THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

A.S.No.269 of 2016
and
C.M.P.Nos.4389 of 2016, 10906 and 10916 of 2023

Kalyanasundaram ...Appellant

Vs.

1.M/s.Kiran Builders,
Rep. by its Proprietor Shankaran,
Plot No.3, Kiran Gardens,
No.1544, Ram Nagar,
Anna Nagar, Chennai – 600 101.

2.Sankaran

3.Karthick

4.Amudha

5.The Manager,
State Bank of India,
Monteith Road Branch Office,
Egmore, Chennai – 600 008.

6.The City Case Officer,
State Bank of India,
Red Cross Building 2nd Floor,
32, Monteith Road Branch Office,
Egmore, Chennai – 600 008. ...Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure to set aside the judgment and decree made in O.S.No.62 of 2015 on the file of the III Additional District Judge, Poonamallee.

For Appellant : Mr.V.Raghupathi

For Respondents : Mr.M.L.Ganesh for R5 and R6
R1 to R4 – No appearance

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JUDGMENT

(Judgment of the Court was made by **R.SUBRAMANIAN, J.)**

The sole plaintiff in O.S.No.62 of 2015 is on appeal, aggrieved by the dismissal of his suit for declaration of title to the 'B' schedule property which is undivided share in 'A' schedule property, for 'C' schedule flat and for recovery of possession of 'B' and 'C' schedule property, to declare the sale deed dated 06.03.2023 executed by one Sankaran as the power of attorney of the original owners conveying the undivided share in the 'B' schedule property to M/s. Karthi and Amudha as null and void, to declare the possessory mortgage executed by the said purchasers viz., the defendants 3 and 4 in favour of the 5th defendant on 24.04.2003 is null and void and for recovery of mesne profits.

2. According to the plaintiff, the original owner of the property entered into an agreement of sale with M/s.Kiran Builders, the 1st defendant, represented by its Proprietor Sankaran for development of the property on 06.02.2002. Pursuant to the said agreement, the power of attorney document was executed by the original owners in favour of Mr.Sankaran. One Mr.Chelladurai had entered into an agreement of sale on 06.02.2002 with the builder/ 1st defendant for purchase of certain undivided share along with a flat. The said Chelladurai obtained a sale deed also and thereafter he sold the apartment along with the undivided share to the plaintiff 11.10.2011. When the plaintiff was in possession of the property, he was evicted by the 5th defendant Bank on 10.08.2012 purportedly in exercise of power vested in it under the SARFAESI Act on the ground that valid mortgage has been created in its favour on 24.04.2003 by the defendants 3 and 4 viz., the purchasers from Sankaran under the sale deed dated 06.03.2003.

3. After obtaining the documents from the 6th defendant viz., the officer in-charge of the Stressed Assets Recovery Branch of the State Bank of India, the plaintiff discovered that a fraud has been played by Sankaran in selling the property twice. According to the plaintiff, his vendor being the purchaser earlier to the defendants 3 and 4 would be entitled to property and the sale by Sankaran on 06.03.2003 will not cloth the defendants 3 & 4 with any title. It was also contended that the 5th defendant Bank had colluded with the other defendants in creation of the mortgage and the subsequent action taken. All the defendants in the suit remained exparte.

4. The trial Court however dismissed the suit on the ground that the plaintiff has not produced the documents filed in the original application before the Debt Recovery Tribunal and on the ground that the Debt Recovery Tribunal has passed a recovery certificate against the defendants 3 and 4 for payment of Rs.10,34,916/-. The failure on the part of the plaintiff to produce those documents was also cited as a reason for dismissal of the suit. Hence, this appeal.

5. Pending this appeal, the Bank had prosecuted the matter before the

Debt Recovery Tribunal in O.A.No.1 of 2013. The Debt Recovery Tribunal III by its order dated 4th October 2018 has held that the mortgage created by the defendants 3 and 4 in the present suit, who figured as defendants 1 and 2 before the Debt Recovery Tribunal in favour of the Bank is not valid and hence, there cannot be a decree against the property. The Debt Recovery Tribunal granted only a personal decree against the defendants 1 and 2 therein who figure as defendants 3 and 4 in the present suit.

6. As against the said order of the Debt Recovery Tribunal the Bank preferred an appeal to the Debt Recovery Appellate Tribunal in R.A.No.188 of 2018. The said appeal was allowed in part. However, the finding of the Debt Recovery Tribunal that the mortgage is invalid was confirmed by the Debt Recovery Appellate Tribunal also. In the light of the orders passed by the Debt Recovery Appellate Tribunal, the learned counsel for the Bank had undertaken to handover possession to the appellant and also had handed over possession to the appellant on 03.08.2023. That factum of handing over possession has been recorded by us by our order dated 09.08.2023. Since some of the respondent remained un-served we had ordered publication in one issue of "Maalai Malar" and the publication has also been effected. Hence, all the respondents in the appeal have been served as on today.

7. The appellant has filed a petition in C.M.P.No.10916 of 2023 seeking to produce the orders of the Debt Recovery Tribunal as the additional documents. These orders of the Debt Recovery Tribunal which were passed after the filing of this appeal would throw light on the right of the appellant and are conclusive proof of the fact that right claimed by the defendants 3 and 4 over the property based on the sale deed executed by Sankaran dated 06.03.2003 has been held to be bad after a judicial process.

8. Hence, we find that these two documents viz., the order of the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal could be received in evidence since they would aid us in determining the controversy in the appeal. We do not see any necessity for further oral evidence since they are orders of Tribunal delivered after hearing the parties. Hence, this application in C.M.P.No.10916 of 2023 is allowed. The two documents viz., order of the Debt Recovery Tribunal dated 04.10.2008 and Debt Recovery Appellate Tribunal dated 16.03.2023 are received in evidence and are marked as Exs.A9 and A10. The other documents viz., the representation made by the petitioner to the 5th respondent Bank and the reply as well as the Encumbrance Certificate filed as document No.8 are considered as unnecessary. Hence, this application in C.M.P.No.10916 of 2023 will stand **allowed** only in respect of two orders of the Tribunal viz., the document Nos. 4 and 5 only.

9. Advering to the appeal, since now that the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal have concluded that the sale in favour of the respondents 3 and 4 by Sankaran is invalid and possession has also been handed over to the appellant herein, we set aside the judgment and decree of the trial Court. The appeal will stand **allowed**, there will be a declaration of title of the plaintiff in respect of the 'B' schedule undivided share and 'C' schedule flat. The sale deed dated 06.03.2003 is declared to be null and void. Consequently the mortgage by defendants 3 and 4 in favour of the first defendant on 24-04-2003 is declared void. The prayer in respect of mesne profits will stand rejected. As regards the prayer for possession, we have already recorded that the Bank has handed over possession to the appellant. No costs. Consequently, the other connected miscellaneous petitions in C.M.P.Nos.4389 of 2016, 10906 of 2023 are closed.

(R.S.M.,J.) (N.S.,J.)
18.10.2023

dsa
Index :No
Internet :Yes
Neutral Citation :No
Speaking order
To

The III Additional District Judge,
Poonamallee.

R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

dsa

A.S.No.269 of 2016

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