IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2025

CORAM:

THE HONOURABLE Dr. JUSTICE R.N.MANJULA

S.A. No. 1166 of 2009

Thandavarayan (Died)

2.T. Vasanthi
3.T. Kamal
4.T. Karthikeyan
5.Lalithakumari
6.T. Kathirvel
7.T. Kannan ... Appellants

(A2 to A7 are brought on record as Lrs of the deceased sole appellant)

.Vs.

1.Paranidaran
2.Shanmugavalli @ Saraswathi
3.Rajalingam ... Respondents

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree in A.S. No.232 of 2006 on the file of the Principal District Judge, Puducherry dated 10.06.2009 in reversing the judgmend and decree in O.S. No. 350 of 1998, on the file of Principle Sub-Judge, Pondicherry dated 29.12.2000.

For Appellants : Ms. V. Srimathi,
Asst. by Mrs. M. Saranya

For Respondents : Mr. T. Saikrishnan

JUDGMENT

The Second Appeal has been filed challenging the judgment made in A.S. No. 232 of 2006 dated 10.06.2009, on the file of the Principal District Judge, Puducherry.

2. The appellant is the 1st defendant. The suit was filed for the relief of redemption of mortgage. The trial Court had dismissed the suit and the plaintiff filed an appeal. The First Appellate Court allowed the appeal by setting aside the judgment of the trial Court. Now, the second appeal has been preferred by the defendant challenging the judgment of the First Appellate Court.

3. The short facts pleaded in the plaint are as follows: -

The suit is seeking for the relief of redemption of mortgage under the mortgage-cum-conditional sale deed dated 07.10.1987 and for delivery of possession of the suit property, along with the recovery of mesne profits. In the alternative, the plaintiff seeks a decree for specific performance directing the 1st defendant to reconvey the suit property as per the terms of mortgage-cum-sale deed dated 07.10.1987 and to deliver possession along with the mesne profits.

4. The 3rd defendant, while he was working in the Barathi Mills, Pondicherry, under the industrial workers' scheme, was allotted the suit property by the Government of Pondicherry as a tenant and was later conferred ownership of the same by virtue of a lease-cum-sale deed dated 31.07.1987. As per the terms of the said document, the suit property cannot be transferred for a period of 10 years.

5. The 3rd defendant executed a mortgage by conditional sale in favour of the 1st defendant for a consideration of Rs.35,000/- on 07.10.1987. As per the terms of the said deed, the 1st defendant agreed to reconvey the suit property in favour of the 3rd defendant on payment of

Rs.35,000/-, failing which, on expiry of 11 years, the patta could be transferred in the name of the 1st defendant. On the date of execution of the said document, the value of the property was Rs.1,00,000/-. Subsequent to the mortgage-cum-conditional sale deed dated 07.10.1987, the 1st defendant took possession of the suit property and leased it out to several persons from time to time. At present, the 2nd defendant is in occupation of the suit property. The plaintiff is the grandson of the 3rd defendant through his son Pasupathi, who is also the power agent representing the plaintiff.

6. On 14.10.1996, the 3rd defendant executed a settlement deed in favour of the plaintiff. As per the terms of the settlement deed, the plaintiff is entitled to redeem the suit property from the 1st defendant. Accordingly, the plaintiff approached the 1st defendant in person through his power agent, requesting him to receive Rs.35,000/- and to permit the redemption of the property. However, the 1st defendant asserted that he

was entitled to remain in possession for a period of 11 years.

7. During October 1998, the plaintiff approached the 1st defendant through his power agent to redeem the property, but the 1st defendant did not come forward to reconvey the property as promised. Hence, on 06.10.1998, the plaintiff sent a telegram tendering the mortgage money of Rs.35,000/- in order to redeem the suit property, and also sent a legal notices on 07.10.1998 and 08.10.1998 to the 1st and 2nd defendants respectively. The defendants replied stating that the transaction was an outright sale with a condition to repurchase, and that they had become the absolute owners of the suit property. Hence, the plaintiff has filed the suit for redemption. In order to avoid multiplicity of proceedings, he has also included an alternative prayer for specific performance.

