



S.A(MD)No.596 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.596 of 2014

and

M.P(MD)No.2 of 2014

Santhi

... Appellant/Appellant/Plaintiff

Vs.

1.The Karur Vysya Bank Ltd.,
represented by its Authorized Officer,
Madurai Division,
Divisional Office,
P.B.No.47, Ganathiri Illam,
16, A.A.Road, 3rd Floor,
Gnanaolipuram,
Madurai.

2.The Branch Manager,
Karur Vysya Bank Ltd
Nagercoil Branch,
Veppamoodu Junction, Cape Road,
Now Court Road, Nagercoil,
Nagercoil Village,
Agatheeswaram Taluk,
Kanyakumari District.

... Respondents/Respondents
/Defendants



S.A(MD)No.596 of 2014

PRAYER :-

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This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment, dated 12.02.2013 made in A.S.No.72 of 2011 on the file of the II Additional Subordinate Judge, Nagercoil, confirming the judgement and decree, dated 29.07.2011 made in O.S.No.1183 of 2004 on the file of the II Additional District Munsif, Nagercoil.

For Appellant : Mr.P.Thiagarajan
For R1 : Mr.J.Alaguram Jothi
For R2 : No Appearance

JUDGMENT

The appellant herein filed a suit for injunction restraining the respondents from taking forcible possession of the suit property from the plaintiff. The suit was dismissed by the trial Court. Aggrieved by the same, the appellant filed an appeal and the first Appellate Court affirmed the findings of the trial Court. Therefore, the appellant was constrained to approach this Court by way of Second Appeal.

2. According to the appellant, the suit property originally belonged to her husband Bhoothalingam. On 31.03.1992, the said Bhoothalingam had executed a sale deed in favour of the appellant and from that date onwards,



S.A(MD)No.596 of 2014

she was in possession and enjoyment of the suit property, as absolute owner by paying property tax to the Nagercoil Municipality. It was further averred that the relationship between the appellant and her husband Bhoothalingam was strained and they got separated. Subsequently, the husband of the appellant stood as guarantor and offered the suit property as a security to the respondent's Bank. It was also averred that subsequent to sale by Bhoothalingam in favour of the appellant, he had no authority to offer the suit property as security to respondent Bank. It was further averred that on 30.10.2004, the officers of the respondent Bank visited the suit property and informed the appellant that they propose to take possession of the suit property on 04.11.2004 in connection with the loan obtained by one Krishnan. In these circumstances, the appellant herein filed a present suit for injunction as prayed for.

3. The respondent Bank filed a written statement denying the averment of the appellant that she got separated from her husband. It was specifically averred that the sale deed allegedly executed by Bhoothalingam in favour of the appellant was not a valid document. It was also averred that the respondent Bank had taken proceedings under SURFAESI Act. Under the



S.A(MD)No.596 of 2014

provision of the Act, the respondent Bank is entitled to take possession of the suit property, since it was offered as security for loan availed by friend of Bhoothalingam. The respondent also had taken a stand that the suit filed by the appellant was barred under SURFAESI Act.

4. The trial Court on appreciation of oral and documentary evidence available on record, dismissed the suit. Aggrieved by the same, the appellant filed an appeal in A.S.No.72 of 2011 on the file of the Additional Sub Court, Nagercoil. The first Appellate Court affirmed the findings of the trial Court. Aggrieved by the same, the appellant is before this Court.

