



S.A.No.561 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.01.2024

Pronounced on: 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.561 of 2019

and

CMP. No.9387 of 2019

Kulanthai Pandian

...Appellant

Vs.

- 1.Mrs.Anusya (Died)
- 2.R.Rajkumar (Died)
- 3.Mrs.R.Meenakumari
- 4.R.Senthilkumar
(R3 & R4 bring on record as
LRs of deceased R1 vide
order dated 29.11.2022)
- 5.R.Vengu Sundara Pandian
- 6.D.Velluswamy Pandian

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the decree and judgment passed in A.S. No.48 of 2015 dated 17.09.2016 on the file of the XVII Additional City Civil Court, Chennai confirming and modifying the decree and judgment passed in O.S. No.2700 of 2012 dated 24.01.2014 on the file of the XV Assistant City Civil Court, Chennai.



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For Appellant : Mr.T.Murugamanickam
Senior Counsel for
Mr.R.Ravindran

For Respondents : Mr.A.E.Ravichandran
for R1 to 4
No Appearance for R5 & 6

JUDGMENT

The unsuccessful 1st defendant in a suit for declaration and redemption of mortgage is the appellant before me.

2. For ease of reference, the parties are described as per their litigative status before the Trial Court.

3. The plaintiffs filed a suit for a relief of declaration that the sale deed dated 25.11.2002 executed by the 2nd defendant, in favour of the 1st defendant was sham and nominal, null and void and not binding on the plaintiffs and also for a preliminary decree for redemption of the mortgage, declaring Rs.5,00,000/- as amount due on mortgage and



seeking further direction to enable the plaintiffs to pay the same and there upon, directing the 1st defendant to deliver vacant possession of the suit property along with all documents of title relating to the suit property.

4. The plaintiffs stated that since the 2nd plaintiff intended starting his own business and he was in need of money, he had approached the 1st defendant and borrowed a sum of Rs.5,00,000/- to be repaid together with interest at 15% per annum and as a security for repayment of the said amount borrowed, the original documents of title relating to the suit property were handed over to the 1st defendant and it was also agreed that the 1st defendant would be entitled to collect the rents accruing from the suit property and adjust the same towards interest on the amount borrowed. In short, the plaintiffs allegations was that they had to only repay a sum of Rs.5,00,000/- and get the property redeemed and that the mortgage was a usufructuary mortgage.



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5. In view of the insistence of the 1st defendant, the plaintiffs had executed a general Power of Attorney in favour of the 2nd defendant, besides also handing over blank stamp papers and cheques signed by the plaintiffs on the understanding that the same would be returned on repayment of the principal amount of Rs.5,00,000/- .

6. It is the case of the plaintiffs that the power of attorney executed in favour of the 2nd defendant was misused and a simple mortgage deed was executed and registered on 08.03.2000 as if only Rs.10,000/- had been borrowed by the plaintiffs, that too, from the 3rd defendant, instead of the 1st defendant. Thereafter, the 2nd defendant has executed a sale deed in favour of the 1st defendant on 25.11.2002 using the said power of attorney executed by the plaintiffs. The plaintiffs questioned the 1st defendant. However, all the plaintiffs pleas fell on deaf ears. Further, according to the plaintiffs, the property was worth much more than the sale consideration for which



the property was conveyed by the 2nd defendant in favour of the 1st defendant. According to the plaintiffs, the 2nd and 3rd defendants are only hand maids of the 1st defendant and in collusion amongst themselves, they have knocked off the valuable property belonging to the plaintiffs.

7. After exchange of legal notices, the suit has been filed for the reliefs already mentioned herein above. The said suit was contested by the 1st defendant stating that he had nothing to do with the 3rd defendant and he had purchased the property from the plaintiffs themselves, through power agent and admittedly, the plaintiffs have executed a registered power of attorney in favour of the 2nd defendant, authorising him to convey the suit property. According to the 1st defendant, there was an agreement of sale between the plaintiffs and the 1st defendant on 23.02.2000 under which the 1st defendant had paid Rs.6,00,000/- as advance and subsequently he paid Rs.1,00,000/- on 20.02.2001 and Rs.60,000/- on 18.02.2002 and in view of the substantial portion of the sale consideration being paid, the 1st



defendant was put in possession of the suit property by the plaintiffs.

