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S.A.(MD)No.403 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A.(MD)No.403 of 2023

and

C.M.P(MD)No.8756 of 2023

Gokulam Chit & Finance Company Limited
through its Managing Director,
Having Office at Door No.66,
Sri Gokulam Towers,
Arcot Road, Kodambakkam,
Chennai – 600 024.

... Appellant/Appellant/1st Defendant

Vs.

1.S.Chellappa

... 1st Respondent/1st Respondent/Plaintiff

2.N.Chidambaranathan

... 2nd Respondent/2nd Respondent/
2nd Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to allow the Second Appeal by setting aside the judgment and decree dated 21.12.2021 made in A.S.No.56 of 2020 on the file of the Additional District and Sessions Judge (FTC), Tenkasi, confirming the judgment and decree dated 07.02.2020 made in O.S.No.28 of 2019 on the file of the Principal Subordinate Judge, Tenkasi.

For Appellant : Mr.B.Brijesh Kishore



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JUDGMENT

This Second Appeal is filed against the judgment and decree dated 21.12.2021 made in A.S.No.56 of 2020 on the file of the Additional District and Sessions Judge (FTC), Tenkasi, confirming the judgment and decree dated 07.02.2020 made in O.S.No.28 of 2019 on the file of the Principal Sub Judge, Tenkasi.

2. The brief facts of the case:

The appellant is the first defendant in O.S.No.28 of 2019 on the file of the Principal Sub Court, Tenkasi. The first respondent/plaintiff has filed the said suit against the defendants 1 to 2 to cancel the equitable mortgage deed dated 26.02.2016 executed by the plaintiff on behalf of the second defendant in favour of the first defendant in respect of suit property towards security of chit loan of Rs.5,00,000/- obtained by the second defendant. The plaintiff asked the second defendant to return the documents by cancelling the mortgage deed, the second defendant refused. Therefore, the plaintiff approached the first defendant and offered to repay the security chit amount of Rs.5,00,000/- and demanded to return his deeds, the first defendant refused. hence, the plaintiff filed the suit against the defendants by depositing Rs.5,00,000/- into Trial Court.



Hence, the second defendant is yet liable to pay Rs.21,50,000/- with subsequent penalty. If the plaintiff and the second defendant repay the sum, the first defendant is ready to return the deed.

6. On perusal of records, it is clear that the plaintiff has executed the equitable mortgage in question only for Rs.5,00,000/- in favour of the first defendant towards security of the chit amount availed by the second defendant. The said mortgage deed is marked as Ex.A.1 and the recitals of the same would show the above fact. To show genuineness, the plaintiff has deposited the dispute amount of Rs.5,00,000/- into the Court.

7. On perusal of judgments of both Trial Court as well as First Appellate Court it is clearly discussed that D.W.1 admitted in his evidence that there is no chit transaction between the plaintiff and the first defendant. Ex.A.1 is executed by the plaintiff for Rs.5,00,000/- only as collateral security on behalf of the second defendant. In such circumstances, the first defendant has no reason to retain the documents deposited by the plaintiff on the allegation that the second defendant has further availed two chit amounts. On perusal of appeal grounds in this Second Appeal there is no valid ground and under what reason the



Ex.A.1 equitable mortgage is needed to the first defendant for the dues payable by the second defendant. When the Ex.A.1 is executed only for limited amount of Rs.5,00,000/- and that too the same was deposited by the plaintiff into Court, to show his genuineness, there is *prima facie* no question of law arisen in this Second Appeal against the concurrent findings of the Court below. Therefore, considering the above facts and circumstances, this Court is of the opinion that this Second Appeal is liable to be dismissed in the admission stage itself.

8.At this stage, the learned counsel for the appellant requested this Court to grant leave to proceed against the second respondent/2nd defendant to recover the remaining amount payable by him. The second respondent remained ex-parte before the trial Court. The appellant is at liberty to proceed against the second respondent/second defendant in the manner known to law and as per law to recover the remaining amount payable by him. The learned counsel for the appellant has also requested to grant permission to withdraw the deposited amount before the trial Court. Since the trial Court itself has granted permission to withdraw the deposited amount on conditions no separate order is required to be passed by this Court.



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9. In the result, as there is no substantial question of law involved in this appeal, this Second Appeal is dismissed at the admission stage itself. No costs. Consequently, connected Miscellaneous Petition is closed.

30.08.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

vsd

To

- 1.The Additional District and Sessions Judge (FTC),
Tenkasi.
- 2.The Principal Subordinate Judge,
Tenkasi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

ORDER MADE IN
S.A.(MD)No.403 of 2023
and
C.M.P(MD)No.8756 of 2023

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