



S.A.No.1570 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2024

CORAM

THE HON'BLE MR.JUSTICE V.SIVAGNANAM

S.A.No.1570 of 2004

1. Saraswathi Amma(Died)

2. Thangam,

3. Chellan,

4. Ashok Kumar,

5. Vilasini,

6. Siva Prasad,

(Appellants 2 to 6 are brought on
record as LR's of the deceased first appellant)

... Appellants

Vs.

Sreedharan Nair

... Respondent

PRAYER : Second Appeal filed under Section 100 Cr.P.C., against the judgment and decree dated 19.09.2003, made in A.S.No.33 of 1997 on the file of the Subordinate Judge, Padmanabhapuram, confirming the Judgment and decree dated 28.11.1996 and made in O.S.No.900 of 1994 on the file of Additional District Munsif, Padmanabhapuram.

For Appellants : Mr.L.Shaji Chellan

For Respondent : Mr.P.Thiagarajan



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JUDGMENT

This second appeal has been filed against the judgment and decree dated 19.09.2003, made in A.S.No.33 of 1997 on the file of the Subordinate Judge, Padmanabhapuram, confirming the Judgment and decree dated 28.11.1996 and made in O.S.No.900 of 1994 on the file of Additional District Munsif, Padmanabhapuram.

2. The first appellant herein is the defendant (died) in O.S.No.900 of 1994 and the appellants 2 to 6 are the legal representatives of the sole defendant. The respondent herein is the plaintiff in the suit.

3. When the matter came up for hearing, the learned counsel for the appellants submitted that the plaintiff is not the alleged mortgager. The defendant is in possession from the year 1962 as a lessee of the plaint schedule property. The alleged mortgage deed is a fabricated one, to get over the relationship of lessor and lessee. Apart from this, since the mortgage deed is disputed, the plaintiff failed to prove the mortgage deed by examining any one of the attesting witnesses. The defendant is in possession of the property as on date. In the absence of proof of



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mortgage deed, the plaintiff is not entitled to redeem the property, besides he is not a mortgagor and alleged that it is not executed by the plaintiff. The trial Court as well as the first appellate Court failed to appreciate this aspect. Because of non appreciation of this fact, the question of law has to be framed and adjudicated and therefore, seeks to admit the Second Appeal.

4. The learned counsel for the respondent supported the judgment of the trial Court and the First Appellate Court, besides submitted that the defendant / first appellant failed to prove her stand that she is lessee and is enjoying the property as a lessee. Apart from this, the alleged mortgage deed, dated 30.12.1974 executed by one Sarojini Amma is not disputed by the defendant. The plaintiff had purchased the property with a right from Sarojini Amma and the plaintiff is a competent person to redeem the property, since the defendants had not denied the mortgage deed executed by Sarojini Amma and failed to prove the relationship of lessor and lessee. In the above circumstances, the plaintiff proved the mortgage deed. The trial Court rightly decreed the suit and the First Appellate Court rightly dismissed the First Appeal. In this second appeal



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also, there is no question of law involved in this case and seeks to dismiss the second appeal as it is not maintainable.

5. I have considered the matter in the light of the submissions made on either side and perused the materials on record as well as the Judgments passed by the Courts below.

6. On perusal of the records and evidence, it is seen that the plaintiff / respondent herein filed a suit to redeem the mortgage and require a possession of the suit schedule property of the defendant. It is alleged that originally, the property belongs to one Sarojini Amma. She executed a mortgage deed in favour of the defendant/first appellant herein on 30.12.1974, which is marked as Ex.A1 and Ex.A2. In view of the Act 40/1979, he is entitled to the benefit and is not bound to pay any amount. Since the defendant is enjoying the property for more than 10 years and being agriculturists, the benefit of Section 40/1979, without paying any amount, he is not entitled to acquire the property in favour of the defendant.



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7. The defendant filed a written statement and objected the case of the plaintiff and contended that the property is enjoyed by the defendant's husband from the year 1962 as a lessee of the property. The alleged mortgage deed is a fabricated one. The defendant and her husband improved the property and the plaintiff is not an agriculturist and she is not entitled to get the benefit of under Act 40/1979 and prayed for the dismissal of the suit.

8. Before the Trial Court, in support of the plaintiff's case, the plaintiff himself examined as P.W.1 and 10 documents were marked as Ex.A.1 to Ex.A.10. On the side of the defendant, the defendant herself examined as DW.1 and one Balakrishnan and Neelakanda Pillai were examined as D.W.2 and D.W3 respectively and One document was marked as Ex.B.1, which is the death certificate of Velayutham Pillai.

9. Considering the evidence on record, the trial Court found that the mortgage is true and the property has been purchased by the plaintiff by way of a sale deed dated 05.01.1993, which is marked as Ex.A3 and the plaintiff is entitled for the benefit under Act 40/1979 and with regard



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to the improvement, it has to be decided at the time of passing the final decree and therefore, passed the preliminary decree as prayed for. The First Appellate Court also after considering the evidence and records, confirmed the order of the trial Court and dismissed the Appeal Suit.

10. There is no improper appreciation of evidence on record. Evidence on record is properly considered by the Courts below. There is no question of law involved in the second appeal. In this circumstances, there cannot be any doubt whatsoever that consideration of irrelevant fact and non consideration of relevant fact would give rise to a substantial question of law. Further, it does not meet out the parameters laid down by the Hon'ble Supreme Court in the following decisions:

(i) ***AIR 2008 SC 379 Moses Wilson Vs. Kasturiba.***

(ii) ***AIR 2008 SC 956 AbdulRaheem Vs. Karnataka Electricity Board.***

(iii) ***AIR 2008 SC 1749 Kashmir Singh Vs. Harnam Singh and another.***



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11. The Courts below had decided the case based upon the evidence and documents submitted by the parties. There are no perverse findings, no mis-consideration of evidence and no substantial questions of law are involved in this case. There are no merits in this case and the second appeal fails.

12. Accordingly, this Second Appeal stands dismissed. No costs.

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

To

- 1.The Subordinate Judge,
Padmanabhapuram.
- 2.The Additional District Munsif,
Padmanabhapuram.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM,J.

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