Thereafter, the 1st defendant spent Rs.3,00,000/- for renovation of the suit property and subsequently on payment of the balance sale consideration, the sale deed was executed in favour of the 1st defendant on 25.11.2002. The allegations of collusion are denied and the maintainability of the suit is also questioned on the ground of improper valuation and also on the ground that there was no mortgage in favour of the 1st defendant and therefore the question of relief in that regard was unsustainable.

8. Before the Trial Court, the 4th plaintiff examined himself as P.W.1 and Exs.A1 to A15 were marked. On the side of the defendants, the 1st defendant examined himself as D.W.1 and one Mr.Manoharan was examined as D.W.2 and exhibits Exs.B1 to B7 were marked on the side of the defendants.

9. The Trial Court found that the plaintiffs were entitled to



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redemption of the property on payment of Rs.5,00,000/- and decreed the suit with directions. The relief of declaration that the sale deed dated 25.11.2002 being sham and nominal, null and void and not binding on the plaintiffs was also granted as prayed for.

10. Aggrieved by the said judgment and decree of the Trial Court, the 1st defendant preferred A.S.No.48 of 215. The First Appellate Court concurring with the findings of the Trial Court, dismissed the appeal with a modification that the mortgage executed in favour of the 3rd defendant had to be redeemed first and thereafter the usufructuary mortgage was to be redeemed.

11. Aggrieved by the same, the 1st defendant has preferred the above Second Appeal.

12. I have heard Mr.T.Murugamanickam, learned Senior counsel for Mr.R.Ravindran, for the appellant and Mr.A.E.Ravichandran,



learned counsel for the respondents 1 to 4.

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13. On hearing the submissions of the learned counsel on either side, I frame the following substantial questions of law to be answered in the above Second Appeal.

1. Whether the Courts below erred in granting the declaratory relief setting aside the sale deed in Ex.A5 when Ex.A1-power of attorney and its contents had been admitted?

2. Whether the Courts below erred in granting the decree of redemption of usufructuary mortgage in the absence of a written deed evidencing such usufructuary mortgage?

3. Whether the First Appellate Court was right in modifying the decree of the Trial Court directing redemption of Ex.A4 mortgage dated 08.03.2000, when the plaintiffs themselves did not seek for such a prayer?



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14. Learned Senior counsel for the appellant would take me through the judgments of the Courts below, apart from the oral and documentary evidence to fortify his contentions that the plaintiffs' case as pleaded did not entitle them to a decree as prayed for. He would also contend that the decree passed by the Courts below was not in consonance with the judgment or the pleadings in the plaint and would seek interference on this limited score and that apart, he would state that when admittedly the plaintiffs had executed a power of attorney and also a sale agreement in favour of the 1st defendant, the sale deed executed by the power agent viz., the 2nd defendant in favour of the 1st defendant cannot be called in question by the plaintiffs. Even the valuation of the suit, according to the learned Senior counsel U/s.25(d) was improper and the suit ought to have been valued U/s. 40 since the plaintiffs had categorically admitted to the execution of power of attorney based on which alone Ex.A5-sale deed came to be executed and registered. He would also place reliance on Ex.A7, which clearly evidenced the fact the plaintiffs were fully aware of the



possession of the 1st defendant as the notice was sent to the 1st defendant and served at the suit property. He would also draw my attention to Ex.B2, which is a receipt signed by the three of the plaintiffs viz., 1,2 and 4th plaintiffs on 28.11.2002. He would state that the specific case of the plaintiffs was that all the plaintiffs have signed blank papers and that the same have been misused to bring about the alleged receipt dated 28.11.2002. However, since the said receipt Ex.B2 has been signed only by three of the plaintiffs and there being absolutely no explanation whatsoever for the 3rd plaintiff not signing the same, the case of the plaintiffs had to be disbelieved.

15. Further, he would also state that a usufructuary mortgage was required to be registered. He would take me through the relevant provisions viz., Sec.58 of the Transfer of Property Act. He would also place reliance on Ex.B1-sale agreement which is admittedly signed by all the plaintiffs in favour of the 1st defendant and according to him, the same would establish the truth and genuineness of the sale deed in favour of the 1st defendant. Further, learned Senior counsel would also

state that the 1st defendant had nothing to do with the defendants 2 and 3 and not having challenged the power of attorney which was admittedly executed by the plaintiffs, there could be no challenge to the sale deed in favour of the 1st defendant.

