
M.Nagalakshmi Vs P.Subbiah(Died), & Anr.

201 of 2007

Court: MADRAS HIGH COURT

Date of Decision: April 28, 2017

Acts Referred:

[Evidence Act, 1872](#), [Section 92](#), [Section 114\(e\)](#) - Exclusion of evidence of oral agreement - Court may presume existence of certain facts

Hon'ble Judges: C.V.Karthikeyan

Bench: SINGLE BENCH

Advocate: C.V.Karthikeyan

Final Decision: Dismissed

Judgement

1. The defendant in OS.No.43 of 2004, on the file of the learned Principal District Judge, Thoothukudi, has filed this appeal.

2. The suit was originally instituted and numbered as O.S.No.12 of 2002 before the Sub-Court, Kovilpatti. In view of the change in the pecuniary

jurisdiction, the suit was transferred to the Principal District Court, Thoothukudi and renumbered as O.S.No.43 of 2004.

3. The said suit had been filed on the basis of a mortgage, seeking a preliminary decree for a sum of Rs.5,80,000/- together with interest and costs

and on failure to pay the amount, to bring the property, which is the subject matter of the mortgage, for sale in public option and if the sale

proceeds is not sufficient to satisfy the decree, for a personal decree against the defendant and for costs.

4. The property, which is subject matter of the mortgage, is the land and building at Door number 12/1, S.No.569/2C, Kovilpatti Village,

Kathiresan Kovil Street, Ward No.28, Kovilpatti Municipality, Palayamkottai. In the plaint, it had been stated that the defendant had executed a

registered mortgage deed, dated 11.08.1999 for a sum of Rs.4,00,000/- in favour of the Plaintiff Subbiah. The defendant Nagalakshmi had agreed

to pay interest at the rate of 18% per annum. It had been stated that the defendant had not repaid the amount or interest. The notice was issued on

28.01.2002. In the reply notice dated 05.02.2002, it had been falsely stated that the borrowal was only Rs.3,00,000/- and further, the husband of

the defendant had paid Rs.6,000/- on 17.09.1999, Rs.10,000 on 26.10.1999 and Rs.6,000/- on 20.04.2001. The plaintiff denied receipt of the

above payments. Claiming that amount under the mortgage together with interest was Rs.5,80,000/-, the suit had been filed for the reliefs as stated

above.

5. In the written statement filed by the defendant, claim of the plaintiff had been denied. It had been stated that the borrowal was only

Rs.3,00,000/-. It had been further stated that towards the borrowal, the husband of the defendant had paid a sum of Rs.6,000/- on 17.09.1999,

Rs.10,000/- on 26.10.1999 and Rs.6,000/- on 20.04.2002. It had been further stated that the husband of the defendant had been forced to pay a

sum of Rs.90,000/- by cheque. It had been further stated that there were cheque dealings and also purchase of jewels by the plaintiff and in such

manner, the entire amount has been discharged. The defendant claimed that the suit should be dismissed.

6. On the basis of the above pleadings, the Principal District Judge, Thoothukudi had framed the following issues for trial:-

1. Whether the defendant has got the mortgage amount from the plaintiff?

2. Whether it is correct that the defendant has got only Rs.3,00,000/- for the mortgage loan?

3. Whether the defendant has paid amount for the loan amount and has got chit from the plaintiff?

4. Whether the plaintiff is entitled as prayed for?

5. To what relief the plaintiff is entitled?

7. The parties went to trial. During the trial, the plaintiff had examined himself as PW1. On the side of the defendant, the husband of the defendant,

Mariappan was examined as DW1. The defendant had also examined the witness to the mortgage deed as DW2. The plaintiff had marked Ex.A1

to A5. These documents included the mortgage deed dated 11.08.1999 as Ex.A1, the copy of the notice and reply notice dated 28.01.2002 and

05.02.2002 as Ex.A2 and Ex.A3 respectively and the documents relating to CC.No.103 of 2001 on the file of Learned Judicial Magistrate-I at

Kovilpatti as A4 and A5. The defendant had marked a pocket notebook as Ex.B1.