8. The written statement filed by the defendants, in brief: -

It is true that the Government of Pondycherry executed a lease-cum-sale deed in respect of the suit property in favour of the 3rd defendant on 31.07.1987. The 3rd defendant also executed a conditional sale deed in favour of the 1st defendant for a consideration of Rs.35,000/- on 07.10.1987, with a condition that the patta of the property could be transferred in the name of the 1st defendant after the expiry of 11 years. Immediately after the execution of the conditional sale, the 1st defendant was put into possession of the property.

8.1. It is false to state that the plaintiff is the grandson of the 3rd defendant through his son Pasupathy, and that the 3rd defendant had executed a settlement deed in his favour on 14.10.1996. The plaintiff has approached the 1st defendant both in person and through his power agent, offering Rs.35,000/- to redeem the suit property. The deed executed by him is not a deed of mortgage by conditional sale; it is an ostensible conditional sale deed. After the execution of the ostensible conditional sale deed on 16.11.1987, the 3rd defendant approached the 1st defendant and received a sum of Rs.25,000/- from him, and executed a sale receipt in his favour.

8.2. The 3rd defendant has no right to execute any document conferring rights or encumbering or alienating the suit property while the alleged conditional sale deed is existing in favour of the 1st defendant. The alleged settlement deed dated 14.10.1996 in favour of the plaintiff is a void document and it is not binding upon the 1st defendant. The 1st defendant has spent a sum of Rs.1,50,000/-, for construction and repairs of the suit property. Neither the plaintiff nor his power agent ever approached him during the past 11 years, either personally or through messengers. As the prescribed period of 11 years has already been lapsed, the 1st defendant has absolute title and enjoyment over the suit property. The plaintiff, being a third party, has no locus to demand possession from the 2nd defendant or to claim mesne profits from the 1st and 2nd defendants.

9. The 3rd defendant remained ex parte, and the 2nd defendant adopted the written statement of the 1st defendant. On the basis of the

above pleadings, the following issues have been framed: -

> "*1) Whether the plaintiff is entitled for redeeming the mortgage under the suit mortgage cum conditional sale deed dated 7.10.1987 as claimed or in the alternative is entitled for the specific performance as per the terms of the document as claimed?*
>
> *2) Whether the plaintiff is entitled for possession as prayed for?*
>
> *3) Whether the plaintiff is entitled for mesne profits as claimed?*
>
> *4) Whether the plaintiff is entitled for a decree as prayed for?*
>
> *5) To what relief is the plaintiff entitled?"*

10. During the course of the trial, on the side of the plaintiff, 3 witnesses were examined as PW.1 to PW.3 and Ex.A1 to A9 were marked. On the side of the defendants, 3 witnesses were examined as DW1 to DW3 and Ex.B1 to B3 were marked.

11. After the conclusion of the trial and considering the evidence available on record, the suit was dismissed. An appeal was preferred by the plaintiff, and the First Appellate Court allowed the appeal by setting

aside the judgment of the trial Court.

12. The 1st defendant has preferred the second appeal and the second appeal has been admitted on the following substantial questions of law:

"a) Whether the suit at the instance of a third party to the document is maintainable when the document is one of conditional sale?

b) Whether the lower appellate court was right in holding Ex.B1 deed is a mortgage by conditional sale?

c) Whether the suit for "redemption" is maintainable when the party failed to comply with his part of the contract stipulated under Ex.B1?

d) Whether the lower appellate court is justified in ignoring Ex.B2, sale receipt, issued by the 3rd respondent, which confirms the nature of the document as one of the sale?"

13. Learned counsel for the appellant submitted that Ex.A1 is only

a conditional sale and not a mortgage by way of a conditional sale. The 3rd defendant executed the conditional sale in favour of the 1st defendant, but the 3rd defendant did not come forward and execute the reconveyance as per the condition by repaying the sale consideration within 11 years, and without getting the title reconveyed in favour of the 3rd defendant. He cannot execute a settlement deed in favour of the plaintiff, and the said settlement deed will not pass any title in favour of the plaintiff. Neither the 3rd defendant nor the actual plaintiff came to the box to depose evidence and the power agent of the plaintiff, who is none other than the son of the 3rd defendant, alone tried to conduct the suit by making unsustainable claims that the appellant had invested more than Rs.20,000/- for putting up construction in the suit property only because he believed that he had obtained the sale deed. The 3rd defendant had received Rs.25,000/- subsequent to the execution of the conditional sale and had passed the sale receipt Ex.B2 dated 16.11.1987. This shows the intention of the 3rd defendant to sell the suit property once and for all in favour of the 1st defendant and allow the 1st defendant to enjoy the suit property as his own. Even though, the trial Court has rightly dealt with the evidence available on record and denied relief to the plaintiff, the First Appellate Court had misled itself and chosen to decree the suit by allowing the first appeal.