16. Per contra, the learned counsel for the respondents would state that as there was no stay granted by this Court at the time of filing of the Second Appeal, final decree proceedings have been initiated and the Court also ordered directing return of documents. According to the learned counsel for the respondents, even in the plaint, the plaintiff has categorically asserted that the sale deed was as a result of fraud and collusion and brought about by defendant 1 along with defendants 2 and 3. He would also state that despite asserting that the 1st defendant has spent Rs.3,00,000/- on taking possession in order to renovate the property, the 1st defendant has not let any evidence to establish the same. Learned counsel for the respondents would further state that the defendants have played fraud and behind



the back of the plaintiffs, have executed a simple mortgage for Rs.10,000/- even though the actual amount borrowed by the plaintiffs was Rs.5,00,000/- and it was also only from the 1st defendant and not the 3rd defendant in respect of whom the simple mortgage came to be executed and registered. He would also point out the variations in the dates regarding payment of portions of sale consideration and he would assert that since the specific case of the plaintiffs was that the blank papers were misused and sale agreement was brought about, the 1st defendant ought to have examined atleast one of the witnesses to the sale agreement. Further, he would also state that the receipt issued by the plaintiffs, three in number, in favour of the 2nd defendant was only in the hands of the 2nd defendant and the fact that the 1st defendant has produced the same during trial clearly establishes the collusion between the defendants 1 and 2. He would further state that all the documents have been prepared by the one and the same advocate and this again only highlights the connivance amongst the defendants 1 to 3. He would also contend that there is nothing wrong



in the approach adopted by the Courts below and relief has been granted based on pleadings and stated that the appellant is not a bonafide purchaser for value. Moreso, since there was a registered mortgage admittedly in favour of the 3rd defendant on the date of purchase by the 1st defendant and as a prudent buyer, he ought to have enquired about the same and called upon the plaintiffs to discharge the said mortgage before proceeding to purchase the suit property.

17. Learned counsel for the respondents would also state that “once a mortgage, is always a mortgage” and in that regard he would place reliance on the decisions of the Hon'ble Supreme Court in

i) ***Shankar Sakharam Kenjale Vs. Narayan Krishna Gade and Anr***, reported in ***(2021) 13 SCC 309***;

ii) ***Sidhakamal Nayan Ramanuj Das Vs. Bira Naik and Ors***, reported in ***AIR 1954 SC 336 (1)***;

iii) ***Sarojini Prabhu and Ors Vs. Pappikutty Adiesiar and Ors***, reported in ***AIR 2007 Kerala 44***, for the proposition that in a case of



usufructuary mortgage, there is no limitation. He would conclude his submissions by stating that the right of redemption of the plaintiffs cannot be taken away and the sale of the property by the 2nd defendant in favour of the 1st defendant would not stand in the way of the plaintiffs seeking redemption and that the decree granted by the Courts below is only in terms of Appendix C of Code of Civil Procedure and there was no error in the First Appellate Court directing redemption of Ex.A4 mortgage before redemption of the usufructuary mortgage in favour of the 1st defendant.

18. In reply, learned Senior counsel for the appellant would submit that the discrepancies in the dates would have no bearing on the main transaction or the reliefs in the suit. With regard to the same advocate for defendants, he would rely on the evidence of the 1st defendant in the witness box and state that the questions in this regard ought to have been put only to the 2nd defendant and not the 1st defendant. As regards the conduct of the 2nd and 3rd defendants,



learned Senior counsel would submit that the 1st defendant has categorically stated that he has nothing to do with the 3rd defendant and the 2nd defendant was only the admitted power agent of the plaintiffs and therefore their conduct, including not appearing before the Courts, cannot be put against the 1st defendant.

19. I have carefully considered the rival submissions advanced by the learned Senior counsel for the appellant and the learned counsel for the respondents.

