



S.A.(MD)No.54 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.06.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.54 of 2017

and

C.M.P.(MD)No.1157 of 2017

1.A.Govindaraj

2.P.Gopu

3.P.Mohan

... Appellants

/Vs./

1.M.Krishnamoorthy

2.G.M.G.Engineering Industries,
Rep. by its Managing Partner.

3.M/s.Lakshmi Industrial Works,
Rep. by its Managing Partner.

4.M/s.Lakshmi Engineer Works,
Rep. by its Managing Partner.



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5.U.Krishnamoorthy

6.M.Periyakaruppan

7.Punjab National Bank,
Rep. by its Manager.

8.The Authorized Officer,
Punjab National Bank,
Regional Office,
Thiruverumbur,
Trichy – 620 014.

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 15.02.2016 made in A.S.No.25 of 2014 on the file of the II Additional District and Sessions Judge, Thanjavur, confirming the judgment and decree dated 06.12.2013 made in O.S.No.47 of 2011 on the file of the Principal Subordinate Judge, Thanjavur.



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For Appellants : Mr.N.Satheesh Kumar
For Respondents : Mr.A.Senthil Kumar (R1)
Mr.J.Jeyakumaran (R3 & R4)
No appearance (R6 to R8)

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The defendants 4 to 6 in the suit in O.S.No.47 of 2011 on the file of the Principal Subordinate Judge, Thanjavur are the appellants herein. The first respondent is the plaintiff in the suit and the remaining respondents are the other defendants in the said suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The suit was filed for permanent injunction as well as for damages by the plaintiff against the defendants on the ground that the defendants, deliberately knowing fully well that the suit schedule property belongs to the plaintiff, had mortgaged the same to the ninth



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defendant bank claiming that the suit schedule property belongs to the defendants and not to the plaintiff.

3. As seen from the written statement filed by the defendants, they claimed that adjoining lands to the suit schedule property are owned by them and since they were owners of the said lands, they had mortgaged the suit schedule property along with other properties with the ninth defendant bank and availed financial facilities.

4. A categorical stand was taken by the plaintiff as seen from his plaint that he is the absolute owner of the suit schedule property, having purchased the same under a sale deed dated 13.07.2005 (Ex.A1) and exchange deed dated 13.07.2005 (Ex.A2).

5. Based on the pleadings of the respective parties, the trial Court framed the following issues:

(a) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?;

(b) Whether the plaintiff is entitled to the relief of mandatory



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injunction as prayed for?;

(c) Whether the plaintiff is entitled to get compensation of Rs.1,00,000/- as prayed for?;

(d) Whether the jurisdiction of this Court has been ousted by the provisions of the SARFAESI Act?; and

(e) To what other reliefs, the plaintiff is entitled?.

6. The trial Court, namely, the Principal Sub Court, Thanjavur, by its judgment and decree dated 06.12.2013 passed in O.S.No.47 of 2011 partly decreed the suit by granting the relief of permanent injunction in favour of the plaintiff as prayed for in the plaint and also awarded compensation of Rs.50,000/- payable by the defendants 4 to 6 and another sum of Rs.50,000/- payable by the 9th defendant bank.

7. The trial Court, while partly decreeing the suit in favour of the plaintiff, has given the following findings:

(a) Ex.A1 is the certified copy of the registered sale deed dated 13.07.2005 standing in the name of the plaintiff executed by the defendants 4 to 6 in his favour with regard to S.No.155/2B measuring to



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an extent of 6 cents, 155/8 measuring to an extent of 7 cents, 155/7 measuring to an extent of 6 cents, all put together total extent of 19 cents;

(b) Ex.A2 is the registered exchange deed executed by the plaintiff entered into between the plaintiff and the defendants 4 to 6, wherein the plaintiff was allotted with the property situated in S.No.155/1 measuring to an extent of 19 cents, 169/1 measuring to an extent of 1.16 acres, 117/1A measuring to an extent of 1.69 acres, 117/B measuring to an extent of 35 cents, all put together total extent of 3.39 acres.

(c) No documentary evidence has been produced by the defendants to prove that they are entitled to the suit schedule property. Even in the written statement, they have only pleaded that since they were entitled for the neighbouring lands, they had mortgaged the property belonging to the plaintiff also.