14. Learned counsel for the respondents submitted that, as per Ex.B1, the 3rd defendant had availed the loan of Rs.35,000/- from the 1st defendant and executed the Ex.B1 document. It is only a conditional sale. By way of settlement, the 3rd defendant transferred the right of redemption in favour of the plaintiff and hence, the plaintiff is entitled to redeem the mortgage by paying the loan amount as per the condition before the expiry of 11 years.

14.1. Even if the amount was tendered by the plaintiff to the 1st defendant, the 1st defendant refused to cancel the mortgage or transfer the property in favour of the plaintiff. Since the plaintiff only stands in the shoes of the 3rd defendant, he is entitled to discharge the mortgage by conditional sale by repaying the loan amount for which the sale was executed. When the language of the document is clear about the mortgage by sale by incorporating the word “<bul;L fpuak;;”, it is for the party asserting that Ex.B1 is not a mortgage, to bear the burden of disproving the same. The appellant / 1st defendant did not prove anything contrary to the recitals contained in Ex.B1.

14.2. As the trial Court had not properly appreciated the evidence on record, the First Appellate Court rightly appreciated the evidence and arrived at the conclusion that the plaintiff has the right of redemption of the mortgage and thus decreed the suit by setting aside the judgment of the trial Court.

14.3. Based on the recitals in Ex.B1, the First Appellate Court has rightly held that it is a mortgage by conditional sale and hence the plaintiff has the right of redemption. Since the Ex.B2 sale receipt is unregistered, the trial Court has rejected it as a proof of sale. It is further observed by the First Appellate Court that even if Ex.B1 is a conditional sale, the plaintiff has exercised his option to get the suit property transferred in his name after paying the principal amount. The plaintiff approached the 1st defendant immediately after getting the Ex.A3 settlement deed in his favour on 14.10.1996. The plaintiff has sent his agent, PW.2 and PW.3 to the 1st defendant to pay the money and to recover the suit property in the plaintiff's name. Therefore, it is held that the plaintiff is entitled to the relief of redemption of mortgage.

Discussion:-

15. The 1st respondent / plaintiff has filed the suit for redemption of mortgage along with the relief of recovery of possession by alleging that the Ex.B1 document executed in favour of the 1st defendant is a mortgage by conditional sale. The recitals of Ex.B1, read that it is "<bul;L fpuak;;". The word "<bul;L fpuak;;;" in Tamil conveys the meaning that

it is uncertain. The sale made in favour of the 1st defendant by the 3rd defendant under Ex.B1 is not an absolute sale deed, but it is an uncertain sale deed. Because, a condition has been attached to the sale deed to make it either an absolute sale or no sale. It depends upon the 3rd defendant's ability to full fill or his failure to fulfil.

16. According to the terms of Ex.B1, the sale consideration was agreed at Rs.35,000/-. The rider in the sale deed is that the 3rd respondent can repay the sale consideration within 11 years and get back the sale executed in his favour and recover possession. The 3rd respondent does not deny the fact that the possession of the suit property was handed over to the 1st defendant immediately after Ex.B1 has been executed. In fact, the 1st defendant has inducted the 2nd defendant to occupy the suit property. In any event, the 3rd respondent has handed over the possession of the suit property in favour of the 1st defendant.

17. The plaintiff claims that Ex.B1 is not a conditional sale but it is only a mortgage by conditional sale, and if the transaction was a mortgage by conditional sale, the recitals of Ex.B1 have stated that there is a mortgage in respect of the suit property and failure to repay the same within the stipulated time would convert the mortgage into a sale in favour of the 1st defendant. No such recitals are found in Ex.B1. Instead, Ex.B1 simply states that it is an "<bul;L fpuak;;" meaning that it is an uncertain sale and the certainty of which will depend on the happening of some specific event.

