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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2022

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

S.A.No.760 of 2012

1. N.Jothi

2. L.Nagarajan

...Appellants

Vs.

1. K.Muthusamy

2. M.Santhi

3. Minor Sathya Lalitha

4. Minor Nandeeswaran

(Minors represented by Mother and
Guardian M.Santhi)

...Respondents

PRAYER:Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 12.01.2012 made in A.S. No.26 of 2010 on the file of the Principal District Court, Salem, modified by the Judgment and Decree dated 12.01.2010 made in O.S.No.177 of 2003 on the file of the Principal Sub Court, Salem.

For Appellants : Mr.T.Murugamanickam
Senior Counsel
Assisted by
Zeenath Begum

For Respondent1 : Mrs.G.Thilakavathi,
Senior Counsel
for Mr.R.Gopinath

For Respondent 2: No Appearance (Notice Served)

JUDGMENT

The 5th and 6th defendants are the appellants in this Second Appeal. The first respondent/plaintiff filed a suit for recovery of money against the defendants 1 to 4. The case of the plaintiff is that he had lent a sum of Rs.2,00,000/- (Rupees two lakhs only) to the first defendant and his son R.Mani on



07.12.1996 and this amount was paid by way of cheque. The promissory note was also executed in favour of the plaintiff and this document was marked as Ex.A.1. That apart, the above said R.Mani also created a mortgage by deposit of title deeds on 08.12.1996 and the document through which this mortgage was created, has been marked as Ex.A.2. By virtue of this document, the original sale deed in the name of R.Mani and the parent document were handed over to the plaintiff. The further case of the plaintiff is that the loan amount was paid only up to 06.02.2000 and thereafter, the first defendant committed default in repayment of the loan amount.

2.It is stated that the above said R.Mani died on 09.06.2002 leaving behind his father, the first defendant, his wife, the second defendant and his children, who are the defendants 3 and 4. Since the amount was not repaid back, the plaintiff proceeded to file the mortgage suit.

3.The suit was effectively contested only by the defendants 5 and 6 who are the appellants herein. The appellants are the subsequent purchasers of the property which was sold to them by R.Mani through two registered sale deeds dated 12.06.2001 and 13.06.2001 which are marked as Exs.B.1 and B.5. According to the defendants 5 and 6, they are bonafide purchasers and they were not aware about the loan transaction between the parties. They have also taken a stand that originally the title deeds were handed over to them and they gave it back to the above said R.Mani for taking photocopy and it was never returned back. However, subsequently, they came to know about the documents being used to create a mortgage in favour of the plaintiff. The defendants 5 and 6 have therefore sought for the dismissal of the suit.

4.Both the courts below dealt with the oral and documentary evidence and took into consideration the facts and circumstance of the case and found that the plaintiff had made out a case for recovery of money. This was more so since the defendants 1 to 4 chose not to contest the case. Even otherwise, the documents filed by the plaintiff establishes the borrowal of the money and execution of the promissory note. The courts below thereafter went into the issue raised by the defendants 5 and 6 to the effect that they are bonafide purchasers. Both the courts found that the defendants 5 and 6 are not bonafide purchasers for the simple reason that they have purchased the property even without insisting for handing over the original documents. The courts below also appreciated the evidence of the fifth defendant, who was examined as D.W.1.

5.On a careful consideration of the evidence and the facts and circumstances of the case, both the courts below



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concurrently found that D.W.1 was contradicting herself in the course of evidence and the theory propounded by the defendants 5 and 6 that the original document was handed over to R.Mani one week prior to the purchase of the property was also found to be incorrect.

6.Learned counsel for the appellant read through the judgment of both the trial court as well as the first appellate court and submitted that the finding of the both the courts below is perverse and requires the interference of this Court.

7.In the considered view of this Court, both the courts below have appreciated the oral and documentary evidence put forth before the Court. The reasoning given by both the Courts below cannot be termed to be improper or illegal and both the courts below have assigned reasons before giving their findings. This Court does not find any perversity in the finding rendered by both the courts below. This Court cannot re-appreciate the evidence in exercise of its jurisdiction under Section 100 of Civil Procedure Code.

8.In view of the above, this Court does not find any ground to interfere with the judgments and decrees of both the courts below and there is no substantial question of law involved in the present appeal.

9. In the result, the second appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr/rgi

To

1. The Principal District Court, Salem

2. The Principal Sub Court, Salem

+1cc to M/s.Zeenath Begum, Advocate, S.R.No.8554

+1cc to Mr.R.Gophinath, Advocate, S.R.No.8707

S.ANo.760 of 2012

SS(CO)

RGA(31/03/2022)