



S.A.No.907 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2025

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.907 of 2018

R.Narayanan

... Appellant

Vs.

1. N.Chandra

2. Murray & Co.
No.340 (Old No.164),
Thambuchetty Street,
Chennai - 600 001.

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 26.10.2016 passed in A.S. No.120 of 2015, on the file of the XV Additional City Civil Court, Chennai, upholding the decree and judgment dated 12.02.2015 passed in O.S.No.1166 of 2013, on the file of the XVII Assistant City Civil Court, Chennai.

For Appellant	: Mr.M.Lenin Samuel
For R1	: Mr.B.Manoharan



S.A.No.907 of 2018

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JUDGMENT

The appellant is the first defendant in O.S.No.1166 of 2013, on the file of the XVII Assistant City Civil Court, Chennai. The first respondent / plaintiff filed the suit for the following reliefs :

- (a) declaration that the General Power of Attorney deed dated 23.07.2010 (Ex.A2) executed by the plaintiff is null and void.
- (b) declaration that the registered Mortgage Deed dated 07.09.2011 for a sum of Rs.20,00,000/- is null and void.
- (c) permanent injunction restraining the first defendant, his men and agents from disturbing the peaceful possession and enjoyment of the suit property.
- (d) permanent injunction restraining the defendants or their men and agents from alienating or encumbering the suit property.
- (e) to order costs of the suit.



S.A.No.907 of 2018

WEB COPY

2. For the sake of convenience, the parties are referred to as per their rank in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff in a nutshell is as follows :

The plaintiff is the owner of the suit property in Survey Number 123 (part), Plot No.211, TNHB Colony, Velachery, Chennai, measuring 489 sq.ft. She borrowed a sum of Rs.1,00,000/- from the first defendant on 22.02.2010 and agreed to repay the same with interest at the rate of 24% per annum. She executed a registered Mortgage deed (Ex.A3) on the same day. After part payment of the said loan amount, she executed a registered General Power of Attorney dated 23.07.2010 (Ex.A2) in favour of the first defendant to deal with the suit property. On 07.09.2011, the entire mortgage loan amount of Rs.1,00,000/- was discharged by the plaintiff and she requested the first defendant to cancel the General Power of Attorney (Ex.A2). The plaintiff is an illiterate. Taking advantage of the same, the first defendant had fraudulently fabricated a registered Mortgage deed dated 07.09.2011 (Ex.A5) as if the



S.A.No.907 of 2018

WEB COPY

plaintiff had borrowed a sum of Rs.20,00,000/- from her. The first defendant, in fact, informed the plaintiff that he was cancelling the earlier Mortgage deed dated 22.02.2010 (Ex.A3) and thus had played a fraud upon her. Subsequently, during July 2011 the first defendant attempted to evict the plaintiff from the suit property with the help of rowdy elements. Therefore, the plaintiff lodged a police complaint on 25.07.2012 (Ex.A6). Thereafter, the second defendant issued an Auction notice dated 03.01.2013 (Ex.A8) to the plaintiff. The plaintiff never borrowed a sum of Rs.20,00,000/- from the first defendant and the Mortgage deed dated 07.09.2011 (Ex.A5) is fabricated. Hence the suit.

4. The suit was resisted by the first defendant on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. The registered Mortgage deed dated 22.02.2010 (Ex.A3) was executed by the plaintiff.



S.A.No.907 of 2018

WEB COPY

- iii. The said document was prepared in Tamil, read over and explained to the plaintiff.
- iv. The first defendant had lent his hard earned money to the plaintiff.
- v. The suit filed by the plaintiff is not maintainable and hence, liable to be dismissed.

5. On the basis of the above pleadings, the trial Court framed the following issues:

- "i. Whether the suit filed by the plaintiff is not maintainable?*
- ii. Whether the plaintiff has repaid the entire loan amount of Rs.1,00,000/- with interest on 07.09.2011 to the first defendant ?*
- iii. Whether the first defendant has fraudulently obtained the plaintiff's thumb impression in the Mortgage deed dated 07.09.2011 ?*
- iv. Whether the plaintiff has suppressed material facts in this case ?*
- v. Whether the plaintiff is entitled for the two reliefs of declaration as prayed for ?*
- vi. Whether the plaintiff is entitled for the two reliefs of permanent*



S.A.No.907 of 2018

WEB COPY *injunction as prayed for ?*

vii. To what relief is the plaintiff entitled ?

6. In the trial Court, the plaintiff examined herself and one another witness and marked Ex.A1 to Ex.A15. The first defendant examined himself and marked Ex.B1 to Ex.B16.