18. As per Section 91 of the Evidence Act, when the terms of a contract between the parties are reduced into writing, and if a party intends to prove the contract, it can be proved only by producing the document itself and not otherwise. The production of such a document, as contemplated under Section 91 of the Evidence Act, excludes oral evidence, except under certain specific circumstances under Section 92 of

the Evidence Act.

19. Even the plaintiff does not contend that any exceptional circumstances arise as contemplated under Section 92 of the Evidence Act. However, the interpretation of the nature of the Ex.B1 document by the plaintiff differs from that of the 1st defendant. The 1st defendant claims that it is merely a conditional sale, whereas the plaintiff claims that it is a mortgage by conditional sale.

20. Learned counsel for the respondents drew the attention of this Court to Section 58(c) of the Transfer of Property Act and submitted that if Ex.B1 fulfills the condition features contemplated under the said provision and hence, it can only be classified as a mortgage by conditional sale.

For the sake of clarity, the above provision Section 58(c), is extracted below: -

> *"58(c) Mortgage by conditional sale.- Where the mortgagor ostensibly sells the mortgaged property-*

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

1 [Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.]"

21. Learned counsel for the respondent also cited the decision in ***Karuppanna Gounder v. Thirumalai Gounder*** reported in ***89 L.W. 364***, wherein it is held that a sale with a condition to repurchase can be construed as a mortgage, but the burden to prove that it is only a mortgage by conditional sale would lie on the party who asserts the same.

22. On perusal of the above judgment, it only reveals that the construction of the sale with condition to repurchase as a mortgage by conditional sale is possible only if such clauses is incorporated in the very

same document. So the incorporation of the above sale agreement can only be found out from the language contained in the document or from the attendant circumstances. In the language of the above judgment, the above position is clarified as under:-

> *"4. With reference to such a situation, the Supreme Court, in Chunchun Jha v. Ebadat Ali, , has observed, at page 347.*
>
> *"The legislature has made a clear cut classification and excluded transactions embodied in more than one document from the category of mortgages; therefore it is reasonable to suppose that persons who, after the amendment, choose not to use two documents, do not intend the transaction to be a sale, unless they displace that presumption by clear and express words, and if the conditions of Section 58(c) are fulfilled, then we are of opinion that the deed should be construed as a mortgage".*
>
> *The Supreme Court further observed, at page 348:*
>
> *"Now, as we have already said, once a transaction is embodied in one document and not two and once its terms are covered by Section 58(c) then it must be taken to be a mortgage by conditional sale unless there are express words to indicate the contrary, or, in a case of ambiguity, the attendant circumstances necessarily lead to the opposite conclusion". As I pointed out already, the condition is embodied in the same document and it is not embodied in a separate document. The terms of Ex. B-2 are covered by Section 58(c) of the T. P. Act. Therefore, according to the observation of the Supreme Court referred to above, the transaction under Ex. B-2 must be taken to be a mortgage by conditional sale unless there are express words to indicate the contrary, or in the case of ambiguity, the attendant*

