



A.S.No.71 of 2011

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment	Date of Pronouncing the Judgment
02.08.2024	27.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.71 of 2011

and

M.P.No.1 of 2011

Chennapuri Nidhi Limited
rep.by its President
Office at 57/1, Thirumalai Pillai Road
T.Nagar, Chennai-600 017
[Appellant's name amended *vide*
Court order dated 13.09.2023 in
C.M.P.No.20760 of 2023]

... Appellant

-vs-

B.Varalakshmi

... Respondent

Appeal suit filed under Section 96 of the Civil Procedure Code, 1908, as against the judgment and decree in O.S.No.6191 of 2006, on the file of the Additional District Court, Chennai-600 001, II Fast Track Court, dated 07.05.2010.

For Appellant : Mr.M.Vijay Anand

For Respondent : Mr.J.Ram

Page 1 of 16



WEB COPY

A.S.No.71 of 2011

J U D G M E N T

For the sake of convenience, the parties are referred to as per their ranking in the suit.

2. The unsuccessful plaintiff is the appellant herein.

3. The plaintiff, who is a Mutual Benefit Fund Company, filed the suit against the defendant, who is a borrower, under Order VII Rule 1 read with Order XXXIV Rule 4 of the Code of Civil Procedure, namely, mortgage suit, for foreclosure of the loan availed by the defendant.

4. The plaint proceeds on the basis that the defendant borrowed loan by executing two simple mortgage deeds, dated 09.05.1994 and 02.06.1994, for a sum of Rs.1,50,000/- and Rs.40,000/- respectively at the rate of 18% interest per annum and mortgaged the property situated at Door No.6, Venkatarama Iyer Street, Chennai-79 and the loan amount was to be repaid by taking two recurring deposits bearing Nos.507 and 513. The term of repayment of the loan amount is 80 months i.e., till 02.02.2001.

5. According to the plaintiff, as per Clause 6(vi) of the mortgage



A.S.No.71 of 2011

deeds, the plaintiff is empowered to sell the mortgaged property either by privately or by public auction, without the intervention of the Court, as per Section 69 of the Transfer of Property Act, 1882.

6. As per Clause 6(ii), the defendant agreed not to alienate the mortgaged property, without the written permission of the plaintiff.

7. As per Clause 6(viii), the plaintiff was empowered to file a suit or initiate other proceedings for recovery of the amount due to the plaintiff and for sale of the mortgaged property through Court and for other reliefs.

8. Further, according to the plaintiff, the defendant paid only a sum of Rs.1,52,192/- towards the abovesaid mortgage and on repeated demand notices, the defendant failed to discharge her liability and hence, she became a chronic defaulter, thereby the plaintiff brought the mortgaged property to sale by a public auction as per the auction notice dated 24.08.1999.

9. At that stage, the defendant filed a suit for redemption in



A.S.No.71 of 2011

O.S.No.6408 of 1999, on the file of the XVI Assistant City Civil Court, Chennai, with a false account, as if the total outstanding due was only Rs.38,000/-, and after filing of the said suit, the defendant had paid a sum of Rs.72,800/- as per the conditional order dated 12.02.2001, passed by the Court directing her to pay a sum of Rs.75,000/- on or before 27.02.2001.

10. After elaborate enquiry and trial conducted in the said suit i.e. O.S.No.6408 of 1999, a decree was passed on 12.09.2005, dismissing the above suit for redemption, wherein it was observed that the defendant herein is liable to pay a sum of Rs.7,40,518/- after giving credit to all the payments made by her before and after filing the said suit.

11. In such circumstances, the plaintiff passed a resolution in the Board Meeting held on 26.02.2006 to claim only principal and interest waiving onerous service charges. After deducting the onerous service charge, the plaintiff restricted their claim to a sum of Rs.5,14,048/- with further interest till the date of recovery.

12. The defendant filed her written statement stating that the suit



A.S.No.71 of 2011

in O.S.No.6408 of 1999 filed by her for redemption was dismissed and based on the findings rendered therein, the present suit has been filed by the plaintiff. Since it is a money suit, after three years, the suit is barred by limitation.

13. Before the Trial Court, the authorized agent of the plaintiff was examined as P.W.1 and the authorization letter was marked as Ex.A1, besides Exs.A2 to A7 were marked. On the side of the defendant, her husband was examined as D.W.1 and Exs.B1 to B5 were marked.

14. The Trial Court has originally formulated as many as two issues on 12.02.2008 and thereafter, on 06.04.2010, formulated one additional issue.

