IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2025

CORAM:

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

A.S.No. 262 of 2017
and
C.M.P.No. 10140 of 2017

P.Ponnusamy ... Appellant

Vs.

A.Palanisamy (died)

2. K.Suseela
3. M.Swarnalatha
4. G.Banumathy

Respondents 2 to 4 brought on record as LR of deceased Sole respondent viz., (A.Palanisamy) vide court order dated 27.06.2022 made in C.M.P. Nos. 10087 to 10089 of 2018) .. Respondents

PRAYER : Appeal Suit filed under Sec. 96 r/w Order 41 Rule 1 of Civil Procedure Code, to set aside the judgment and decree dated 03.03.2015 passed by the I Addl. District Court, Tiruppur in O.S. No.629 of 2009.

For Appellant : Mr.S.S.Swaminathan

For Respondents : Mr.S.Natarajan for R2 to R4
R1 – died

JUDGMENT

The appellant herein is the defendant in the suit in O.S.No.629 of 2009, on the file of I Addl. District and Sessions Judge, Tiruppur, challenging the findings of the trial court, had preferred this Appeal Suit.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit seeking for the relief of recovery of money based on the mortgage deed executed by the defendant herein on 03.04.2006 for availing a loan of Rs.6,00,000/- borrowed by him and agreed to repay the same with interest within 36 months, but he failed to repay the loan. On 03.04.2007 he issued a notice, but no reply was given. Though he received the notice, he has not taken any steps to repay the loan. Hence, he filed a suit with restricted interest at the rate of 24% for the suit claim. Accordingly, the suit was filed for

recovery of loan based on the mortgage deed with restricted interest at the rate of 24% per annum.

4. The defendant denied the plaint allegations stating that he received only a sum of Rs.2 lakhs as loan from the plaintiff for running an unauthorised chit fund with the intention to grab the house property belongs to him. He came forward with the suit as if he borrowed a sum of Rs.6 lakhs and executed a mortgage deed. In fact, he repaid the alleged loan amount with interest. Hence, the suit claim is unlawful one and prayed for dismissal of suit.

5. Considering both side submissions, the trial court framed the issue as to whether the plaintiff is entitled for the suit claim. Both parties adduced oral and documentary evidence. On the side of plaintiff, the documents Ex.A1 to Ex.A16 were marked and P.W.1 and P.W.2 were examined. On the side of defendant, no document was marked and D.W.1 and D.W.2 were examined.

6. Based on the Ex.A1 mortgage deed, the plaintiff contended that he borrowed a sum of Rs.6 lakhs and he executed Ex.A1 mortgage deed agreeing to repay the loan amount within 36 months and also handed over

original title deed marked as Ex.A2. The defendant himself in his evidence admits that he handed over title deed at the time of trial. However, he has not given any reply to the notice issued by the plaintiff and also not proved that he paid the interest. Therefore, the trial judge held that based on Ex.A1 registered mortgage deed, he has not proved that he paid the interest. Therefore, the trial judge held that based on the Ex.A1 registered mortgage deed, the plaintiff proved his claim. Accordingly, the suit was decreed in favour of him directing the defendant to pay suit claim within two months with restricted interest. Challenging the said findings, the defendant preferred this Appeal Suit.

7. The learned counsel for appellant argues that the trial court failed to take note of the fact that the plaintiff was running an unauthorised chit fund and he was a money lender, but not doing any business, inspite of that, he produced the income tax documents to show that he has an income tax buyer and the same was erroneously appreciated by the trial court. Furthermore, the alleged stamp paper for Ex.A1 was also been furnished long back, which would clearly proves that as a money lender, he possessed blank stamp paper and the same was fabricated. Furthermore,

the trial court failed to take note of the fact that the defendant has no necessity to borrow the loan of Rs.6 lakhs and the plaintiff also not established that for the said borrowal, the said document was handed over to him. Inspite of that, the suit was decreed as such is erroneous one and liable to be set aside. Moreover, the trial court improperly appreciated the evidence of P.W.2, who had no direct knowledge about the alleged loan transaction. Therefore, he prayed to set aside the findings.

8. By way of reply, the learned counsel for plaintiff argues that for the borrowal of loan of Rs.6 lakhs, the defendant mortgaged his property by executing registered mortgage deed marked as Ex.A1. As he failed to repay the loan amount, the plaintiff issued a notice and thereafter, he filed a suit and proved his claim. The trial court rightly decreed the suit by relying the document adduced on the side of plaintiff, which needs no interference. Hence, the prayed to dismiss this Appeal Suit as no merit.

9. Now the point is to be decided whether Ex.A1 is a valid document, through which the plaintiff is entitled for the suit claim.

10. Admittedly, Ex.A1 is the registered mortgage deed and the same was admitted by the defendant that the plaintiff executed the said

document by coercion with the intention to grab his property. But, no evidence adduced on the side of defendant to prove the said coercion made by the plaintiff. Even as per the contention of defendant, he borrowed only a sum of Rs.2 lakhs from the plaintiff, but there is no independent evidence to prove the said aspect. As per Ex.A1 recital, there is a sum of Rs.6 lakhs was borrowed by the defendant by mortgaging his property and the original title deed stand in the name of defendant also been handed over to the plaintiff. Moreover, as per the written objections, the defendant would submit that he has paid the interest, but there is no proof is sought to establish the same. Admittedly, P.W.2 is not a signatory of Ex.A1. During the cross-examination, the defendant admits that he handed over the original document to the plaintiff but there is no evidence that the defendant borrowed only Rs.2 lakhs, however as per recitals of Ex.A1, he borrowed a sum of Rs.6 lakhs. As per Sec.92 of Evidence Act, the plaintiff proved his claim through Ex.A1, which is a best evidence and there is no contra evidence on the side of defendant to disprove Ex.A1 and the trial court rightly appreciated those facts, which needs no interference of this court. Hence, the plaintiff is entitled for the suit claim. Accordingly, the issue is answered. However, in respect of interest, the plaintiff restricted his claim to 24% though there is an agreement for 30% interest, it was taken into consideration. Accordingly, time is granted to the defendant to repay the suit claim of Rs.10,83,000/- along with interest at the rate of 24% till the date of decree i.e. upto the year 2015 and thereafter at the rate of 12% till realisation for the period of five months from the date of receipt of copy of this judgment. On payment of such amount, the plaintiff is directed to hand over the original title deed to the defendant. Accordingly, the Appeal Suit is dismissed and the findings of the trial judge in O.S.No.629 of 2009 is confirmed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

03.01.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

I Addl. District and Sessions Judge, Tiruppur.

T.V.THAMILSELVI, J.

rpp

A.S.No. 262 of 2017

03.01.2025