circumstances necessarily lead to the opposite conclusion. In this case, the learned Subordinate Judge has unfortunately committed a mistake. In para. 6 of his judgment he has stated "The plaintiffs have to prove that Exhibit B-2 is a mortgage by conditional sale and not an outright sale". This statement of the learned Subordinate Judge, on the face of it, is erroneous and runs counter to the law laid down *by the Supreme Court. From the law* laid down by *the Supreme Court it will follow that once the condition is incorporated in the same document and the terms of the document are covered by* Section 58(c) *of the T. P. Act, the transaction will be considered to be a mortgage only unless the person who asserts it is not a mortgage is able to prove, either from the language contained in the document or from the attendant circumstances, that the transaction was intended to be an outright sale. By throwing the burden wrongly on the appellants herein, the learned Subordinate Judge has committed an error and as a matter of fact, the conclusion of the learned Subordinate Judge would appear to be based upon his view that the appellants had failed to prove that Ex. B-2 was a mortgage by conditional sale. On the face of it, such a conclusion is erroneous. Therefore, I have no alternative but to set aside the judgment and decree of the learned Subordinate Judge and remand the matter for fresh disposal again by the lower appellate Court by finding out whether the respondents herein had shown that the transaction under Ex. B-2 is not a mortgage by conditional sale, but an outright sale. As a matter of fact, from the extract from the judgment of the Supreme Court referred to already by me, it will be clear that the same can be shown by two means: one, by establishing that there are express words in the document itself which will be indicative of the character of the document not as a mortgage by conditional sale and establish it to be an outright sale; and secondly, by establishing the attendant circumstances which will necessarily lead to the inference that the transaction was meant to be an outright sale only. If, in the document itself, express words are to be found to show that the transaction was intended to be only an* *outright sale, there would be no need for me to remand the matter and therefore, I gave an opportunity to Mr. T. R. Rajagopalan, learned counsel for the respondents, to draw my attention to any term in Exhibit B-2 which will lead to the inference that the transactions under Ex. B-2 was only an outright sale. Apart from referring to certain statements and words contained in the document showing that the transaction was a sale, the learned counsel was not able to draw my attention to any express words which will preclude the transactions being a mortgage by conditional sale and establish that the same is only an outright sale. As a matter of fact, with regard to the reliance on the recitals and words contained in Ex. B-2 as showing the transaction as a sale, the Supreme Court itself, in the judgment referred to already, has given an answer. The Supreme Court pointed out at page 348 as follows:*

"The only weakness in this argument is that when a mortgage is by conditional sale, this is the form it has to take, because Section 58(c) *postulates that there must be an 'ostensible sale' and if a sale is ostensible it must necessarily contain all the outward indicia of a real sale. The question we are considering can only arise when the word 'sale' is used and, of course, a sale imports a transfer of title. The use of the words "absolute proprietor in our places" carries the matter no further because the essence of every sale is to make the vendee the absolute proprietor of what is sold. The question here is not whether the words purport to make the transferee an absolute proprietor, for, of course, they must under* Section 58(c)*, but whether that is done 'ostensibly' and whether conditions of a certain kind are attached".*

Thus, the recitals contained in Ex. B-2 to show that the transaction was a sale were consistent with the sale being an ostensible one, and therefore, from those recitals, no inference can be drawn that the transaction was not intended to be a *mortgage by conditional sale, but was intended to be only an outright sale."*

23. In the judgment of ***Tulsi and others vs. Chandrika Prasad and Others*** reported in ***(2006) 8 SCC 322***, the Supreme Court has held, by citing the example of a document that falls within the purview of Section 58(c), that a property can be mortgaged by conditional sale. The relevant paragraphs have been extracted hereunder: -

> *"17. The transaction in this case has been evidenced by one document. Section 58(c) of the Transfer of Property Act will, therefore, apply.*
>
> *18. In the instant case, the scribe of the document was examined. His categorical statement was that he had been asked by the parties to scribe a deed of mortgage and not a deed of sale. Respondent 1, as noticed hereinbefore, in the document itself categorically stated that he was executing a deed of mortgage. Indisputably, the amount of stamp duty was also paid by him. In a case of deed of sale, ordinarily the transferee pays the stamp duty. Why such a deviation from the normal practice was made has not been explained by the appellant.*
>
> *19. We have noticed hereinbefore that the nature of the deed described that the document is ambiguous as both the terms viz. "Kewala" and "Baibulwafa", were mentioned. The transaction, however, categorically states that Appellant 1 was to maintain the property in its present*

condition. Of course, permission for reconstruction of the structure was granted. But, if the intention of the parties was to transfer the property absolutely, no such stipulation was required to be made at all. In a case of absolute transfer, the vendee has an absolute right to deal with his property in any manner he likes. It was clearly stipulated in the deed that in the event the executant repayed the entire consideration by 30-12-1971, the purchaser would reconvey the property and furthermore deliver possession thereof. The sale was to become absolute only when the transferee failed to pay the said amount within the stipulated period. The courts below have also taken into consideration the contemporaneous conduct of the parties in treating the transaction to be one of mortgage and not of sale. We are, therefore, of the opinion that the parties intended to enter into a transaction of mortgage and not sale.

