

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :12.11.2021

PRONOUNCED ON : 21.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.74 of 2014
MP.Nos.1 and 2 of 2014

(Through Video Conferencing)

R.Ahmed Basha

Appellant/Plaintiff

Vs

1.C.Sekar
2.C.Balan
3.M.Manivannan
4.E.Sugumar
5.M.Manivasagam
6.P.A.Samiyappan
7.M.Shanmuga Sundaram
8.S.Senthamizhselvan
9.R.Nageswaran
10.D.Dhanasekaran

Respondents/Defendants

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC against the judgement and decree, dated 12.04.2013 passed in OS.No.53 of 2011 by the II Additional District Court, Salem.

For Appellant :Mrs.Hema Sampath, SC

For Respondents :Mr.P.Jagadeesan-R1

:Mr.D.Sivakumaran-RR2 to 10

JUDGEMENT

1.This Appeal Suit has been filed, against the judgement and decree, dated 12.04.2013, passed in OS.No.53 of 2011, by the II Additional District Court, Salem.

2. The case of the Plaintiff is that both the parties are carrying on the business in silver ornaments. The 1st Defendant had borrowed a sum of Rs.12,00,000/- from the Plaintiff and executed a promissory note dated, 24.4.2008 for the said sum, agreeing to repay the same with interest at 1% per men sum and also deposited his original title deeds, dated 29.8.1986 in respect of the suit property on 25.4.2008, creating an equitable mortgage and executed a Memorandum on that date to that effect. The 1st Defendant did not pay any amount. However, the 1st Defendant had sold the suit property to the Defendants 2 to 10 on 20.7.2010 and hence, they are also liable to pay the amounts claimed from and out of the mortgaged property. A legal notice, dated 17.2.2011 was issued to the Defendants. Since the Defendants failed to pay any amount, the suit had been filed, to pass a judgement and decree, directing the Defendants to deposit into the Court a sum of Rs.16,34,000/- with future interest and if the Defendants failed to deposit the amount, directing realization of the same by the sale of the suit property and to pass a personal decree against the 1st Defendant for the above said sum with future interest and for costs.
3. The case of the 1st Defendant is that both the Plaintiff and the 1st Defendant are doing business in silver ornaments. He did not borrow Rs.12,00,000/- from the Plaintiff on 24.4.2008, by executing a promissory note, deposit his title deeds with the Plaintiff on 25.4.2008 and execute a memorandum on 25.4.2008, as alleged by the Plaintiff. During the course of their business, he had requested the Plaintiff to give silver, for which he agreed, but he wanted 50 grams of silver as interest. The Plaintiff wanted security and took the title deeds from this Defendant relating to his properties and also that of his mother and took his signatures in blank papers, blank stamp papers and on pronote forms. As on May 2004, this Defendant was liable to pay the value of 35 kilos and 725 grams of silver. This Defendant, his brothers and their mother had sold their land, measuring 71 cents, under the sale deed, dated 28.07.2006. Thereafter, the Plaintiff had fabricated the suit documents. The Plaintiff is liable to pay the value of 42.175 kg of silver. Only to defeat the claim of this Defendant, the suit had been filed. Hence, the suit is liable to be dismissed.
4. The case of the 6th Defendant and adopted by the Defendants 2 to 5 and 7 to 10 is that they were not aware of the transaction between the Plaintiff and the 1st Defendant. The 1st Defendant along with others had executed a Power of Attorney, dated 16.9.2008 in respect of the property in S.No.15/6, measuring 0.71 acres of land and other property in favour of one

Balasubramaniam. Anjalai and others have executed another Power of Attorney, dated 10.12.2009 in favour of Balasubramaniam in respect of the property in S.No.9/2A measuring 0.51 acres of land. The Defendants 2 to 10 had purchased the property in S.No.15/6, measuring 0.71 acres of land and other property by virtue of a sale deed dated 28.7.2010. The Defendants 2 to 10 had purchased the property in New S.No.9/2A measuring 0.51 acres of land along with other property by virtue of the sale deed dated 16.7.2010. Defendants 2 to 10 purchased another portion of property in new S.No.9/2B measuring 0.49 ½ acres of land along with other property by virtue of a sale deed dated 5.8.2010. At the time of purchase, the Defendants asked the power agent Balasubramaniam about the original sale deed, dated 29.8.1986 registered as Doc.No.1635/1986 and the power agent said that he had misplaced the same. However, it is written in the sale deed dated 28.7.2010 that the original sale deed dated 29.8.1986 and another documents were handed over to the Defendants 2 to 10 at the time of sale. The Defendants 2 to 10 are the bona fide purchasers. The suit is liable to be dismissed as devoid of merits.

