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O.S.A.No.215 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM :

THE HON'BLE MR.JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

O.S.A.No.215 of 2023

Mr.Masilamani Anbalagan .. Appellant

v.

1. Mrs.Agnees Nirmala
W/o late Mr.Sethuraman Vairavan

2. M/s Birmingham Industries Private Limited
rep by Vice President Mr.Saravanan
Flat No.A-3, 3rd Floor, Ramana Enclave
Door No.40/1, Madhavan Salai
Mahalingapuram, Nungambakkam
Chennai 600 034 .. Respondents

Memorandum of Grounds of Original Side Appeal under Order XXXVI, Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent, against the fair and decretal order of the learned single Judge dated 07.08.2023 passed in C.S.SR.No.62688 of 2023 on the file of this



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For Appellant :: Mr.G.Ramesh
For Respondents :: Mrs.Hema Sampath
Senior Counsel for
M/s K.Sridevi for R1
No appearance for R2

JUDGMENT

(Judgment of the Court was made by S.S.SUNDAR,J.)

This original side appeal is directed against the fair and decretal order passed by the learned single Judge of this Court dated 07.08.2023, at the stage of numbering the suit in C.S.SR.No.62688 of 2023.

2. Heard the learned counsel for the appellant and the learned Senior Counsel for the first respondent.

3. The appellant before this Court filed a suit for recovery of money claiming that a mortgage was created by deposit of title deeds. From the reading of plaint, the plaint discloses the cause of action with specific



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averments that the suit property has been mortgaged by deposit of title deeds. In the plaint, it is stated that the first defendant and her husband have borrowed money on several occasions and the details are furnished. It is also stated that the first defendant's husband, with the consent and request of the first defendant, handed over all the title deeds of the suit property. The plaintiff has also stated in the plaint that the first defendant and her husband have not repaid the loan amount as promised. The plaintiff has produced the original documents of title deeds along with the plaint to prima facie show creation of an equitable mortgage supported by documents.

4. When the unnumbered suit was listed before the learned single Judge for maintainability on the objection raised by the Registry, the learned Judge, after referring to several judgments, suspected the genuineness of the contentions of plaintiff and held that the plaintiff has not established whether the first defendant had an intention to create the equitable mortgage by deposit of title deeds. After stating that there is no fundamental



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document to prove that there is an intention to create the equitable mortgage, the learned Judge held that in all probabilities and possibilities, the suit can be considered only as a suit for recovery of money and not a suit on equitable mortgage and directed the plaintiff to amend the relief accordingly to sustain the suit.

5. This Court is unable to sustain the order of the learned single Judge, who decided the character of suit and the merits of the contentions of plaintiff, even without a trial or an opportunity to the plaintiff to prove what he has stated in the plaint. Therefore, the order of the learned single Judge cannot be sustained in law. The plaintiff is entitled to a fair opportunity to prove his case as pleaded in the plaint. Hence the order of the learned single Judge is set aside. However, it is open to the defendants to raise all objections while defending the suit in the written statement and to contest the same on merits. Accordingly, with the liberty preserved to the defendants above stated, the original side appeal is allowed. Registry is directed to number the suit, if the papers are otherwise in order, as



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expeditiously as possible and list the case before the appropriate Court. No order as to costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (K.R.S.,J.)
07.08.2024

SS

To

The Sub Assistant Registrar (O.S.)
High Court, Madras



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S.S.SUNDAR, J.
AND
K.RAJASEKAR, J.

SS

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