20. Section 91 of the Evidence Act mainly forbids proving of the contents of a writing otherwise than by writing itself and merely lays down the "best evidence rule". It, however, does not prohibit the parties to adduce evidence in a case the deed is capable of being construed differently to show how they understood the same.

21. We may notice that in Indira Kaur v. Sheo Lal Kapoor? this Court upon taking into consideration the stipulations made in the deed to the effect that a period of 10 years was fixed for conveying the property and the vendee was prohibited from selling and parting with his right, title and interest for the said period and no order of mutation was passed in his favour, construed the same to be a transaction of mortgage.

22. In the instant case also the transferees did not get *their name mutated. The tenant in the property was no other than the husband of Appellant 1. He continued to be a tenant. The possession purported to have been delivered in favour of the defendant was merely a symbolic one."*

24. As per Section 58(c), if the mortgagor sells the property on the condition that, on default of payment of the mortgage money on a certain date, the sale shall become absolute, or on the condition that, upon such payment being made, the sale shall become void, it amounts to a mortgage by conditional sale. The condition may also provide that, on payment of the mortgage money, the buyer shall reconvey the property to the seller. Even in that case, the transaction can be treated as a mortgage by conditional sale.

25. On the other hand, if the sale is authentic and the terms of the instrument provide only for the transfer of title along with a separate agreement to reconvey the property upon repayment of the amount, such transaction would only amount to a conditional sale.

26. In the instant case, even though there is no express term stating that the document is a deed of mortgage, there is a condition that the seller shall repay the sale amount within a period of 11 years and, upon such repayment, the property shall be reconveyed in favour of the executant. However, the 1st defendant submitted that another document Ex.B2 was subsequently executed by receiving Rs.25,000/- on 16.11.1987 and confirmed that the transaction is only an outright sale. The conduct of the 3rd defendant in executing Ex.B2, can only be considered to presume that the 3rd defendant intended an absolute sale and not a mortgage by conditional sale. The learned First Appellate Court has arrived at the conclusion that Ex.B2 is an unregistered document and hence, it cannot convey title.

27. No doubt, the conveyance has been made only through Ex.B1 document. Ex.B2 receipt has been produced to show the circumstances

under which the transactions involved in Ex.B1 can be presumed to be a sale. Admittedly, Ex.B1 does not contain any stipulation restraining the 1st defendant from putting up any construction or changing the possessory rights in his favour. The 1st appellant is said to have spent a sum of Rs.1,50,000/- to put up a construction on the suit property and this has not been denied. The execution of Ex.B2 receipt has also not been denied by the 3rd defendant. In fact, the 3rd defendant avoided the witness box and it is only the plaintiff who has entered the witness box.

28. Therefore, without the evidence of the 3rd defendant regarding the circumstances under which Ex.B2 receipt was executed, the plaintiff cannot claim that Ex.B1 is a mortgage by conditional sale. However, there is a condition that the patta for the property can be transferred in the name of the 1st defendant only after expiry of 11 years and only in the event of the 3rd defendant fails to repay the money.

29. It is the contention of the appellant / 1st defendant that the plaintiff, being a third party, is not entitled to maintain the suit for redemption and that he has no *locus standi* to file the suit. The 3rd defendant had executed a settlement deed in favour of the plaintiff even before the expiry of 11 years and without paying the money involved in Ex.B1 and obtaining reconveyance in his favour. As there are recitals to the effect that the 1st defendant cannot transfer the possessory documents in his favour before the expiry of 11 years, it is also possible to presume that the Ex.B1 instrument is a mortgage by conditional sale. In that event, the settlement deed executed in Ex.A3 in favour of the plaintiff can, at best, be considered as a transfer subject to encumbrance.

30. Hence the plaintiff cannot be strictly precluded from exercising the right of his transferor, namely the 3rd defendant, to clear the encumbrance by making payment of the mortgage money to the 1st defendant and thereby get the sale in favour of the 1st defendant

cancelled. As the plaintiff steps into the shoes of the 3rd defendant, he can also exercise the right of redemption by clearing the mortgage. Thus, the substantial question of law (a) is answered.

