



S.A.(MD).No.123 of 2020

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2023

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.123 of 2020

and

C.M.P.(MD)No.1893 of 2020

Rajeswari

... Appellant

Vs.

Palaniyappan

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 05.04.2019 in A.S.No.61 of 2018 on the file of the II Additional Sub Court, Madurai, confirming the Judgment and Decree dated 04.04.2018 made in O.S.No.09 of 2010 on the file of District Munsif Court, Vadipatti.

For Appellant : M/s.M.Thirunavukkarasu

For Respondent : Mr.J.Barathan

JUDGMENT

The present second appeal is filed against the Judgment and Decree dated 05.04.2019 passed in A.S.No.61 of 2018 on the file of II Additional Sub Court, Madurai, confirming the Judgment and Decree dated 04.04.2018 in O.S.No.09 of 2010 of the District Munsif Court, Vadipatti.



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2. The plaintiff in the suit is the respondent herein and the defendant in the suit is the appellant herein. For the sake of convenience, the contesting parties shall be referred as plaintiff and defendant as per the ranking in the suit.

3. The plaintiff had filed the suit is O.S.No.9 of 2010 to direct the defendant to receive Rs.20,000/- and hand over the possession of the suit property without any let or hindrance. The brief facts as stated by the plaintiff is that the suit property comprised in the New S.No.325/9 (Old Natham S.No.214/1), Door No. 2/56, located in Chittalangudi Village, Vadipatti, Madurai belongs to the plaintiff. The said property is an ancestral property and the plaintiff had inherited the same as legal heir. The plaintiff received Rs.20,000/- on 12.02.1999 from the defendant and let out the possession of the suit property for the defendant's enjoyment in lieu of interest for the said amount of Rs.20,000/-. Whenever the plaintiff demanding the defendant to vacate on repaying the amount of Rs. 20,000/-, the defendant would hand over the possession. The plaintiff and the defendant had executed a Varthamana Letter for the said transaction and the original letter is with the defendant. After the period of three years the plaintiff



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requested the defendant to receive the amount of Rs.20,000/- and vacate the suit property, but the defendant refused to receive the amount and also refused to hand over possession. While that being so, the defendant with ill motive had given false complaint and instigated the anti-social elements to conduct “katta panchayat” for sale of suit property to the defendant. Subsequently the defendant send notice on 29.01.2008 with false averments and for the same the plaintiff had replied suitably. On 11.12.2009 the plaintiff issued legal notice to the defendant to receive Rs.20,000/- and demanded to hand over the possession and the defendant replied with false averments. Hence the present suit.

4. The defendant had denied the allegation that the plaintiff after 3 years asked to receive the money and hand over possession, but the defendant refused. The case of the defendant is that the plaintiff is the owner of the suit property. The plaintiff had borrowed Rs.20,000/- on 12.02.1999 for urgent family expenses and had executed a promissory note on 12.02.1999 with interest at the rate of 12% per annum and also executed a Varthamana Letter dated 12.02.1999 and handed over possession to the defendant. Further the plaintiff intended to sell the property and offered to sell to the defendant and the defendant accepted the



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said offer and the sale consideration was fixed as Rs.1,20,000/-. Based on the oral agreement it was agreed that the borrowed amount of Rs. 20,000/- shall be considered as advance and the defendant had paid additional amount of Rs. 10,000/- as advance on 13.03.2005. And further agreed to execute sale deed within a period of three years and the three years started from 13.03.2005, the date when the additional amount was paid. Thereafter inspite of several request the plaintiff refused to receive the balance amount of Rs.90,000/- and failed to execute the sale deed. Hence there were exchange of notices and reply notices. Even though the time to complete the sale had lapsed on 12.02.2008, the defendant is having every right to file the suit as part performance of contract, hence the defendant had filed suit in O.S.No.600 of 2009 for specific performance. After filing of the said suit, as counter blast the present suit is filed on 11.01.2010 which is motivated and after thought. The plaintiff had suppressed the fact of filing of another suit and pendency of the said suit. There is no cause of action and the plaintiff has no right to vacate the defendant from the property. Even if the case of the plaintiff is accepted then the plaintiff ought to adhere to the provisions of Building, Lease and Rent Control Act. Further the present suit is belated one and was filed to defend the suit filed by the defendant in O.S.No.600



of 2009 and prayed to dismiss the suit.

