IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2021

PRONOUNCED ON : 25.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.NO.898 OF 2012
AND
M.P.NO.1 OF 2012

1. G.Sampath Kumar
2. S.Senthil Kumar
3. S.Sathish Kumar
4. Pachaiyammal
5. Deepa

... Appellants/Defendants

Vs.

K.N.Mani Naidu

... Respondent/Plaintiff

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgment and decree, dated 30.04.2012, made in O.S.No.128 of 2010 by the Principal District Judge, Tiruvallur.

For Appellants : Mr.A.Swaminathan

For Respondent : Mr.Om Prakash
Senior Advocate
for Mr.B.Raghavulu Naidu

JUDGMENT

1.This Appeal Suit has been filed, against the judgment and decree, dated 30.04.2012, made in O.S.No.128 of 2010 by the Principal District Judge, Tiruvallur.

2.The suit was filed, seeking a preliminary decree for recovery of sum of Rs.18,67,099/- being the principal and interest due on a simple mortgage deed executed by the 1st defendant in favour of the plaintiff for a sum of Rs.7,99,500/- with subsequent interest at the rate of 12% p.a from the date of plaint till the date of realisation and for costs.

3. The case of the Plaintiff, as set out, in the plaint is that the first Defendant has received Rs.7,99,500/- from the plaintiff on 24.03.2005, by executing a registered simple mortgage deed, by mortgaging the suit property. Inspite of the repeated demands made by the plaintiff, the first defendant did not repay the mortgage amount and hence, the plaintiff issued a legal notice, dated 09.09.2010, for which the first defendant issued a reply on 17.09.2010. There was no encumbrance over the suit property. The first defendant settled the mortgaged property in favour of the second and third defendants. The defendants 2 to 5 are added as formal parties and hence, no relief can be claimed against them. In such circumstances, the suit has been filed, seeking reliefs, as stated above.

4. The case of the 1st defendant is that it is false to state that the defendants received Rs.7,99,500/- from the plaintiff. The suit is bad for misjoinder of the defendants 2 to 5. The 1st defendant has demanded a loan of Rs.40,000/- from the plaintiff during the 2nd week of January, 1997 and again the plaintiff has paid a sum of Rs.7000/- and he obtained a sale agreement from the wife of the defendant, Smt. Mangalam on 22.01.1997 for a sum of Rs.1,00,000/- as a security for the said loan at 12% p.a. After deducting Rs.47,000/- already paid to the defendant and after deducting the registration expenses of the sale agreement, the remaining amount was only to be paid to the defendant. By sale agreement dated 22.01.1997, the defendant has agreed to sell a property in favour of the plaintiff for Rs.1,50,000/- and on 22.01.1997, the defendant has received a part payment of Rs.1,30,000/- from the plaintiff towards sale consideration. Mangalam has signed another agreement in respect of the same property and the second agreement, was dated 06.01.2000 and the amount of Rs.1,00,000/- together with the interest calculated at exorbitant rates by the plaintiff at Rs.1,96,000/- was shown to be the advance/part of sale consideration and the balance amount was shown as Rs.3,04,000/- and the total sale consideration was fixed at Rs.5,00,000/- Again in order to clear off certain loans, the plaintiff has arranged for a loan of Rs.45,000/- to the defendant from one relative viz., Sarada Rajesh. As per the directions of the plaintiff, the defendant has executed another sale agreement in respect of a different property and thereby the total sale consideration was fixed at Rs.1,00,000/- and the payment made by way of loan was shown as Rs.50,000/-. Due to urgent needs of the family, the defendant was constrained to arrange Rs.2,00,000/- and hence, he tried to obtain loan from his friends. While making the claim, the plaintiff started to

convince the defendant to agree to execute a mortgage deed for a total sum, which shall include all the existing loans and dues thereon, including the sum payable to Sarada Rajesh and on such execution, the plaintiff would pay the sum of Rs.2,00,000/-. Again the plaintiff has assured to take of this loan and he promised that this loan would be repaid by the plaintiff and this amount repaid could be treated as the amount due to the plaintiff and hence, this amount was to be added with the total due amount payable to the plaintiff. Sarada Rajesh also agreed for the same. The defendant was made to execute a mortgage deed as directed by the plaintiff for a sum of Rs.7,99,500/- which included the original loan amount of Rs.1,00,000/- and the loan amount received from Sarada Rajesh is Rs.45,000/- and the rest of the amounts were expenses towards the registration of Agreement for sale as well as for the Mortgage Deed. The plaintiff did not honour his own commitments in as much as the due amount towards the loan taken from Sarada Rajesh has not been cleared by the plaintiff until now and no clearance certificate was produced. The agreement was not cancelled and the original sale deeds handed over by this defendant was not returned back to the defendant even after the execution of the mortgage deed. The plaintiff has not even returned the original documents of title in the name of Smt.Mangalam, as well as towards the loan arrangement from Sarada Rajesh. The rate of interest claimed by the plaintiff is highly exorbitant and the defendant is ready and willing to repay the principal amount with a reasonable and legally payable interest. In such circumstances, the suit is liable to be dismissed.