20. First and foremost, it is seen that the plaintiffs have come to Court with a specific case that they have borrowed a sum of Rs.5,00,000/- from the 1st defendant and a usufructuary mortgage has been created by handing over possession of the suit property, with the 1st defendant being entitling to receive rents accruing from the suit property in lieu of the interest on the amount borrowed. Strangely, the plaintiffs also admit execution and registration of a general power of



attorney in Doc.No.208 of 2000 on the file of the Su-Registrar, Anna Nagar in favour of the 2nd defendant. It is the further case of the plaintiffs that the 1st defendant compelled them and obtained signatures of the plaintiffs in blank papers, blank stamp papers and blank cheques and that they were obtained only as a further security for the money lent in addition to the mortgage.

21. Sec.58(d) of the Transfer of property Act,1882 refers to usufructuary mortgage and the same is extracted hereunder:

“ 58. (d) Usufructuary mortgage.—Where the mortgagor delivers possession 1[or expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property 2 [or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage -money, or partly in lieu of interest 3 [or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an



usufructuary mortgage.”

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Thus, the requirement for creation of a usufructuary mortgage is that the possession of the property must be delivered by the mortgagor either expressly or impliedly, binding himself to the mortgagee and authorising the mortgagee to retain possession until repayment of the mortgage money and further entitling the mortgagee to receive rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage money or partly in lieu of interest or partly in payment of mortgage money.

22. Sec.59 of the Transfer of Property Act deals with the manner of effecting a mortgage, other than a mortgage by deposit of title deeds. Sec.59 is extracted hereunder:

*“ 59.Mortgage when to be by assurance.—
Where the principal money secured is one hundred rupees or upwards, a mortgage 5 [other than a mortgage by deposit of title-deeds] can be effected*



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only by a registered instrument signed by the mortgagor and attested by at least two witnesses. Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by 6 [a registered instrument] signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.”

In terms of the said Section, it is clear that when the principal money borrowed is in excess of Rs.100/-, then the mortgage, not being a mortgage by deposit of title deeds, can be effected only by a registered instrument, signed by the mortgagor and attested atleast by two witnesses. Here, it is the specific case of the plaintiffs that they mortgaged their property for a sum of Rs.5,00,000/- borrowed from the 1st defendant and created a usufructuary mortgage. In support of their contentions, the plaintiffs have not produced even a written deed of usufructuary mortgage, leave alone satisfying the requirements of a registered deed of usufructuary mortgage. Thus, it is seen that the plaintiffs are seeking relief in the suit in respect of a non-existent usufructuary mortgage. The case of the plaintiffs however is that though they borrowed Rs.5,00,000/- from the 1st defendant, their



power agent, the 2nd defendant proceeded to execute a simple mortgage in favour of the 3rd defendant for a mere Rs.10,000/- instead of Rs.5,00,000/-. On going through the oral and documentary evidence, I find that the plaintiffs have not been able to establish their case that instead of executing a mortgage in favour of the 1st defendant for Rs.5,00,000/-, the 2nd defendant executed a mortgage in favour of the 3rd defendant for Rs.10,000/-, that too by way of a simple mortgage and registered the same.

23. Keeping this in mind, I also went through the oral and documentary evidence adduced by the parties. Ex.B2 is a receipt dated 28.11.2002. The said receipt has been signed only by three of the four plaintiffs. It is no where the case of the plaintiffs that in some of the blank papers, only three of them signed and not all four of them signed. The specific allegation in the plaint is that the 1st defendant insisted on the plaintiffs i.e., meaning four of them to sign blank papers and blank stamp papers. In the light of such an allegation in



the plaintiff, the plaintiffs have not been able to explain as to how the receipt in favour of the 2nd defendant came to be executed by three of them. In order to establish the said receipt, D.W.2-Mr.Manoharan, who has signed as a witness in the receipt has also been examined. D.W.2 in cross examination has stated that on 28.11.2002, the 1st defendant-Kulanthai Pandian requested him to accompany the 1st defendant to the house of the sellers for obtaining a receipt for payment and he also stated that he alone signed as a witness and apart from him no one else signed. He has also confirmed the fact that only three of the plaintiffs signed the receipt. He denied the suggestions that the plaintiffs signed the blank paper across Revenue stamp affixed. Thus, execution Ex.B2 receipt by the plaintiffs 1,2 and 4 has been proved by the 1st defendant.