5. The learned counsel for the appellant submitted that after marriage of the appellant with Bhoothalingam, there was a strained relationship between the appellant and her husband Bhoothalingam, who sold away all the jewels of the appellant and led a wavered life. Therefore, as per the instructions of the Mediator, an agreement was entered into. As per the terms of family settlement, Bhoothalingam had executed the sale deed, in respect of the suit property in favour of the appellant, to compensate the sale of jewels of the appellant by said Bhoothalingam. Subsequent to the execution of the sale



S.A(MD)No.596 of 2014

deed on 31.03.1992, mutation had taken place in favour of the appellant and the appellant had been enjoyed the suit property by paying property tax to the Nagercoil Municipality. In such circumstances, the husband has no right to offer the plaint schedule property as security to the respondent Bank. Assailing the findings rendered by the Courts below, the learned counsel submitted that the Courts below without appreciating the evidence of PW1 and PW2 in a proper perspective came to the conclusion that the sale deed executed by husband in favour of the appellant was not at all acted upon. Therefore, the said findings is liable to set aside.

6.In order to prove the relationship between the appellant and the Bhoothalingam got strained, the appellant was examined as PW1 and her father was examined as PW2. The appellant has not examined any independent witness to prove the strained relationship between her and Bhoothalingam. Though in the plaint, the appellant referred to about the mediation and family settlement arrived at between the appellant and her husband Bhoothalingam, the said Mediator had not been examined to prove the alleged family settlement, in pursuance of which, the suit property was sold to the appellant by Bhoothalingam. In order to prove that the sale deed



S.A(MD)No.596 of 2014

was acted upon and mutation had taken place, the appellant has produced Ex.A2 to Ex.A5, house tax receipts in her name. The Courts below on perusing the house tax receipts observed that the tax for building in the suit property from the year 1997 onwards was paid only on 28.10.2004 just five days prior to the filing of the suit. Therefore, the Courts below disbelieving the evidence of PW1 and PW2 came to the conclusion that the sale deed executed by Bhoothalingam of the appellant was not acted upon. It also noted that the original document of the suit property was retained by Bhoothalingam and he offered the same as security for the loan obtained by his friend. Therefore, the findings of facts by the Courts below that the sale of suit property in favour of appellant by Bhoothalingam was not acted upon requires no interference by this Court.

7. Further, the appellant filed a suit for bare injunction restraining the respondent-Bank from taking forcible possession of the suit property. As per the averment found in the plaint, the respondent-Bank officials visited the plaint schedule property on 30.10.2004 and had informed the appellant that the property would be taken possession by the respondent Bank on 04.11.2004 in connection with the loan obtained by Krishnan, friend of



S.A(MD)No.596 of 2014

Boothalingam.

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8.The respondent herein filed a written statement stating that he had taken proceedings against the suit property under SURFAESI Act and hence the present suit was barred by provision of SURFAESI Act. Though the appellant sought for injunction restraining the respondents from taking forcible possession of the plaint schedule property, in the body of the plaint, the appellant has not stated anything about the alleged action of the respondent Bank to take forcible possession of the suit property. If the respondent Bank take possession of the suit property by following procedure, especially under SURFAESI Act, the appellant cannot question it before the Civil Court. In the absence of any averment in the plaint that the respondent Bank is making attempt to take forceful possession, without following due process of law, the prayer for injunction has no cause of action. As per the written statement filed by the respondent Bank, they had taken proceedings under SURFAESI Act for taking possession of the suit property. If the respondent Bank try to take possession of the suit property under the provision of SURFAESI Act, it is for the appellant to move appropriate application before the Debts Recovery Tribunal, if so permitted by law.



S.A(MD)No.596 of 2014

9. In these circumstances,

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a) I do not find any substantial question of law in this Second Appeal and consequently the Second Appeal stands dismissed and the judgment and decree passed by the learned II Additional Subordinate Judge, Nagercoil, dated 12.02.2013 made in A.S.No.72 of 2011 stands confirmed;

b) in the facts and circumstances of the case, there would be no order as to costs; and

c) consequently, connected Miscellaneous Petition is closed.

02.03.2023

NCC : Yes/No
Index : Yes / No
vsd

To

- 1.The II Additional Subordinate Judge,
Nagercoil.
- 2.The II Additional District Munsif,
Nagercoil.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)No.596 of 2014

S.SOUNTHAR, J.

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