IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.NO.124/2022 & CMP.NO.2613/2022

M.Kannan

.. Appellant/ Defendant

Vs.

C.Mani

.. Respondent / Plaintiff

Prayer:-

Second Appeal preferred under 100 of CPC against the judgment and decree dated 16.12.2019 passed in AS.No.53/2017 by the learned Additional District Judge, [FTC], Arani, Tiruvannamalai District, confirming the judgment and decree passed by the learned Subordinate Judge, at Cheyyar in OS.No166/2014 dated 04.11.2016.

For Appellant : Mr.P.G.Thiyagu

JUDGMENT

(1) The defendant in the suit in OS.No.166/2014 on the file of the Sub Court, Cheyyar, is the appellant in the above Second Appeal.

(2) The respondent herein, as plaintiff, filed the suit in OS.No.166/2014 for recovery of money due on a mortgage from the defendant and for bringing the property for auction to recover the money by passing a preliminary decree in case the defendant failes to pay the mortgage amount with interest.

(3) The case of the plaintiff is as follows. The suit property belongs to the defendant. The defendant executed a Mortgage Deed on 13.08.2002 by receiving a sum of Rs.1,25,000/- for his family expenses and agreed to pay

interest @ 24% per annum. The Mortgage Deed is registered before the Sub Registrar of Sethupet, as Doc.No.963/2002. Despite repeated requests by the plaintiff to the defendant to discharge the mortgage debt, the defendant did not pay any money either towards principal or interest to the plaintiff. Though a pre-suit notice was issued to the defendant through the plaintiff's Advocate on 23.07.2014, the defendant neither responded nor come forward to settle the debt. It is also contended by the plaintiff' that the defendant had sufficient funds available with him in cash and that the defendant's son is employed in abroad and that, the defendant is therefore is not entitled to benefits of any debt relief acts.

(4) The suit was contested by the defendant by filing a written statement disputing the whole case of the plaintiff in the plaint. Firstly, the Mortgage Deed is described as a fraudulent document. According to the defendant, the document of Mortgage referred to in the plaint, was fraudulently obtained from him without paying any money. It is also stated that the said document was obtained by coercion. From the averments in the written statement, it is seen that a different version was given by the defendant. It is the case of the defendant that the defendant introduced his relative one Balaraman to the plaintiff who was searching to buy a house site. Stating that the plaintiff was made to pay a sum of Rs.45,000/- to one Duraisamy, a land owner in anticipation of selling the property and that the transaction did not fructify due to other reasons, the plaintiff wanted the defendant to reimburse the money which he had paid a sum of Rs.45,000/- with the hope of getting the Sale Deed in respect of a property by a third party. Since the defendant had introduced a stranger to the plaintiff, it is stated by the defendant that the plaintiff coerced him to execute the Mortgage Deed as a security for the amount which was paid by the plaintiff to a third party. It is also stated that the defendant also repaid the entire money which was payable to the plaintiff and the plaintiff, however, laid the suit with a false claim. The defendant therefore, prayed for dismissal of the suit.

(5) The Trial Court, after framing necessary issues, found that the defendant has not proved his case that the Mortgage Deed was obtained by the plaintiff by fraud or coercion. It is admitted that the Mortgage Deed was executed on 13.08.2002. Since the defendant did not take any steps to cancel the Mortgage Deed, the case of the defendant that he was coerced and compelled by the plaintiff to execute the mortgage, was disbelieved by the Trial Court. Since the plaintiff has proved the execution of the Mortgage Deed by calling upon one of the attestors,

the Trial Court held that the plaintiff has proved the mortgage and therefore, decreed the suit as prayed for. Aggrieved by the judgment and decree of the Trial Court, the defendant preferred an Appeal in AS.No.53/2017 on the file of the learned Additional District Judge, [FTC], Arani, Tiruvannamalai. The Lower Appellate Court also concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent judgments and decrees of the Court below, the above Second Appeal is preferred by the defendant.

(6) The learned counsel for the appellant raised the following substantial questions of law in the Second Appeal:-

(a) Whether the Court below ought to have properly appreciated and applied the principles to find out the plaintiff is entitled for recovery of money, in the view of the facts and circumstance of the present case?

(b) Whether the Lower Appellate Court has not erred in considering the sequence of the facts corroborating evidence let by the appellant side witness?''