31. However, merely holding that the plaintiff has entitlement does not automatically lead to the conclusion that he is entitled to the decree as prayed. Because, it has to be determined whether Ex.A1 document is a mere conditional sale or a mortgage by conditional sale, and in case it is found to be a mortgage by conditional sale, whether the plaintiff has fulfilled the condition.

32. Even though the 1st defendant has pleaded that he has put up the construction by spending a sum of Rs.1,50,000/-, Ex.B1 does not give him the liberty to put up the construction by assuming that he has become the absolute owner of the suit property. When there is a condition attached that the patta should not be changed in his name before the

expiry of 11 years, Ex.B1 cannot be treated as an outright sale. This condition, coupled with the primary condition that the 3rd defendant is entitled to repay the mortgage amount within a period of 11 years and obtain the conveyance in his favour, would clearly lead to the inference that Ex.B1 is a mortgage by conditional sale. Because Ex.B1 contains all the features contemplated under Section 58(c) of the Transfer of Property Act. Therefore, Ex.B1 has to be considered as a mortgage by conditional sale.

33. So far as the Ex.B2 sale receipt is concerned, it can only be considered as a circumstance and not as a conveyance. Even in Ex.B2 sale receipt, there is a condition that the 3rd defendant or his legal heirs would repay the money before the expiry of the stipulated time and get back the conveyance in their favour. Therefore, at best, Ex.B2 can only be considered as a continuation of the Ex.B1 mortgage by conditional sale and on the strength of Ex.B2, the transaction cannot be treated either as a

mere conditional sale or an absolute sale. Thus, the substantial question of law (d) is answered accordingly.

34. However, the evidence on record shows that the plaintiff did not go to the 3rd defendant directly to offer the mortgage money and secure the reconveyance either in his favour or in favour of the 3rd defendant. Instead, he has been sending other persons on the verge of the expiry of 11-year period. Even though, the First Appellate Court is right in arriving at the conclusion that Ex.A1 is a mortgage by conditional sale, it has failed to appreciate the conduct of the plaintiff. Without appreciation of the plaintiff's lack of efforts to repay the mortgage amount within the stipulated 11-year period, the Court cannot conclude that the condition stipulated in the Ex.B1 has been complied with.

35. The 3rd defendant, who is the proper person to speak about the subsequent document Ex.B2, did not come to the rescue of the plaintiff

by entering the witness box. The 11-year period was to conclude on 07.10.1998, and only on that date the plaintiff is said to have sent a notice to the 1st and 2nd defendants stating that he was ready to tender the mortgage money of Rs.35,000/-. Even on 06.10.1998, when he sent a telegram, he did not choose to meet the 1st defendant in person. It is seen from the evidence of PW.2 and PW.3 that the plaintiff had sent only PW.2 and PW.3 as his messenger for reconveyance. These acts were not performed sufficiently in advance.

36. Whatever may be the case, the record does not disclose that the plaintiff had actually tendered the mortgage money physically and thereafter waited for the 1st defendant to come and execute the sale deed. Therefore, the condition to repay the mortgage money as found in Ex.B1 requires actual payment and cannot be satisfied by a mere expression of intention to pay. The First Appellate Court has not taken this aspect into consideration before holding that the plaintiff is entitled to redeem the

mortgage and it is not correct. Thus, the substantial question of law (b) and (c) is answered.

37. Even though the plaintiff can maintain a suit for redemption, when he fails to comply with the condition stipulated under Ex.B1, his entitlement to seek reconveyance of the suit property in his favour is lost. As the First Appellate Court has not considered this essential aspect by appreciating the evidence on record in proper perspective, the judgment of the First Appellate Court is therefore liable to be set aside.

38. The Second appeal is allowed and the judgment and decree dated 10.06.2009, passed in A.S. No. 232 of 2006 is set aside and the judgment of the trial Court is restored. No costs.

06.11.2025

Index : Yes / No
Speaking Order/Non Speaking Order

AT

To
1.The Principal District Judge, Puducherry.

2.The Principle Sub-Judge, Puducherry.

Dr. R.N. MANJULA, J.

AT

S.A.No.1166 of 2009

06.11.2025