8. The only document filed by the defendants before the trial Court is the legal opinion with regard to title dated 06.10.2005 and 07.10.2005, which were marked as Exs.B1 to B5 and On the side of the defendants, two witnesses were examined, namely, the sixth defendant as D.W.1 and Sridhar as D.W.2. However, on the side of the plaintiff, 11



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documents were marked, which were marked as Exs.A1 to A11, which include the title deeds standing in the name of the plaintiff as well as the revenue records standing in his name. On the side of the plaintiff, two witnesses were examined, namely, the plaintiff himself as P.W.1 and K.Elangovan as P.W.2.

9. The plaintiff has proved that he is the absolute owner of the suit schedule property and the defendants are not entitled to create mortgage over the same without plaintiff's concurrence. Based on the aforesaid findings, the trial Court had partly decreed the suit by granting the relief of permanent injunction as prayed for by the plaintiff in the suit and has awarded the compensation amount totalling to Rs.1,00,000/- in favour of the plaintiff, since the defendants had deliberately mortgaged the suit schedule property, which was absolutely belonging to the plaintiff.

10. This Court does not find any infirmity in the findings of the Courts below. As seen from the contentions of the appellants before the lower appellate Court, their only grievance was with regard to quantum of compensation awarded to the plaintiff at Rs.1,00,000/-. It is also



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brought to the notice of this Court by both the counsels that the loan availed by the defendants by mortgaging the plaintiff's property without his concurrence was also discharged subsequently with the bank, during the pendency of the first appeals, after passing of the judgment and decree by the trial Court.

11. The learned counsel appearing for the appellants would contend that there are other suits pending between the parties, in which a claim has been made by the appellants / defendants against the plaintiff for recovery of certain sums of money for other transactions. This Court after perusing the pleadings as well as oral and documentary evidence available on record, notices that such a plea was never taken by the appellants before the Courts below. At the second appeal stage, the plea taken by the appellants as stated supra cannot be accepted by this Court and it has to be rejected. No counter claim was also filed by the appellants before the trial Court with regard to their claim that the plaintiff owes money with regard to other transactions between them. The quantum of compensation of Rs.1,00,000/- awarded by the Courts below in favour of the plaintiff cannot be considered to be excessive,



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considering the fact that it has been conclusively proved by the plaintiff that his property was deliberately and illegally mortgaged without his knowledge by the defendants, who had availed financial facilities from a bank.

12. Obviously, a person whose property has been mortgaged without his knowledge by another third party would have suffered mental agony on account of the illegal mortgage. The Courts below, only after giving due consideration to the same, has awarded a compensation of Rs.50,000/- payable by the defendants 4 to 6 in the suit and another sum of Rs.50,000/- payable by the 9th defendant bank in the suit in favour of the plaintiff.

13. This Court does not find any infirmity with the findings of the trial Court with regard to the quantum of compensation awarded to the plaintiff. The other findings of the trial Court are based only on the oral and documentary evidence available on record. The relief of permanent injunction has also been rightly granted by the trial Court, as the plaintiff



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is the absolute owner of the suit schedule property. As seen from the documents, which were marked as exhibits on his side, namely, Exs.A1 to A11, which includes the revenue records in the form of pattas standing in his name, the lower appellate Court, namely, II Additional District and Sessions Judge, Thanjavur, in the appeals filed by the defendants 1 to 8 and 9 in A.S.Nos.24 and 25 of 2014 respectively has rightly confirmed the findings of the trial Court by dismissing the first appeals.

14. The issues raised by the appellants / defendants in the grounds of this second appeal have been rightly considered by the Courts below by holding that the plaintiff is entitled for damages for the mental agony suffered by him to the extent of Rs.1,00,000/- on account of the illegal mortgage created over his property by the defendants without his consent. The relief of permanent injunction has also been rightly granted by the Courts below in favour of the plaintiff only based on the oral and documentary evidence available on record. There are no infirmities in the findings of the Courts below. There are no debatable issues of fact or law involved for further consideration by this Court under Section 100 of CPC.



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15. In the result, there is no merit in this second appeal. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
NCC : Yes / No
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ABDUL QUDDHOSE, J.

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TO:

- 1.The II Additional District and Sessions Judge, Thanjavur.
- 2.The Principal Subordinate Judge, Thanjavur.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
S.A.(MD)No.54 of 2017

Dated:
27.06.2023