5. After considering the pleadings of the parties, documentary evidence and depositions of the parties, the Learned Trial Court allowed the suit for the recovery of possession of the said suit property from the defendant in favour of the plaintiff. Aggrieved over the same, the defendant had preferred an appeal and the Learned First Appellate Court had dismissed the appeal filed by the defendant. Aggrieved over the same, the defendant has preferred this Second Appeal.

6. The second appeal was admitted on the following substantial questions of law:

“a) Whether the Courts below were right in granting decree for redemption of an unregistered usufructuary mortgage?”

7. It is seen that the plaintiff and the defendant had admitted that the property belongs to the plaintiff. Also, both the parties have admitted the execution of the Varthamana Letter, which is marked as Ex.B2. The contention of the defendant is that the plaintiff has executed promissory note, but had concealed the execution of the said promissory noted in the plaint, but had admitted is the



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deposition. This Court is of the considered opinion that non-disclosure of the promissory note is not going to affect the case of the plaintiff. Infact the same would indicate that there was money transaction between the parties, which is evident from the Varthamana Letter Ex.B2. And the said Varthamana Letter is admitted by both the parties.

8. The next contention of the defendant is that the said Varthamana Letter ought to be construed as usufructuary mortgage, when the same is not registered then the plaintiff is not entitled to the decree for redemption. However, the contention of the plaintiff is the said Varthaman Letter cannot be constructed as usufructuary mortgage, but it is a transaction wherein the money was borrowed and in lieu of interest to the said amount possession of the property was given to the defendant and hence the same need not be registered. On perusing the said Varthaman Letter it is seen that the amount was given and in lieu of the interest only the possession was handed over. As rightly pointed out by the Learned Counsel appearing for the plaintiff, for usufructuary mortgage, the title deed ought to be handed over to the defendant. In the present case the title deeds are with the plaintiff and it has not been handed over to the defendant, which is admitted by



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the defendant. In such circumstances, the contention of the defendant that the transaction ought to be construed as usufructuary mortgage under section 58(f) of the Transfer of Property Act fails and the substantial question of law is answered in favour of the plaintiff / respondent and against the defendant / appellant

9. The defendant is claiming that there was agreement for sale and had filed suit in O.S.No.600 of 2009 for specific performance. But the plaintiff submitted that the said suit was dismissed for default. A petition was filed to restore the same, but the same was dismissed. This fact of dismissal of the suit was considered by the Trial Court and had held that the defendant had deliberately allowed the suit for dismissal since the defendant is aware that the oral agreement for sale cannot be substantiated.

10. It is an admitted fact that the land belongs to the plaintiff and the possession is with the defendant based on the Varthamana Letter. The defendant does not have any right to hold the possession of the plaintiff's property, when the plaintiff has come forward to repay the loan amount of Rs.20,000/-. The plaintiff had deposited the said amount before this Court and hence the plaintiff is entitled



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to recover the possession of the said suit property. Both the Trial Court and the Appellate Court have rightly granted the relief as prayed in suit and the same needs no interference. Therefore, considering all the points, the substantial question of law is answered against the defendant/appellant herein and in favour of the plaintiff / respondent herein.

11. For the reasons stated supra, the judgments of both the Trial Court and the First Appellate Court are confirmed. Therefore, the Second Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

27.11.2023

Index : Yes / No

NCC : Yes / No

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TO:
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1. II Additional Sub Court, Madurai
2. District Munsif Court, Vadipatti.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
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