IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.03.2025

CORAM:

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

S.A.No.1629 of 2002

Panjali ... Appellant

Vs.

1. Bhavani Madhurakavi (Died)
2. Madouracavy
3.Manimarane
4.Manimegalai
5.Ejilamarane Ingarsal
6.Aroul Marane Pannir
7.Kalaimaran
8.Parthimaran ... Respondents

[R1 died, RR2 to RR8 brought on record as LRs of the deceased R1 vide Court order dated 10.11.2022 made in CMP.No.10212 of 2022 in SA.NO.1629 of 2002 (KRJ)]

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed against the Judgment and Decree dated 14.03.2002 in A.S.No.91 of 2001 on the file of III Additional District Court, Puducherry confirming the appeal against the judgement and decree dated 09.10.2001 in O.S.No.760 of 2000, on the file of Principal District Munsif Court, Puducherry.

For Appellant	:	Mr.Usha Raman
For R2 to R7	:	Mr.R.Thiagarajan
For R1	:	Died
For R8	:	No appearance

JUDGMENT

The appellant has filed this Second Appeal against the Judgment and Decree dated 14.03.2002 in A.S. No. 91 of 2001 on the file of the III Additional District Court, Puducherry, which confirmed the appeal against the Judgment and Decree dated 09.10.2001 in O.S. No. 760 of 2000 on the file of the Principal District Munsif Court, Puducherry.

2. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

3. Challenging the reversal findings of the first appellate court, the defendant preferred this Second Appeal. The respondent herein is the plaintiff in O.S. No. 760 of 2000 on the file of the Principal District Munsif Court, Puducherry. The suit was filed by the plaintiff against the defendant seeking redemption of mortgage, a direction to execute the cancellation of the registered mortgage deed, and to hand over the plaintiff's original sale deed.

4. In the written statement, the defendant/appellant denied the existence of the mortgage deed as alleged by the plaintiff. The defendant contended that there was, instead, an oral sale agreement between them, pursuant to which possession of the property was handed over to her. The defendant further claimed that the plaintiff subsequently evaded performance of the agreement terms and alleged that the suit property was grossly undervalued and the correct court fee was not paid.

5. Upon considering the submissions of both sides, the learned trial Judge framed eight issues and ultimately held that there was no mortgage deed executed between the plaintiff and the defendant. The trial court concluded that the plaintiff had failed to prove the execution of the mortgage deed and that the amount allegedly sent by the plaintiff to the defendant through demand draft, as if to discharge a mortgage debt, was not acceptable. It also held that there had already been an oral sale agreement between the parties, which was sufficiently established by the defendant. Accordingly, the suit was dismissed.

6. Challenging the said findings, the plaintiff preferred an appeal in A.S. No. 91 of 2001. The learned first appellate Judge elaborately discussed the facts and evidence, framed separate points for consideration, and finally held as follows: (i) The court fees paid by the plaintiff were proper and correct. (ii) Although the defendant did not sign the mortgage deed, she contended that it was unilaterally executed by the plaintiff, thereby admitting its execution. Hence, examination of the attesting witness was not necessary. (iii) The plaintiff successfully proved the execution of the mortgage deed, which was a simple mortgage. (iv) The defendant failed to prove the alleged oral sale agreement between the parties. (v) The mortgage amount had already been paid by the plaintiff to the defendant through demand draft.

7. In view of the above findings, the learned first appellate Judge held that the plaintiff had established her claim. Accordingly, the appeal was allowed, and the findings of the trial court were set aside.

8. The learned counsel for the appellant challenges the reversal findings of the first appellant Court, on the following grounds:

(i) The learned Additional District Judge, Puducherry erred in confirming the appeal and setting aside the well considered judgment of the trial Court.

(ii) The lower appellate court ought to have seen that the defendant had specifically denied the mortgage and being a 2. document required by law to be attested under Section 59 of a Transfer of Property Act, the plaintiff cannot succeed without calling as witness atleast one of the attesters in court.

(iii) The lower appellate court ought to have seen that the defendant did not know that any mortgage has been executed in her favour by the plaintiff and it was a clever ploy of the plaintiff to merely cook up a document behind the back of the defendant to defeat the defendant's right to purchase property under an oral agreeement.

(iv). The learned District Judge ought to have accept the contention of the defendant that she parted with Rs.20,000/-as advance for the property intended to be purchased from the plaintiff but no formal document was executed in view of the proximity of their respective houses and the close friendship before them before suit.

(v) The learned District Judge ought to have further seen that even in a statement given by the plaintiff which was caused to be published in a Tamil magazine Nakeeran, her only contention was that the defendant was attempting to purchase her property against her will and even then there was no whisper about the so called mortgage in favour of the defendant.