5. On the pleadings of the parties, issues were framed. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A22 were marked and PW.1 and PW.2 were examined. On the side of the Defendants, Ex.B1 to Ex.B6 were marked and DW.1 and DW.2 were examined. The Trial Court had passed a judgement and decree, directing the 1st Defendant to pay a sum of Rs.16,34,000/- with future interest with costs to the Plaintiff, in default, the property comprised in S.No.9/2 to an extent of 1.49 acre, in Valappady Sub Registrar District, Periyakrishnapuram Village, Salem would be brought for sale for realisation of the amount and dismissing the suit in respect of the Defendants 2 to 10 and S.No.15/6 to an extent of 71 cents in Valappady Sub Registrar, Periyakrishnapuram Village, Salem. Aggrieved against the same, this Appeal Suit had been filed by the Plaintiff.
6. This Court heard the submissions of the learned counsel on either side.
7. The learned counsel for the Appellant has submitted that the Defendants 2 to 10 are not the bona fide purchasers and that the 1st Defendant had mortgaged the suit property with the Appellant and deposited the original title deeds and also executed a Memorandum of Deposit of Title Deeds and that since the original title deeds are with the Appellant, without verifying the original title deeds, the purchase of the mortgaged property by the Defendants 2 to 10 are not a bona fide one and that to defeat the rights of the Appellant, the sale was made and hence, it cannot be said that it is a bona

fide purchase, as they purchased the mortgaged property and that they are enjoying the same and hence, they are liable to pay the amount claimed from and out of the mortgaged property, namely, the property in S.No.15/6 and that the court below erred in analysing all the facts and hence, this appeal ought to be allowed.

- 8.The learned counsel would rely on the decisions reported in 2000 (6) SCC 402 : 2000 SCC Online SC 995 (R.K.Mohammed Ubaidullah and Others Vs. Hajee C.Abdul Wahab (D) by Lrs & Others), 2011 SCC Online Del 3353 (Sh.Rajesh Aggarwal Vs. Sh.Jasbir & Another), AIR 1965 SC 1591 (United Bank of India Ltd., Vs. Messrs Lekharam Sonaram and Co. & Others), 1986 SCC Online Mad 19 : (1987) 100 LW4 : AIR 1987 Mad 108 (H.G.Nanjappa Vs. M.F.C. Industries (P) Ltd., rep by its Director in charge V.Sivaprasad, Ootacamund) and 2002 SCC Online Mad 490 : (2002) 5 CTC 184 : AIR 2003 Mad 46 (Chinnasamy Vs. Subakmul Gulecha & Another).
- 9.The contention of the Respondents 2 to 10 is that they are the bona fide purchasers and that they were not aware anything about the transaction between the Appellant and the 1st Defendant and that they are not liable to pay any amount and that the court below had properly analysed all the documents and rightly dismissed the prayer, against the Plaintiff and therefore, this appeal is liable to be dismissed.
- 10.This Court considered the rival submissions of the learned counsel on either side and also perused the materials available on record.
- 11.The Plaintiff filed the suit for recovery of Rs.16,34,000/- from the Defendants with future interest and costs and if the Defendants failed to deposit the amount to direct the sale of the suit mortgaged properties for realizing the amount and for a personal decree against the first Defendant.
- 12.The suit was decreed in part, directing the 1st Defendant to pay a sum of Rs.16,34,000/- with future interest with costs to the Plaintiff, in default, the property comprised in S.No.9/2 to an extent of 1.49 acre, in Valappady Sub Registrar District, Periyakrishnapuram Village, Salem would be brought for sale for realisation of the amount. The suit was dismissed, in respect of the Defendants 2 to 10 and in respect of the property in S.No.15/6 to an extent of 71 cents in Valappady Sub Registrar, Periyakrishnapuram Village, Salem.
- 13.It is admitted by DW.2 in his cross examination that the Defendants 2 to 10 had purchased the suit property without verifying the original title deeds. Since the property was mortgaged with the Appellant, the purchase of the same cannot be said that it is a bona fide purchase. Since they are enjoying the property, they are liable to pay the amount due to

the Appellant.
14.In fine, this Appeal Suit is allowed. No costs. Consequently,
the connected MPs are closed.

21.02.2022

Srcm

For Being Mentioned

This First Appeal having been listed under the caption for "Being Mentioned" on Tuesday, Fifth July Two Thousand and Twenty Two upon perusing the earlier order dated 21.02.2022 made herein and in the presence of Mrs.Hema Sampath Senior Counsel for M/s.R.Meenal, Advocate for the Appellant herein and Mr.P.Jagadeesan, Advocate for the first respondent and Mr.D.Sivakumaran, Advocate for the Respondents 2 to 10 and this Court made the following order:

1.The above first appeal was allowed by this Court by the Judgement dated 21.02.2022 and it is posted today for being mentioned.

2.In the judgement, dated 21.02.2022, paragraph 14 shall be replaced with the following:-

"14.In fine, this Appeal Suit is allowed. Three months time is granted to the Defendants 2 to 10 for payment of decree amount to the plaintiff. No costs. Consequently, the connected MPS are closed".

3.The Registry is directed to issue copies, after carrying out the necessary amendment.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The II Additional District Court,
Salem

Copy to:

The Record Keeper,
VR Section, Madras High Court.

+1cc to Mr.D.Shivakumar, Advocate SR.No.11883

+1cc to M/s.R.Meenal, Advocate SR.No.11469

+1cc to Mr.P.Jagadeesan, Advocate SR.No.11339

AS.No.74 of 2014
MP.Nos.1 and 2 of 2014

RSI (CO)
CB(25/07/2022)