8. On considering the oral and documentary evidence, the learned Principal District Judge, Thoothukudi did not believe the stand of the defendant

that the mortgage amount was only Rs.3,00,000/- and further did not believe the payments said to have been made by the defendant, DW1 to the

plaintiff. The learned Principal District Judge held that Ex.A1 being a registered mortgage deed had to be upheld and consequently, passed a

preliminary decree, together with costs, directing the defendant to pay a sum Rs.6,31,881.50/- on or before 15.03.2005 with interest at 6% per

annum on the principal amount of Rs.5,80,000/-. The court below had further directed that if the amount was not paid within the time stipulated,

then the property under the mortgage can be sold. As against the same, the defendant has filed this appeal.

9. The learned counsel for the appellant, Mr.V.Meenakshi Sundaram pointed out that in the written statement, the appellant had stated that the

borrowal was only Rs.3,00,000/- and further there had been other transactions between the appellant and respondent and therefore, the decreeing

the suit for the entire amount is not proper and not justified.

10. On the other hand, Mr.A.Arumugam, the learned counsel for the respondent, pointed out that Ex.A1 mortgage deed is a registered document

and that the claim of the plaintiff to have discharged the debt under mortgage has to be proved only by the appellant and she had not proved the

same during trial.

11. I have carefully considered the arguments made by both sides.

12. In this case, the mortgage deed had been marked as Ex.A1. A perusal of Ex.A1 shows that the said document had been executed on

11.08.1999 and it is a registered document. It has been registered as Doc.No.3002 of 1999 in the office of the Sub-Registrar, Kovilpatti. The said

document actually had been written in hand. The defendant had signed each page of the document. The attestors to the document were M.Vijayan

and R.Mariappan. M.Vijayan is the son of R.Mariappan, who is the husband of the defendant. R.Mariappan had examined himself as DW.1. He

was also a witness to the document. On behalf of the defendant, another witness, by name A.Mariappan, was also examined as DW.2. He

claimed to have signed as a witness to the document. DW.2, A.Mariappan had described himself as son of S.Anganayakkar. The witnesses to the

document is R.Mariappan, son of M.Ramachandra Chettiyar and also A.Mariappan, son of Anganayakkar. However, his witness has signed

Ex.A1 in Tamil, and for unexplained reasons, leading to suspicion, signed the Court deposition in English, even though his evidence has been

recorded in Tamil. It is, therefore, seen that even at the threshold, the defendants case suffered from withholding of true facts and projecting a false

facts during the trial. The witness/attestor to the document, R.Mariappan had been examined as DW1. He did not come forward to voluntarily say

that he was a witness to Ex.A1. He produced Ex.B1 a pocket notebook. In the said Exhibit, he admitted that it did not contain the signature of the

plaintiff. The said document is inadmissible in evidence since the plaintiff during his evidence was not confronted with the said document.

13. In so far as Ex.A1 is concerned, the amount under the mortgage had been given as Rs.4,00,000/-. Section 92 of the Indian Evidence Act,

reads as follows:-

92. Exclusion of evidence of oral agreement.:-

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form

of a document have been proved according to the last section, no evidence of any oral agreement of statement shall be admitted, as

between the parties to any such instrument or their representative in interest, for purpose of contradicting, varying, adding to, or subtracting from, its items

It is also seen that Ex.A1 is a registered document. Consequently, no amount of oral evidence can be let in against the term found in Ex.A1. In

Ex.A1, amount of mortgage was given as Rs.4,00,000/-. The husband and son of the appellant has signed as attestors to the document and the

husband as a witness. During the trial, the appellant had produced as DW2 A.Mariappan, who claimed that he was a witness to the document,

which fact is shrouded with suspicion and this is evident from a mere glance at the signatures of DW2 found in the deposition and in Ex.A1. The

document being a registered document, a presumption under Section 114 (e) of the Indian Evidence Act, can also be drawn and it is as follows:-

114. Court may presume existence of certain facts.

The court may presume the existence of any fact which it things likely to have happened regard being had to the common course of

natural events human conduct and public and private business, in their relation to the facts of the particular case.

The Court may presume-

(e) That judicial and official acts have been regularly performed.

14. From the evidence available on record, this Court holds that the appeal has to fail and deserves dismissal.

15. In the result, this appeal suit is dismissed, with costs. The Judgment and Decree passed in O.S.No.43 of 2004 dated 15.02.2006 on the file of

the Principle District Court, Thoothukudi is confirmed.