(vi). The lower appellate court failed to properly examine the plaintiff's admission that she did not recall any details of the monthly interest due on the alleged mortgage.

(vii) The courts below ought to have seen that the plaintiff was trying to fabricate a version of the mortgage only to wriggle out of her obligations to execute a sale after receiving the balance of consideration of Rs.30,000/- from the defendant, which the defendant was always ready and willing to pay.

(viii). The learned District Judge was in error in drawing an adverse inferrence against the defendant for not returning the amount sent by the plaintiff towards the alleged mortgage. On the other hand, the defendant had deposited the amount in a bank account and informed the plaintiff that she was free to take it back at any time after notice to the defendant.

9. This Court admitted the Second Appeal on 17.04.2024 on the following substantial questions of law:

"(A) Whether the suit for redemption was not liable to be dismissed on the ground that the mortgage, which was required to be attested under Section 59 of the Transfer of Property Act, had not been proved by calling at least one attesting witness, as required under Section 68 of the Indian Evidence Act, 1872.

(B) Whether the learned District Judge was not in error in failing to appreciate that the mortgage itself was a crafty machination of the plaintiff got up without the defendant's knowledge, only to wriggle out of the plaintiff's duty to execute a sale deed for the admitted receipt of Rs.20,000/- as advance."

10. The learned counsel for the respondent/plaintiff contends that the present case is a simple suit for redemption of mortgage. The defendant, instead of discharging the mortgage liability and executing a cancellation of mortgage deed, falsely claims that there was an oral agreement to sell the property. However, the alleged oral sale agreement has not been proved. The plaintiff has established that she discharged the mortgage by sending the mortgage amount to the defendant via demand draft. The defendant received

and admitted this payment during the proceedings but claimed it was part of a sale consideration. However, he has failed to prove the alleged oral sale. The mortgage deed has been proved through documentary evidence. The trial Court failed to appreciate the evidence and circumstances properly. However, the first appellate judge rightly held that the plaintiff had proved her claim and accordingly decreed the suit. Thus, there is no substantial question of law involved, and the appeal deserves to be dismissed for lack of merit.

11. Brief Facts of the Case:

The plaintiff borrowed Rs. 20,000/- from the defendant at Puducherry on 01.02.1990 and executed a mortgage deed in favor of the defendant on the same date, securing the loan by mortgaging the property described in the plaint schedule (a plot and a tiled house). As per the terms, the plaintiff agreed to repay the principal with interest. On 30.04.1996, the outstanding amount including interest was Rs.34,800/-. The plaintiff attempted to repay this amount, but the defendant evaded receipt with malafide intent to grab the property. Consequently, the plaintiff sent a legal notice enclosing a demand draft for Rs. 34,800/- towards the mortgage dues. The defendant received the notice and retained the demand draft, initially requesting time to vacate the premises and execute the cancellation of mortgage deed. However, despite the lapse of time, the defendant failed to act, compelling the plaintiff to file the present suit for redemption.

12. The defendant disputed the claim, alleging that the property was undervalued and that the correct court fee was not paid. He also contended that both parties were family friends, and that the plaintiff had originally purchased the property as a vacant site in 1967. He claims she handed over possession in 1975, and by 1980, he had made improvements and expressed interest in purchasing the property. Allegedly, there was an oral sale agreement, under which Rs. 20,000/- was paid as advance against a total consideration of Rs. 50,000/-. The defendant claims the plaintiff handed over the original title deeds but later refused to execute the sale deed, instead creating a false mortgage document and lodging a fabricated complaint.

13. Before the trial Court, both parties adduced oral and documentary evidence. On the plaintiff's side, P.W.1 was examined, and Exs.A1 to A3 were

marked. On the defendant's side, D.W.1 to D.W.5 were examined, and Exs.B1 to B12 were marked. Court exhibits Ex.X1 to Ex.X4 were also marked.

14. The learned trial Judge framed specific issues. Relying on the guideline value under Ex.X2, the trial Court held that the property was undervalued and hence the correct court fee had not been paid, affecting the Court's pecuniary jurisdiction. The trial Court also held that the rate of interest was not properly explained and rejected the plaintiff's claim of 18% interest. It further held that the execution of mortgage deed (Ex.A1) was not proved as no attesting witness was examined. Consequently, it found that the mortgage and calculation of dues were not proved and that the demand draft was related to the alleged oral sale. The trial Court dismissed the suit. The plaintiff preferred an appeal in A.S. No. 91 of 2001, which was allowed by the first appellate Judge. The reversal of the trial Court's judgment is now challenged in the present second appeal by the defendant.