15. The Trial Court has held that since in is a suit for recovery of money, the suit ought to have been filed within three years and hence, the suit filed by the plaintiff is barred by limitation. The Trial Court also found that the redemption suit filed by the defendant amounts to a preliminary decree and hence, the plaintiff ought to have taken steps to obtain final decree therein, instead of filing a fresh suit. Accordingly, the Trial Court dismissed



A.S.No.71 of 2011

WEB COPY the suit.

16. Heard the learned counsel for the plaintiff and the learned counsel for the defendant and perused the materials available on record.

17. Learned counsel for the plaintiff relied upon Exs.A6 and A7 and contended that the suit is on time, since the plaint is filed under Order XXXIV Rule 4 of the Code of Civil Procedure.

18. Learned counsel for the defendant made submissions in support of the Judgment of the Trial Court.

19. After hearing both sides, the following points arise for consideration:

- (i) Whether the plaintiff is entitled for the suit claim?
- (ii) Whether the suit claim is barred by limitation, as projected by the defendant?
- (iii) Whether the statement of accounts marked as



WEB COPY

A.S.No.71 of 2011

Ex.A7 is proved in the manner known to law?

- (iv) Whether the Judgment of the Trial Court is sustainable in law?

20. At the outset, I find that the Trial Court has mislead and misdirected itself in treating the case filed under Order VII Rule 1 read with Order XXXIV Rule 4 of the Code of Civil Procedure, namely, the suit of mortgage as that of a suit of pronote and dismissed the suit on the limitation point.

21. Exs.A2 and A3 are the mortgage deeds by deposit of title deeds executed by the defendant in favour of the plaintiff. Ex.A2 is for a sum of Rs.1,50,000/- dated 09.05.1994 and Ex.A3 is for Rs.40,000/- dated 02.06.1994. Initially, the defendant paid some amounts, thereafter, she did not make any payment towards repayment of the loan amount. Hence, the plaintiff issued a public auction notice, dated 24.08.1999, as could be seen from Ex.A4.

22. At this juncture, it appears that the defendant filed a suit for



A.S.No.71 of 2011

WEB COPY

redemption in O.S.No.6408 of 1999, before the XVI Assistant City Civil Court, Chennai, by averring that the balance amount is only Rs.38,000/-. Initially, there was a conditional order of interim stay of the public auction notice on payment of Rs.75,000/-.

23. After trial, as per Ex.A7, the learned Trial Judge has come to the conclusion that the amount due is Rs.7,40,513/- as pleaded by the defendant and not Rs.38,000/- as pleaded by the plaintiff in that suit and accordingly, dismissed the present suit.

24. This Court finds that the Trial Court has committed an error, since the earlier suit is for redemption and therefore, the Trial Court ought to have passed a preliminary decree directing the plaintiff therein, who is the defendant herein, to pay Rs.7,40,513/-.

25. As like in the partition suit, mortgage suit also falls under double decrees, namely, preliminary decree and final decree. This principle appears to have not been followed by the learned Trial Judge while dismissing the present suit.



A.S.No.71 of 2011

WEB COPY

26. Be that as it may, after the dismissal of the suit, it appears from the records that the plaintiff has conducted a meeting on 26.02.2006 and based upon the statement of account (Ex.A7), the plaintiff has conceded for recovery of Rs.7,40,513/- however, restricted the suit claim to Rs.5,14,048/- for filing purpose as could be seen from the evidence of P.W.1 and the resolution (Ex.A5) and in the written statement, the defendant has taken a plea that since it is a money decree, the suit has to be filed within a period of three years. The learned Trial Judge accepting the case of the defendant dismissed the suit.

27. After perusing the statement of account (Ex.A7), I find that the learned Trial Judge has completely overlooked the said document. In Ex.A6, Judgment made in O.S.No.6408 of 1999, the learned Trial Judge therein has categorically held that the defendant herein has to pay Rs.7,40,513/- to the plaintiff herein and the suit filed for redemption, without paying the said amount, is not maintainable.

28. As per Ex.A5, resolution, the plaintiff has reduced the claim amount from Rs.7,40,513/- to Rs.5,14,048/- for filing purpose.



A.S.No.71 of 2011

WEB COPY

29. It remains to be stated that as per the Judgment passed in the redemption suit, drafting of judgment was error and now, the defendant wants to take advantage of the same as could be seen from Ex.A6 and the fact that the present suit has been filed under the mortgage suit caption and the provision of law is Order XXXIV Rule 4 of the Code of Civil Procedure was forgotten. Hence, I find that while dismissing the suit for redemption filed by the defendant herein, the learned Trial Judge therein, gave a finding that the plaintiff herein has proved the amount to be paid from 1999 onwards by the defendant herein. After giving credit to all the amount by the defendant herein, the balance amount has been clearly established by the plaintiff herein in the said redemption suit at Rs.7,40,513/- however, the said amount has been restricted to Rs.5,14,048/- for the purpose of filing the present suit.

