BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.299 of 2019
and
C.M.P.(MD)No.5991 of 2019

Chellathai ... Appellant

vs

1.K.Ashok
2.A.Thennarasu
3.K.Karuppasamy ...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 28.02.2019 made in A.S.No.12 of 2016 on the file of the Subordinate Court, Palani confirming the judgment and decree, dated 29.01.2016 made in O.S.No.79 of 2010 on the file of District Munsif Court, Palani.

For Appellant	: Mr.PT.S.Narendravasan
For R1	: Mr.P.Venkatesh
For R2	: Given up
For R3	: Mr.M.P.Senthil

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JUDGMENT

This Second Appeal has been filed challenging the judgment and decree, dated 28.02.2019 in A.S.No.12 of 2016 on the file of the Subordinate Court, Palani, confirming the judgment and decree, dated 29.01.2016 in O.S.No.79 of 2010 on the file of the District Munsif Court, Palani.

2.The plaintiff is on appeal before this Court. The parties are referred to, as per their status before the trial Court.

3.It is the case of the plaintiff that the suit property belongs to the first defendant through a partition deed, dated 26.11.1980. In respect of the suit property, an agreement through a vardhman letter, dated 26.11.2007 in Ex-A2, was executed, based on which, the first defendant, on receiving a sum of Rs.1,75,000/- in cash, as loan, had handed over the possession of the suit property to the plaintiff to enable her to carry on cultivation and the time period to redeem the property was fixed as 25.11.2010. It his her further case that at any time prior to the expiry of time period, ie., 25.11.2010, the first defendant can repay the loan amount and on repayment, the possession will be handed over back to the first defendant. The plaintiff had cultivated sugarcane and had spent nearly Rs.40,000/- for carrying on the cultivation. While so, all of a sudden, on 27.12.2009, the third defendant, claiming that he had purchased the suit property from the defendants 1 and 2, had interfered with the peaceful possession and enjoyment of the plaintiff over the suit property. Hence, the plaintiff had come up with the suit for permanent injunction restraining the defendants from interfering with the possession and the cultivation carried on by the plaintiff.

4.The first defendant resisted the suit by filing a written statement by disputing the fact that the possession of the suit property was handed over to the plaintiff. However, the receipt of a sum of Rs.1,75,000/- from the plaintiff was admitted by the first defendant. Further, it is averred that the first defendant had sold the suit property in favour of the third defendant and he has also put the third defendant in possession of the suit property. It is further averred that the second defendant is not a necessary party to the suit and the first defendant is ready to repay the loan amount of Rs.1,75,000/- received from the plaintiff.

5.The third defendant filed a separate written statement contending that he has purchased the suit property from the defendants 1 and 2 on 20.07.2009 for a sale consideration of Rs.2,58,500/-. Immediately on purchase, the patta and other revenue documents have been mutated in favour of the third defendant. It is the further case of the third defendant that the defendants 1 and 2 had carried on cultivation in the suit property by cultivating sugarcane till 2008 and from 2009 onwards, after the possession was handed over to him, he has been in cultivation and sought for dismissal of the suit.

6.During trial, the plaintiff examined herself as PW-1 and further examined other witnesses as PW-2 to PW-4 and marked Ex-A1 and Ex-A2. No witness was examined on the side of the defendants. However, a sum of Rs.1,75,000/- was deposited in the suit and the receipt for the said deposit has been marked as Ex-B1.

7.The trial Court, after analysing the documents and evidences, came to the conclusion that since the receipt of loan of Rs.1,75,000/- is admitted, even as per the documents relied on by the plaintiff, the possession ought to be handed over back to the first defendant on repayment towards the loan amount. Considering the fact that the first defendant had deposited the loan amount of Rs.1,75,000/- in Court through Ex-B1, the trial Court had dismissed the suit holding that the plaintiff is entitled to withdraw the deposit amount made by the first defendant. On appeal, the lower appellate Court re-appraised the facts and evidences and dismissed the appeal by confirming the judgment and decree of the trial Court on the ground that since the mortgage has not been registered, the plaintiff cannot maintain the suit. The appellate Court also confirmed the findings of the trial Court allowing the plaintiff to withdraw the deposit amount made by the first defendant. Assailing the findings of the Courts below, the plaintiff has preferred the above appeal.

8.The learned Counsel for the appellant argued that when the plaintiff, by filing a document in Ex-A2, established that the loan amount has been advanced for which he was put in possession and also a period of three years has been fixed, the sale deed executed by the first defendant in favour of the third defendant prior to the completion of the time period is illegal and therefore, it is void. It is his further contention that when the defendants have admitted the receipt of the loan amount, the Courts below have simply brushed aside the document, Ex-A2, only due to the fact that the first defendant had deposited the amount in the suit. It is his contention that since the possession of the plaintiff is admitted, the findings arrived at by the Courts below are perverse in dismissing the suit.

9.The learned Counsels for the respondents 1 and 3 submitted that the plaintiff cannot maintain the suit for possession by relying on document in Ex-A2, as the said document is in-admissible in evidence, since the usufructuary mortgage is created, which requires compulsory registration under Section 17 of the Registration Act, 1908. It is their further contention that even though Ex-A2 could be relied on for collateral purpose to the extent of money transaction, which has been admitted by the first defendant himself, the suit filed in respect of possession by relying on Ex-A2 cannot be sustained and contended that the Courts below have rightly concluded the issue and dismissed the suit.