5.On the pleadings of the parties, issues were framed by the Trial Court. Before the Trial Court, on the side of the Plaintiff, P.W.1 was examined and Ex.A1 to Ex.A4 were marked. On the side of the Defendants, D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B5 were marked. The Trial Court had decreed the suit for a sum of Rs.18,67,099/- with interest 12% p.a. Aggrieved against the same, this Appeal Suit has been filed by the appellants.

6.This Court heard the submissions of the learned counsel on either side.

7.The learned counsel for the Appellants has submitted that the mortgage deed was executed by the first appellant for the earlier transaction without consideration. The appellants borrowed only a sum of Rs.47,000/- for family purpose. But, the respondent is claiming an exorbitant and usurious interest. Therefore, he prays to allow this appeal.

8. The learned counsel for the appellants, in support of his contentions, has relied on the following citations:

a) CDJ 1966 SC 304 – Srinivasavaradachariar Vs. Gopala Menon.
b) CDJ 1981 APHC 225 – Kanigalla Prakasa Rao Vs. Nanduri Ramakrishna Rao.
c) CDJ 2011 DHC 2118 – Geetu Lakhpat Vs. Jaipal
d) CDJ 2012 MHC 1429 – M/s.Tamil Nadu Finance Corporation Vs. K.B.Panduranagan
e) CDJ 2014 APHC 33 – Surisetty Nookarathnam Vs. Saragadam Gowri Ramalakshmi.
f) CDJ 2014 MHC 1816 - M. Kokila Vs. A. Dhanalakshmi.
g) CDJ 2014 MHC 4387 – S. Venkatesan Vs. V.Munusamy.
h) CDJ 2021 MHC 4936 – M/s. RV Media Solutions Vs. M.S. Sharavanan Proprietor M/s.Sri Green Productions.

9. The learned counsel for the respondent would submit that the appellant after receipt of the amount, has executed a simple mortgage which is a registered one. In his written statement, he agreed to repay the principal amount with reasonable interest. Even in the cross -examination, he admitted the execution of Ex.A1 and also admitted the contents stated in paragraph No.12 of the written statement. Order 34 Rule 11 is applicable to the case of the respondent in respect of payment of interest.

10. This Court considered the submissions of the learned counsel on either side and also perused the materials available on record.

11. The contention of the plaintiff is that the first defendant has received Rs.7,99,500/- from the plaintiff and executed a mortgage deed Ex.A1 dated 24.03.2005. Then, he sent a demand notice Ex.A2 dated 09.09.2010. The first defendant sent a reply notice with false statement Ex.A3 dated 17.09.2010. In the reply notice, the first defendant has admitted that he will settle the mortgage amount. Even in the written statement, the first defendant has admitted the claim and willing to repay the loan amount with reasonable interest. The defendants 1 and 2 neglected to pay the mortgage amount.

12. The contention of the first defendant is that the plaintiff is claiming an exorbitant rate of interest. As per law, he cannot make such a huge claim worked out at exorbitant rate of interest.

13. After careful perusal of the documentary evidence and the submissions made by both the learned counsel, it is seen that Ex.A1 mortgage deed is a registered document. The first defendant admitted the execution of Ex.A1. In his written statement and proof affidavit, he stated that he agreed to repay the principal amount with reasonable interest without mentioning any amount. It is the duty of the defendants to prove that Exs.B1 to B4 are relevant to this mortgage deed transactions. But, he has miserably failed to prove it. In this case, the plaintiff has proved his case by oral and documentary evidence. The trial court after perusal of oral and documentary evidence came to the proper conclusion. Therefore, no interference is warranted in this appeal and this appeal is liable to be dismissed.

14. Accordingly, this Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

gv

To

The Principal District Judge,
Tiruvallur.

Copy To

The Record Keeper/Section Officer,
VR Section,
Madras High Court.

A.S.No.898 of 2012
and
M.P.No.1 of 2012

MG(CO)
RLP(01/07/2022)