15. Since the plaintiff approached the Court seeking redemption of mortgage, she has to prove that a valid mortgage existed. The mortgage deed

was marked as Ex.A1 a registered document dated 14.08.2001. The defendant disputes it, alleging that he did not sign and that it was unilaterally executed by the plaintiff. However, even though the defendant denied his signature, he did not categorically dispute the existence of the mortgage. He claimed the document was created unilaterally by the plaintiff. In light of this, and as rightly observed by the first appellate judge, there was no necessity to examine an attesting witness. The trial Court failed to consider this admission when deciding the issues. It is a settled proposition that a mortgage deed need not contain the signature of both parties. Therefore, the absence of the defendant's signature is not fatal to the plaintiff's claim.

16. The learned first appellate Judge, while deciding point No. 1, elaborately discussed the payment of court fee. Under Section 33(8) read with Article 1 of Schedule I of the Pondicherry Court Fees and Suit Valuation Act, only 1/4th of the mortgage debt needs to be calculated. In this case, 1/4th of Rs. 20,000/- is Rs. 5,000/-, and the plaintiff correctly paid the court fee. Therefore, the defendant's objection regarding incorrect court fee is unsustainable. The first appellate judge's finding on this issue is well

reasoned and does not warrant interference.

17. It is also relevant that the original title documents were handed over to the defendant at the time of executing the mortgage, as admitted by the plaintiff. The defendant, while denying the mortgage, claims possession of the original documents and alleges that there was an oral sale agreement. However, in the written statement, the defendant has not disclosed when and where this alleged oral agreement was entered into, nor is any specific date mentioned. On 30.04.1996, the plaintiff attempted to discharge the mortgage by sending a demand draft for Rs. 34,800/- along with a legal notice. The defendant received the amount but refused to cancel the mortgage deed and instead claimed there was a sale agreement. If there was truly an oral sale agreement, the defendant ought to have taken steps for specific performance soon after receiving the notice in 1996. His failure to do so casts serious doubt on the claim of oral agreement.

18. As on date, the defendant has not taken any steps to file a suit for specific performance in case the plaintiff fails to comply with the terms of the

alleged agreement. Therefore, the conduct of the defendant itself proves that the claim of an oral agreement to sell was made only to evade the cancellation of the mortgage. If there had truly been a sale agreement, the defendant would have filed a suit to obtain a sale deed from the plaintiff. However, no such steps were taken, either before or after the filing of the present suit. This clearly indicates that the alleged oral sale agreement is fraudulent claim solely to prolong the proceedings and to avoid handing over the properties and title deeds to the plaintiff. The malafide intention of the defendant was rightly observed by the learned first appellate Judge, and therefore, the findings require no interference. Further, the learned trial Judge erroneously held that the oral agreement between the parties was proved by the defendant. This is a perverse finding, and the learned first appellate Judge rightly set aside those findings.

19. It is an admitted fact that the plaintiff sent a sum of Rs. 38,400/- along with a notice to the defendant. The same was received by the defendant and deposited as a fixed deposit. In support of this, the defendant relied on Ex.B4. Therefore, the amount sent by the plaintiff to discharge the mortgage

debt was received and enjoyed by the defendant. However, she was not inclined to hand over the original documents or discharge the property in favor of the plaintiff. This clearly shows her intention to unlawfully grab the plaintiff's property by using the influence of her husband, who was a revenue inspector at the time of filing the suit.

20. Consequently, the plaintiff even considered filing a police complaint. However, the trial Court failed to appreciate these facts and circumstances and erroneously dismissed the suit. The learned first appellate Judge, on the other hand, rightly appreciated the facts and set aside the findings of the learned trial Judge, which need no interference.

21. It is already established that the plaintiff discharged the mortgage through a demand draft in the year 1996. Despite this, she has been unable to take possession of the property all these years. The defendant failed to prove the existence of any oral agreement between the parties and also received the mortgage amount in 1996. Therefore, the defendant has no right or title to retain the plaintiff's property. For nearly 30 years, the defendant has enjoyed

the property without any lawful claim. Even plaintiff is entitled to claim damages.

22. Although there is no specific prayer for possession, the Court is empowered to grant such relief under its inherent powers. The defendant is directed to hand over the possession of the property and the original title deeds to the plaintiff within 12 weeks from the date of receipt of this order. If the defendant defaults, the plaintiff is entitled to approach the Executing Court to obtain possession and retrieve the original documents. If any application is filed, the trial Judge is directed to dispose of it within three months, without granting unnecessary adjournments.

23. Accordingly, this second appeal is dismissed. There shall be no order as to costs.

25.03.2025

Index : Yes/No
Speaking Order: Yes/No
Nutral citation: Yes/No
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To

1. The III Additional District Court, Puducherry.

2. The Principal District Munsif, Puducherry.

3.The Section Officer, VR Section,
High Court of Madras.

T.V.THAMILSELVI, J.

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