed. All the three mortgage deeds were duly registered. While so, on 12.12.2011, the suit property was purchased by the appellants by a registered sale deed Ex.A4. The plaintiff issued Ex.A5-notice dated 19.12.2016 calling upon the defendants to clear the mortgage debt. The third defendant sent a reply dated 24.02.2016 (Ex.A8). Since the subsequent purchasers did not come forward to clear the mortgage debt, the said suit came to be instituted.

3.The learned trial Judge framed the following issues:-

1.Whether the suit mortgage deeds are true and valid?

2.Whether the plaintiff is entitled for mortgage preliminary decree for sale as prayed?

3.To what other relief the plaintiff is entitled?

4.The plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A8. The seventh defendant-Sabari examined himself as D.W.1. No documentary evidence was adduced on the side of the defendants. During the pendency of the suit proceedings, some compromise talks took place between the parties. It appears that the plaintiff had agreed to receive a sum of Rs.18,00,000/- towards full and final settlement of all his claims. It is further stated that in terms of the said compromise, the appellant herein paid a sum of Rs.8,00,000/- to the plaintiff. They were to pay the balance amount of Rs.10,00,000/- within two months thereafter. It appears that there was some delay on the part of the appellants in paying the balance amount within the stipulated time. When eventually the appellants came to pay the said amount, the plaintiff refused to receive the same. In these circumstances, the Court below passed the impugned Judgment and decree dated 30.07.2020 giving credit to the aforesaid payment of Rs.8,00,000/-. The decree was passed directing the defendants to pay a sum of Rs.12,52,182/- with interest at the rate of 6% per annum with effect from 13.02.2018 till the date of decree and further interest at the rate of 6% on the said sum. Questioning the same, this appeal has been filed.

5.Though notice has been served on the plaintiff and his name is also printed in the cause list, there is no appearance on his behalf. The only question that arises for my determination is as to whether the Court below was right in directing the defendants to pay interest at the rate of 6% per annum on the sum of Rs.12,52,182/-, when admittedly the principal mortgage debt was only Rs.8,75,000/-. The answer this point for determination lies in Section 34 of C.P.C. Section 34 of C.P.C., reads as follows:-

> "34. Interest (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of

the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit."

6.Therefore, the Court below could have directed the defendants to pay interest not exceeding 6% per annum only on the principal sum. The principal sum in this case is admittedly Rs.8,75,000/-. The amount of Rs.12,52,182/- mentioned in the decree includes interest component also. Therefore, the impugned Judgment and decree is modified. The appellants are directed to pay the sum of Rs.12,52,182/- together with interest at the rate of 6% per annum on the said sum of Rs.8,75,000/- with effect from 13.02.2018 till 30.07.2020 and with further interest at the rate of 6% per annum on Rs.8,75,000/- from the date of decree till the date of payment. The impugned Judgment is modified in the above terms. The Appeal Suit is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Additional District Court (Fast Track Court), Tenkasi.

2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai(2 copies)

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