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SA. No.704 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02. 2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

SA. No. 704 of 2002

1.L.Murugan
2.Deviammal

... Appellants

Vs.

B.Subramani

...Respondent

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 03.07.2020 in A.S No. 15 of 2019 before the Sub Court, Coonoor, confirming the judgment and the decree dated 15.02.2019 in O.S No. 28 of 2016 on the file of the District Munsif's Court, Kotagiri.

For Appellants : Mr.R.Meenal

For Respondent : Mr. V.Chinnasamy



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JUDGMENT

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This second appeal has been against the judgment and decree dated 03.07.2020 in A.S No. 15 of 2019 before the Sub Court, Coonoor, confirming the judgment and the decree dated 15.02.2019 in O.S No. 28 of 2016 on the file of the District Munsif's Court, Kotagiri.

2. The appellants herein are the defendants in suit OS No. 28 of 2016 filed by the respondent herein/plaintiff for the relief of delivery of vacant possession of the suit schedule property to the plaintiff from the defendants. According to the plaintiff he is the owner of the suit schedule property bearing New D.No. 4/316 (Old D.No. 4/294) situated in 541/1 at Kengari Village, with an extent of 0.02 acres (Two cents) with specific boundaries. The plaintiff as a owner of the suit schedule property permitted the defendants to occupy the suit house on 01.06.2004 for a period of three years i.e., from 01.06.2004 to 31.05.2007 and the defendants came into possession of the suit schedule property from 01.06.2004. But the defendants refused to vacate the suit property and also failed to hand over the possession to the plaintiff on the fixed date. Thereafter, the plaintiff issued legal notice to the defendants to vacate and hand over the suit property on



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14.03.2016 and the plaintiff terminated his permission on 14.03.2016 given to the defendants. For which, the defendants issued reply notice on 28.03.2016 and refused to vacate the suit house. Hence, the plaintiff filed the suit.

3. The contention of the defendants is that on 01.06.2004 the plaintiff mortgaged with possession of the suit property to the second defendant for a sum of Rs.60,000/- in full and handed over the suit property to the defendants on the same day and the plaintiff promised to repay the mortgage amount of Rs.60,000/- and recover the possession of the suit property but contrary to that agreement the plaintiff warn them to vacate the premises and attempted to mishandle the defendants and threatened them. Hence, the defendant's lodged a complaint before the Sub inspector of police Sholurmattam and on 25.05.2013 the plaintiff appeared before the police station and undertaken that he would pay a sum of Rs.1,50,000/- within a period of two years but without paying the said amount the plaintiff filed the suit. Hence, they prays to dismiss the suit.

4. After considering the submissions on either and also based on the available records the Trial Court held that the properties are belongs to the plaintiff by way of family settlement but not accepted the defence taken by



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the defendant that she mortgaged the property since because no registration mortgage deed was produced on the side of the defendant to prove their case. Besides, D.W.1 also not turn for cross examination and finally held that the plaintiff is entitled to recovery of possession of the property and decreed the suit.

5. Aggrieved over the same the defendants preferred the appeal before the Subordinate Court, Coonoor. After considering the submissions on either side the lower appellate Court dismissed the appeal. Challenging the concurrent findings the defendants preferred this second appeal.

6. The learned counsel for the appellants submitted that the Court below failed to taken into consideration of the undertaking given by the plaintiff before the Shourmattam Police that he agreed to pay the alleged mortgage amount as full time settlement of Rs.1,50,000/- before the Police Station and the same has not been denied by the plaintiff but both the Court below failed to taken into consideration of the above facts and granted relief in favour of the plaintiff as such is erroneous and liable to be set aside. Thereby, Ex.B5 statement given by the plaintiff before Police Station is to be taken into consideration and prayed to allow this appeal.



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7. This Court admitted this appeal with the following substantiation

questions of law:

i. Whether in law the courts below are right in refusing to mark the unregistered mortgage deed overlooking that it could be received as add evidence to show the relationship between the parties, the nature of possession by the appellants and the fact of borrowing by the respondent as set out in AIR 2004 Sc 3856, Virendranath through P.S Holder R.R.Gupta Vs Mohd Jamil and others?

ii. Whether in law the courts below are right in failing to see that the respondent did not prove that the appellants were in permissive possession, especially since the alleged permission expired more than a decade prior to suit and there was no attempt by the respondent to recover possession ?

8. It is an admitted fact that plaintiff is the owner of the suit property according to the plaintiff he permitted the defendant to occupy the suit property. But the defendants contended that the plaintiff borrowed a sum of Rs.60,000/- from the defendants by way of mortgage and possession also given by them in favour of the plaintiff. Further, in Police Station the plaintiff also agreed to pay a sum of Rs.1.50,000/- as one time settlement to the defendants. Even during the cross examination she admits that she gave



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a complaint before the Solurmattam Police station as counter blast the defendant also given complaint to the police station. But he stated that the has not given undertaking before the police station but the same not been disproved by the plaintiff. Hence, as per the undertaking the plaintiff agreed to pay a sum of Rs.1,50,000/- in the year 2013. As on date he failed to comply the said undertakings. Therefore, the plaintiff is directed to pay a sum of Rs.1,50,000/- within a period of three months from the date of receipt of a copy of this order. On receiving the said amount the defendants are directed to hand over the possession of the suit property to the plaintiff.

9. In the result, this Appeal is disposed of. No Costs. Consequentially, connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The Sub Court, Coonoor,
2. The District Munsif's Court, Kotagiri.
- 2.The Section Officer,
V.R Section.

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