30. The learned Trial Judge further failed to take note that as per Ex.A6, the plaintiff has proved that the defendant herein has to pay a sum of Rs.7,40,513/- and the same has not been disputed by the defendant herein. When the Court has given a clear finding with respect to the amount due by the defendant to the plaintiff, the learned Trial Judge has not taken into consideration the same.



A.S.No.71 of 2011

WEB COPY

31. Further, this Court is of the view that it is not necessary for the plaintiff to take steps to get final decree based on the finding given in the redemption suit and the present suit filed by the plaintiff is not barred by limitation, since it has been filed within a period of twelve years.

32. Admittedly, as against the Judgment passed in the redemption suit, the defendant herein, who is the plaintiff therein, had not preferred any appeal. The finding as to the liability of Rs.7,40,513/- has been confirmed. Besides this, it is duly corroborated by the documentary evidence of Ex.A7. The plaintiff is a Mutual Benefit Fund Company. They are maintaining books of accounts during the regular course of business as contemplated under Section 34 of the Indian Evidence Act, 1872. Besides, there is a clear finding by the competent Civil Court, as could be seen from Ex.A6.

33. Hence, on a combined reading of Exs.A5, A6 and A7, I find that the defendant is liable to pay the sum of Rs.7,40,513/- on the date of filing of the present suit. The suit claim was restricted to Rs.5,14,048/- for filing purpose. Hence, I find that the plaintiff has successfully demonstrated before this Court that the defendant, who availed mortgage loan by depositing



A.S.No.71 of 2011

WEB COPY

the title deeds of the house property under Exs.A2 and A3, paid part payment, thereafter became defaulter in larger payment, which resulted in the redemption suit, wherein the quantum of the amount payable by the defendant herein was arrived at Rs.7,40,513/- and the plaintiff herein, however, has restricted the suit claim to Rs.5,14,048/- and filed the present suit has been proved in the manner known to law. Accordingly, all the points are answered in favour of the plaintiff and against the defendant herein. Consequently, the findings rendered by the Trial Court contrary to the provisions of the Indian Evidence Act, 1872, and the mortgage deed procedures under the Transfer of Property Act, 1882, hereby stand vacated.

34. On the point of limitation, the defendant borrowed a sum of Rs.1,50,000/- on 09.05.1994 and Rs.40,000/- on 02.06.1994 from the plaintiff by executing two registered mortgage deeds. The present suit for recovery of money has been filed on 28.04.2006, which falls within twelve years from the date of mortgage. Hence, the present suit is not barred by the law of limitation.

35. The suit to recover the mortgage money on the basis of the



A.S.No.71 of 2011

personal covenant of the mortgagor is governed by Article 12 of the Limitation Act, 1963, which, prescribes twelve years and as per the calculation stated above, the present suit well within the period of twelve years.

36. Hence, the contention of the defendant that for recovery of money the limitation period is three years cannot be countenanced for the simple reason that it is a suit for recovery of money and the plaint has been filed under Order XXXIV Rule 4 of the Code of Civil Procedure and hence, I have no hesitation to reject the said contention. For the reasons stated above, this appeal is liable to be allowed.

37. In the result,

- (i) This appeal is allowed.
- (ii) The Judgment and Decree, dated 07.05.2010, passed in O.S.No.6191 of 2006, on the file of the Additional District Court, II Fast Track Court, Chennai-600 001, are hereby set aside.
- (iii) There shall be a preliminary decree in favour of the



WEB COPY

A.S.No.71 of 2011

plaintiff.

- (iv) Registry is directed to prepare a preliminary decree.
- (v) The plaintiff is at liberty to file a final decree application before the Trial Court to recover the amount due from the defendant, in accordance with law.
- (vi) No costs. Consequently, connected miscellaneous petition is closed.

27.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

krk

To:

- 1.The Additional District Judge,
II Fast Track Court,
Chennai-1.
- 2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



WEB COPY



A.S.No.71 of 2011



WEB COPY



A.S.No.71 of 2011

RMT.TEEKAA RAMAN, J.

krk

JUDGMENT
IN
A.S.No.71 of 2011
and
M.P.No.1 of 2011

27.12.2024