7. The learned trial court judge, on considering the evidence on record, decreed the suit filed by the plaintiff, vide his decree and judgment dated 12.02.2015, on the following grounds:

- i. When the Mortgage deed dated 22.02.2010 (Ex.A3) was subsisting, the plaintiff had executed the General Power of Attorney (Ex.A2) in favour of the first defendant on 23.07.2010 in respect of the suit property.
- ii. In the General Power of Attorney (Ex.A2) there is no mention about the Mortgage deed dated 22.02.2010 (Ex.A3).
- iii. A perusal of the receipt dated 07.09.2011 (Ex.A4) shows that the



S.A.No.907 of 2018

WEB COPY plaintiff had discharged the entire loan amount of Rs.1,00,000/-.

- iv. If really the plaintiff had requested the first defendant to sell the suit property by executing the General Power of Attorney deed dated 23.07.2010 (Ex.A2) she would not have repaid the entire loan amount and instead she would have sold the suit property in favour of the first defendant.
- v. Thus there is a doubt with regard to the transaction between the plaintiff and the first defendant.
- vi. The first defendant had not also proved his financial capacity to lend a sum of Rs.20,00,000/- to the plaintiff.
- vii. The plaintiff is an illiterate and unaware of the contents of the document signed by her. Therefore, the suit filed by the plaintiff is liable to be decreed.

8. Aggrieved over the decree and judgment passed by the trial court judge, the first defendant filed an appeal in A.S. No.120 of 2015 before the XV Additional City Civil Court, Chennai. The learned XV Additional Judge, City Civil Court, Chennai, after analysing the oral and



S.A.No.907 of 2018

documentary evidence on record, concurred with the findings recorded by the trial court judge vide his decree and judgment dated 26.10.2016 as against which the present second appeal is filed by the first defendant.

9. At the time of admission the following substantial questions of law were framed by my learned predecessor :

“1. Whether the Lower Appellate Court is correct in law in casting the onus upon the defendant to prove the Mortgage deed was executed in true faith when the plaintiff has admitted execution and burden shifts upon her?

2. Whether the Courts below are correct in law in ignoring the fact that the Mortgage deed is a registered document and the witness is none other than the plaintiff's son?

3. Whether the non examination of the 2nd witness to the Mortgage Deed is fatal when the 1st Witness has already been examined before the Trial Court under Section 68 of the Indian Evidence Act?

4. Whether the previous Registered Mortgage executed by the very same Mortgagor in favour of M/s.Chennai Karthikeyapuram Cooperative Kattida



S.A.No.907 of 2018

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10. Heard Mr.M.Lenin Samuel, learned counsel for the appellant and Mr.B.Manoharan, learned counsel for the first respondent.

11. The plaintiff has filed the suit for a declaration that the General Power of Attorney dated 23.07.2010 (Ex.A2) and the registered Mortgage deed dated 07.09.2011 (Ex.A5) are null and void. The main contention of the plaintiff is that though she borrowed a sum of Rs.1,00,000/- from the first defendant and executed the registered Mortgage deed dated 22.02.2010 (Ex.A3). According to her, after repayment of part of the said loan amount, she executed the General Power of Attorney deed (Ex.A2) in favour of the first defendant to deal with the suit property. Subsequently, she repaid the entire loan amount of Rs.1,00,000/- as evidenced by the receipt dated 07.09.2011 (Ex.A4) and requested the first defendant to cancel the General Power of Attorney



S.A.No.907 of 2018

WEB COURT

(Ex.A2). However, the first defendant got a registered Mortgage deed dated 07.09.2011 (Ex.A5) by falsely representing the plaintiff that the said document is cancellation of earlier Mortgage deed dated 22.02.2010 (Ex.A3).

12. It is pertinent to point out that the plaintiff has not denied the execution of the Mortgage deed dated 07.09.2011 (Ex.A5). In fact, her son, Kandhan (PW2) had attested the said Mortgage deed. PW1 had pleaded that she is an illiterate. However, her son Kandhan (PW2) who accompanied PW1 admitted that he studied up to X standard and attested the Mortgage deed (Ex.A5). However, both the Courts below had held as follows :

- (a) The first defendant had not proved his financial capacity to lend a sum of Rs.20,00,000/- to the plaintiff.
- (b) The plaintiff was not aware of the contents of Ex.A5 as she is an illiterate.