10.Heard the learned Counsel on both sides and perused the materials available on record.

11.Admittedly, the first defendant is the owner of the suit property. The first defendant had executed a sale deed in favour of the third defendant on 27.12.2009 conveying the suit property for a valuable sale consideration. It is the contention of the defendants that the first defendant was carrying on cultivation in the suit property till the year 2008 and pursuant to the sale, the third defendant was put in possession of the suit property in the year 2009 and thereafter, he is also carrying on cultivation. The plaintiff has come up with the suit for permanent injunction relying on an agreement entered into through a vardhman letter in Ex-A2, dated 26.11.2007.

12.Admittedly, Ex-A2 is an unregistered document between the plaintiff and the first defendant. As per the recitals in Ex-A2, it is seen that the first defendant had received a sum of Rs.1,75,000/- from the plaintiff; the plaintiff has been put in possession of the suit property; the plaintiff was allowed to receive the proceeds in lieu of interest; the plaintiff was bound to hand over the possession of the suit property to the first defendant on repayment of the loan amount.

13.The recitals in the un-registered vardhman letter in Ex-A2 make it evident that it is an usufructuary mortgage created by the mortgagor, the first defendant in favour of the mortgagee, the plaintiff. An usufructuary mortgage is entered into as per Section 58(d) of the Transfer of Property Act, 1882, which reads as follows:

> *"58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined.—*
> *(a).......*
> *(b)......*
> *(c)......*
> *(d)Usufructuary mortgage.—Where the mortgagor delivers possession [or expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property [or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage -money, or partly in lieu of interest [or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee."*

14.When an usufructuary mortgage is executed, the mortgagor delivers possession of the mortgaged property to the mortgagee, whereby, he is authorised to retain the lands, until the payment of the mortgage money and the mortgagee is also allowed to receive rents and profits accrued from the property in lieu of the interest.

15.Admittedly, the usufructuary mortgage entered into in Ex-A2, is in respect of a loan amount of Rs.1,75,000/-. When an usufructuary mortgage is entered into, where the amount involved is more than Rs.100/-, then as per Section 17 of the Registration Act, 1908, the registration of the said document is compulsory. As per Section 17(1)(b) of the Registration Act, 1908, if a document is executed in respect of a property, which is non-testimony instrument, which purport or operate to create, declare, assign, limit or extinguish any right, title or interest of the value of Rs.100/- and upwards to an immovable property, then the document ought to be compulsorily registered. Further, as per Section 49 of the Registration Act, no document required under Section 17 of the Registration Act to be registered, shall be received as evidence of any transaction affecting such property, unless it has been registered subject to the proviso contained therein. As per the proviso, though the document has not been registered, the document could be received in evidence for any collateral purpose.

16.In the instant case, the vardhman letter in Ex-A2, is in respect of a loan amount of Rs.1,75,000/- and the possession of the suit property was also handed over by the first defendant to the plaintiff. When admittedly, the transaction is in respect of an amount more than Rs.100/- and it creates a right in favour of the plaintiff creating usufructuary mortgage, then the document in Ex-A2, by which an usufructuary mortgage is created, is compulsorily registrable under Section 17 of the Registration Act, 1908. Even though the document has been received in evidence and marked as Ex-A2, the plaintiff is entitled to rely on the said document only for collateral purpose to show the money transaction between the parties.

17.The first defendant had admitted that he has availed a sum of Rs.1,75,000/- from the plaintiff and has also filed the written statement stating that he is ready to repay the said amount. The first defendant had specifically denied the handing over of the possession of the suit property in favour of the plaintiff. Though the plaintiff can rely on the document in Ex-A2 for the collateral purpose of having handed over the loan amount to the first defendant and when the handing over of possession of suit property is specifically denied, the document in Ex-A2, which has not been registered, cannot be relied on by the plaintiff to claim the main relief of possession.

18.The Courts below have rightly analysed the documents and rendered a finding that he handing over of the loan by the plaintiff for a sum of Rs.1,75,000/- is established and the first defendant had also admitted the same and had made the deposit of the entire sum of Rs.1,75,000/- in the suit and the receipt of such deposit was also marked as Ex-B1. As such, the suit has been rightly dismissed, however, allowing the plaintiff to withdraw the deposit made by the first defendant. This Court does not find any illegality or perversity in the finding of facts arrived at by the Courts below and no substantial question of law arises for the consideration of this Court.

19.In view of the above, the Second Appeal stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

20.The learned Counsel for the appellant submitted that the appellant may be permitted to withdraw the deposit amount of Rs.1,75,000/- made by the first defendant along with interest, if any accrued, if it is lying in a bank deposit. The appellant is at liberty to file necessary application for such withdrawal of the available amount.

18.06.2025

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

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To

1.The Subordinate Judge, Palani.

2.The District Munsif, Palani.

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

G.ARUL MURUGAN, J.

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Judgment made in
S.A.(MD)No.299 of 2019

18.06.2025