(7) The learned counsel for the appellant submitted that the Courts below have not considered the proximities and probabilities of the case in the light of pleading and the Courts below have misdirected themselves both on facts and law without an application of mind. The learned counsel submitted that the plaintiff has not come forward with the suit for more than 12 years and that the suit is liable to be dismissed on the ground that the transaction alleged by the plaintiff is improbable, as the plaintiff would have come and filed the suit earlier in case the transaction as such is true and the plaintiff's claim is a bona fide one. The learned counsel further submitted that the defendant though admitted the execution of the Mortgage Deed, has specifically denied the nature of transaction and the intention behind the transaction which was reduced into writing as a Mortgage Deed. Since the appellant/defendant was forced, coerced and intimidated by the plaintiff, the signature of the appellant/defendant was forcibly obtained in the document. When the appellant has specifically pleaded about the coercion and intimidation by the plaintiff, the Courts below have failed to render a definite finding based on the evidence adduced by the appellant / defendant in the suit. The grievance of the learned counsel is also that the evidence of the witnesses examined by the defendant's side was not considered by the

Courts below.

(8) This Court is unable to appreciate any of the submissions of the learned counsel for the appellant.

(9) Firstly, the Mortgage Deed is a registered one and it is not a document which can be completed by mere signature of the defendant. The Mortgage Deed had been registered and the presumption under Section 114 of the Indian Evidence Act, will be against the defendant's version which is not sufficient to rebut such presumption. The limitation for filing a suit to recover the amount due under a mortgage is 12 years. It is common to note that a plaintiff in a mortgage suit normally will wait until eleventh hour and it is no wonder the suit is laid nearly 11 years after the suit mortgage. The mortgage suit cannot be dismissed on the ground of delay or laches if it is not barred by limitation. Since the loan is secured by mortgage, there is no abnormality in filing the suit taking advantage of period of limitation.

(10) When the defendant has raised the plea that he was forced, compelled or coerced to execute a registered Mortgage Deed, the normal attitude of the appellant/defendant would be to approach the Court to set aside the transaction on the ground that it is vitiated by fraud or coercion. Under Section 19 of the Indian Contract Act, if consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is voidable and not void. Therefore, when the defendant comes forward with a plea that the Mortgage Deed was obtained by fraud or coercion or misrepresentation, it is for him to approach the Court to seek appropriate relief. The necessary corollary is that the defendant who has failed to come forward with the prayer to set aside the Mortage Deed on the ground of coercion cannot defend the suit ignoring the legal consequences that would follow when a suit for mortgage is filed.

(11) The learned counsel for the appellant though relied on some of the portions of evidence where the previous transaction between one Duraisamy and the plaintiff was referred to, the suit mortgage appears to be independent and the defendant miserably failed to prove any connection between the transaction which the defendant had referred to in the written statement and the suit mortgage which was executed when defendant borrowed the loan from the plaintiff as recited in the Mortgage Deed. Though the defendant has pleaded a panchayat and other events, absolutely there is no proof except the ipsi dixit of the defendant and one witness which was considered and rejected by the Courts below. The question whether the Mortgage Deed was executed by coercion is a pure question of fact and both the Courts below have concurrently held

that the defendant had signed the Mortgage Deed knowing fully well the consequences thereof. Since the document is a registered one and the signature of the defendant is admitted, this Court is unable to come to a different conclusion than the one reached by the Courts below.

(12) In addition to the special feature that there is no sufficient evidence to prove the case of the defendant, the defendant had not taken any step to challenge the Mortgage Deed by filing an independent suit. It is not the case of the defendant that the coercion or compulsion continued even after the execution of Mortgage Deed till the suit was filed for recovery of money due on mortgage. Therefore, the defendant cannot sustain his plea without filing suit either to declare the transaction as void one or to set aside the Mortgage Deed on the ground that his consent was obtained by misrepresentation or coercion.

(13) In view of the facts admitted and the factual findings of the Courts below on all the issues, this Court is unable to find any merit in any of the substantial questions of law raised by the appellant.

(14) In fine, this Second Appeal is dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Additional District Judge, [FTC], Arani,
   Tiruvannamalai District.

2. The Subordinate Judge,
   Cheyyar.

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

+1cc to Mr.P.G.Thiyagu, Advocate, S.R.No.13178

SA.No.124/2022

SS(CO)
PM/01/06/2022