24. Though, learned counsel for the respondent would draw my attention to the evidence of D.W.1 especially cross examination where he has stated that he knows the 2nd defendant and that the same



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advocate has been engaged for all the documents connected to the suit property, I do not find the same to be anything unnatural or suspicious enough to establish collusion amongst defendants 1,2 and 3. Infact, D.W.1 has specifically stated that as far as he is concerned, the advocate prepared Ex.A5-sale deed alone and that he has not engaged the services of the said advocate Mr.Soundarrajan for preparing any other document. Merely because D.W.1 had stated that the 2nd defendant had handed over the documents as admitted by him in cross examination, it would not automatically amount to collusion between the defendants 1 and 2. After all the 1st defendant has purchased the suit property from the plaintiffs through their registered power of attorney viz., the 2nd defendant. Therefore, there it is not unnatural for the power agent to handover the documents related to the suit property to the purchaser viz., the 1st defendant and nothing more can be made out of the said admissions of D.W.1 with regard to manner in which he obtained Exs.B1 and B2.



25. No doubt, as rightly contended by the learned counsel for the respondents, once a mortgage, it is always a mortgage and the mortgagors right to redeem the mortgaged property, subject to Law of Limitation, cannot be taken away even by intervening transactions including alienating the mortgaged property. However, in the instant case, I do not find a valid usufructuary mortgage having been created in the first place.

26. I have already extracted Sec.59 of the Act and in view of the mandate of Sec.59, an oral usufructuary mortgage is invalid in the eye of law. Moreover, the 1st defendant has categorically denied the usufructuary mortgage alleged to have been made by the plaintiffs in his favour. Even otherwise, the plaintiffs have miserably failed to establish even an oral mortgage in and whereby they have borrowed a sum of Rs.5,00,000/- from the 1st defendant and put him in possession of the suit property, with a further right to collect the rental income accruing from the same in lieu of payment of interest and to retain



possession of the property till such time the mortgage money was repaid. Only, if the plaintiffs are able to succeed in establishing the fact that there was a usufructuary mortgage in favour of the 1st defendant, the question of filing a suit for redemption would arise. Unfortunately, the plaintiffs have sought to treat the mortgage executed in favour of the 3rd defendant, which is a simple mortgage deed executed by the 2nd defendant as the power agent of the plaintiffs as a usufructuary mortgage in favour of the 1st defendant for a higher sum of Rs.5,00,000/- and not Rs.10,000/- as mentioned in Ex.A4-simple mortgage deed. Such an imaginative plea cannot be put forth before a Court of law and the plaintiffs ought to have specifically pleaded and proved that there was a mortgage created by them in favour of the 1st defendant and only if they succeed in establishing the said mortgage, they would be in a position to seek redemption of the said mortgage. On the other hand, the plaintiffs cannot call upon the Court to treat a simple mortgage executed by the plaintiffs, through their power agent, 2nd defendant in favour of the 3rd defendant as a



usufructuary mortgage executed by them in favour of the 1st defendant for a totally different consideration.

27. Learned Senior counsel relied on the judgment of this Court in *Dharani Ammal Vs. Arayee* reported in **2015-1-L.W.751** for the proposition that a usufructuary mortgage, not being in writing or registered is an invalid mortgage and the remedy open to the mortgagor in such a case was to only file a simple suit for recovery of possession. On the facts of the said case, this Court found that the suit for recovery of possession had been filed in time and not based on the right of redemption. Therefore, this Court has held that the suit filed was in time and also maintainable in the eye of law. Infact, the said decision came up for consideration before this Court in S.A.No.1041 of 2009 in *Mangathil and Ors Vs. Palaniammal and another*, where this Court, in and by judgment dated 25.10.2019 held that an oral usufructuary mortgage cannot be valid in law and the only remedy open to recover the possession of the property at the hands of the



mortgage was to file a suit, in time i.e., within 12 years for mere recovery of possession alone. This Court further held that unless the mortgage was proved, the mortgagee put in possession pursuant to an invalid mortgage would not acquire the rights of a mortgagee, even after the expiry of 12 years and that the plaintiffs had to at least prove that there was an invalid mortgage.

28. Applying the ratio laid down in the *Dharani Ammal's* case and also clarified in *Mangathil's* case, I have no hesitation in holding that the plaintiffs have miserably failed to prove a mortgage in favour of the 1st defendant, much less a usufructuary mortgage. The specific plea raised in the plaint is that the plaintiffs have created a usufructuary mortgage in favour of the 1st defendant. Such a usufructuary mortgage being required to be in writing and also registered in view of Sec.59 of the Transfer of Property Act, the plaintiffs have no legs to stand and their suit for redemption has to necessarily fail.