13. It is relevant to point out that the plaintiff as PW1 in her



S.A.No.907 of 2018

WEB COPY

evidence had deposed that the first defendant obtained her signature and the signature of her son on Ex.A2, Ex.A4 and Ex.A5 by force and coercion. This has not been pleaded in the plaint. The specific contention of the plaintiff in her plaint is that the first defendant falsely represented to her that he is cancelling the earlier Mortgage deed dated 22.02.2010 (Ex.A3). It is settled law that a person of full age and understanding puts his / her signature to a legal document without taking the trouble of reading it or without asking the document to be read and explained to him / her but signs it relying on the word of another as to its character, content or effect, he / she cannot be heard to say that it is not his / her document. It is in evidence that the plaintiff's son (PW2) had attested the Mortgage deed dated 07.09.2011 (Ex.A5). As already observed, he is not an illiterate and he had studied up to X standard and is working as a driver. No doubt, it is true, that normally an attester may not have the knowledge of the contents of the document. But in the instant case, PW2, the attester, is the son of the plaintiff (PW1) and he knew the transaction between his mother and the first defendant. In fact, he had accompanied his mother while executing Ex.A2, Ex.A3 and Ex.A5 and had attested all these



S.A.No.907 of 2018

WEB COPY

documents. He also did not take steps to know the contents of the document. As already observed that both PW1 and PW2 without any pleadings had deposed that their signatures on the Mortgage deed dated 07.09.2011 (Ex.A5) were obtained by threat and coercion. Moreover, the plaintiff did not give any complaint to the police immediately after executing the Mortgage deed dated 07.09.2011 (Ex.A5). She did not also issue any notice to the first defendant stating these facts. Therefore, the contention of the plaintiff that her signature was obtained by coercion or threat, is totally unacceptable. These aspects have not at all been considered by both the Courts below.

14. It is pertinent to point out that the General Power of Attorney deed (Ex.A2) and the Mortgage deed (Ex.A5) are registered instruments and execution of which were not denied by the plaintiff. The cancellation of the General Power of Attorney has to be done by the plaintiff and she did not do so. However, both the Courts below by their judgments had declared that Ex.A2 and Ex.A5 also null and void.



S.A.No.907 of 2018

WEB COPY

15. The first defendant in his written statement had specifically pleaded that he owns a grocery shop and he has lent a sum of Rs.20,00,000/- to the plaintiff and obtained a registered Mortgage deed. In the circumstances, the decree and judgment passed by both the Courts below are perverse and are liable to be set aside. The substantial questions of law are answered in favour of the appellant.

16. In the result,

- i. the Second Appeal is allowed. No costs.
- ii. the decree and judgment dated 26.10.2016 passed in A.S. No.120 of 2015, on the file of the XV Additional City Civil Court, Chennai, and the decree and judgment dated 12.02.2015 passed in O.S.No.1166 of 2013, on the file of the XVII Assistant City Civil Court, Chennai, are set aside.
- iii. the suit in O.S.No.343 of 2005, O.S.No.1166 of 2013, on the file of the XVII Assistant City Civil Court, Chennai, is dismissed with



S.A.No.907 of 2018

WEB COPY costs.

25.02.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1. The XV Additional City Civil Court, Chennai.
2. The XVII Assistant City Civil Court, Chennai.
3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A.No.907 of 2018

R. HEMALATHA, J.

mtl

S.A.No.907 of 2018

25.02.2025



S.A.No.907 of 2018

WEB COPY

S.A.No.907 of 2018

R. HEMALATHA,J.

This Second Appeal is listed today under the caption "for being mentioned" at the instance of the learned counsel for the appellant.

2. The learned counsel appearing for the appellant contended that in the order passed by this Court on 25.02.2025 in the above appeal in paragraph number 16 (iii), it is mentioned thus :

*"iii. the suit in O.S.No.343 of 2005, O.S.No.1166 of 2013,
on the file of the XVII Assistant City Civil Court,
Chennai, is dismissed with costs."*

Since O.S.No.343 of 2005 is not connected with the present second appeal, Registry is directed to delete the same and modify the paragraph number 16 (iii) as follows:

"16. In the result,



S.A.No.907 of 2018

WEB COPY

.....

*iii. the suit in O.S.No.1166 of 2013, on the file of the
XVII Assistant City Civil Court, Chennai, is dismissed
with costs."*

4.The Registry is directed to carry out the above said
correction and issue fresh order copy.

21.04.2025

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S.A.No.907 of 2018

R.HEMALATHA, J.

mtl

S.A.No.907 of 2018



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S.A.No.907 of 2018

21.04.2025