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29. The Courts below have unfortunately lost sight of the legal position and proceeded to decree the suit in favour of the plaintiffs as if the usufructuary mortgage existed and was binding on the parties. The First Appellate Court has given cryptic findings as if the plaintiffs have established execution of a usufructuary mortgage, when admittedly there is no document executed by the plaintiffs in favour of the 1st defendant in the nature of any mortgage whatsoever. Even with regard to cancellation of sale deed, the plaintiffs have chosen to value the same U/s.25 (d) of Tamilnadu Court Fees and Suits Valuation Act, 1955. Admittedly when the plaintiffs have executed the general power of attorney in favour of the 2nd defendant and such power of attorney authorises the power agent to deal with the suit property including by way of sale and in furtherance of the said power of attorney, the property have been conveyed to the 1st defendant, it is incumbent on the plaintiffs to seek declaration of the sale deed, valuing the relief U/s.40 of Tamilnadu Court Fees and Suits Valuation Act, 1955 and



not U/s.25(d), as done by them. Even, on this court, the plaintiffs are not eligible for the relief of declaration as the relief has been grossly undervalued and inappropriate and inadequate Court fee having been paid.

30. The courts below have also committed a grave error in holding that the plaintiffs had created a usufructuary mortgage in favour of the 1st defendant for a sum of Rs.5,00,000/-. It has not even come out in evidence that the interest payable by the plaintiffs at the rate of 15% per annum even according to them on Rs.5,00,000/-, was setting off against the rental income that the property fetched and therefore the amount determinable and to be paid by the plaintiffs was merely a sum of Rs.5,00,000/-. Even according to the plaintiffs, having borrowed a sum of Rs.5,00,000/- on 23.02.2000 and also having executed a registered general power of attorney in favour of the 2nd defendant, the plaintiffs have not taken any steps whatsoever, close to 10 years, when for the first time notice was sent on



27.08.2011. This inaction and silence on the part of the plaintiffs also does not lend any strength to the case put forth by the plaintiffs. If really the plaintiffs had borrowed the sum of Rs.5,00,000/- from the 1st defendant and they were entitled to redeem the mortgage and recover possession of their valuable property at the hands of the 1st defendant, which was also fetching good rental income, the plaintiffs would not have been in deep slumber for more than a decade. Therefore, their waking up after a lapse of 10 years and coming to Court with a case as if there is a usufructuary mortgage in favour of the 1st defendant and instead a simple mortgage came to be executed registered in favour of the 3rd defendant.

31. The First Appellate Court has also gone beyond the pleadings and the prayer sought for in the suit, by directing the plaintiffs to redeem Ex.A4 mortgage in favour of the 3rd defendant when the plaintiffs themselves did not seek such relief and moreover when the 3rd defendant also remained ex-parte and did not chose to



contest the suit, the findings of the First Appellate Court, instead of independently assessing the oral and documentary evidence adduced by the parties, merely endorsed the Trial Court's discussion and holding that there is no infirmity or illegality in the findings of the Trial Court, especially after having found that the Trial Court has not discussed in detail the issues framed and the findings are also not happily worded. The reasoning of the First Appellate Court that the said mortgage deed dated 08.03.2000 had to be redeemed first in order to avoid legal complication in future is a judicial out reach and excess committed by the First Appellate Court, for the simple reason that when the plaintiffs themselves have disowned the said Ex.A4-mortgage deed and had come to Court stating that instead of usufructuary mortgage for Rs.5,00,000/- in favour 1st defendant, the 2nd defendant had brought about Ex.A4-mortgage deed for Rs.10,000/-, it was not for the Court to grant such a relief by issuing directions with regard to a case not pleaded or relief prayed for by the plaintiffs themselves.



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32. In fine, I am constrained to interfere with the findings of the Courts below and answer all the substantial questions of law framed herein above in favour of the appellants. The Second Appeal is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

31.01.2024

Index : Yes/No

Internet : Yes/No

kpr

To

1. The XVII Additional City Civil Judge, Chennai

2. The XV Assistant City Civil Judge, Chennai.



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P.B.BALAJI, J,
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Pre-delivery Judgment in

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and

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