
(1974) 04 MAD CK 0022
In the Madras High Court
Case No : Appeal No. 207 of 1969

Sulochana and Others

APPELLANT

Vs

The Pandiyan Bank Ltd. and Another

RESPONDENT

Date of Decision : 22-04-1974

Acts Referred:

Contract Act, 1872 — Section 11
Negotiable Instruments Act, 1881 (NI) — Section 26
Transfer of Property Act, 1882 — Section 58

Citation : AIR 1975 Mad 70

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : S. Sitarama Iyer and S. Rajarama Iyer, for the Appellant; R. Gopalaswami Iyengar, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—The first defendant is the appellant. The suit was filed by the first respondent bank for the recovery of the sum of Rs.

70786-82 with subsequent interest on Rs. 69333-82 at 9 per cent per annum on the security of the properties mentioned in Schedules B to F of

the plaint. The case of the first respondent-plaintiff was that the first defendant borrowed from the bank on various occasions on the security of the

immovable properties shown in the Schedules B, C, D, E and F. The mortgage is by deposit of title deeds. It was claimed by the plaintiff that the

documents were deposited in the Pandiyan Bank Ltd. at Madurai, though the loan applications were made to the Kumbakonam branch of the

same bank. The first defendant did not dispute the actual borrowings but contended that the documents were not handed over to the plaintiff as

equitable mortgage, but they were produced by him in order to satisfy the

authorities of the bank that he was solvent. He also further contended that the documents were produced by him and given to the Kumbakonam branch of the bank and since Kumbakonam was not one of the towns notified u/s 58(f) of the Transfer of Property Act, no valid mortgage by deposit of title deeds was created. The court below rejected the contention of the first defendant and held that there is ample evidence to show that the documents were deposited only in the head office of the Bank at Madurai which was a town notified u/s 58(f) and that therefore a legally valid mortgage was created. In that view, the suit was decreed as prayed.

It may be mentioned that the second defendant is impleaded in the suit since it claimed a subsequent encumbrance over the property in its favour.

One other contention which was raised on the merits by the first defendant was that a promissory note for Rs. 45,000 executed as a consolidated security for the loans was executed and signed not only by the first defendant, but also his minor daughter and since the minor daughter joined in the execution, promissory note itself has become invalid and no rights and liabilities could arise against the first defendant. The court below had found accepting the case of the plaintiff that the defendant fraudulently represented to the Bank that his daughter was a major and that is why the daughter also had been included as an executant in the document and that in any case since no liability is sought to be fastened on the minor daughter of the first defendant the security is enforceable as against the second defendant and the mortgage itself cannot be said to be void on that ground. In this appeal, the learned counsel for the appellant reiterated the contention that there was no deposit of title deeds at Madurai as an equitable mortgage for the due payment of the loans granted to the first defendant. He faintly argued that the documents were not handed over as evidencing any mortgage, but that they were handed over to the agent of the Bank at Kumbakonam merely to show that he was solvent. This argument only needs to be noted for rejection. If really, the documents were produced by him just for the purpose of showing that he was solvent, the documents would not have been left with the bank itself and should have been taken delivery of at least within a reasonable time. Till the date of suit, the plaintiff did not even ask for the redelivery of the documents to him. Further, in a number of documents he had admitted that he had

handed over the documents as and by way of equitable mortgage. In this connection, we may refer to Ex. A-128 which is a letter, written by him to the agent of the Bank at Aduthurai in which he has stated that the documents relating to the properties mentioned in the F Schedule were handed over to the Central Office at Madurai on 20-6-1960 creating an equitable mortgage for the loan amount of Rs. 10,000. Similarly, we have the letter Ex. A-140 in respect of the equitable mortgage created on 2-12-1958. Though there are no admissions relating to the other two deposits made on 28-5-1958 and 5-7-1968, having regard to the conduct of the parties and the other evidence available in this case, we have no hesitation in rejecting this contention of the appellant that the documents were handed over merely to show that he was a solvent person.

2. The more important question for consideration is whether the deposits of the documents were made at Kumbakonam or at Madurai. It was the

case of the first defendant that they were handed over at Kumbakonam and that ha himself personally did not take it and give it in the Central

Office at Madurai As already stated, if the deposit of the documents were at Kumbakonam, no equitable mortgage could be created because

Kumbakonam was not one of the towns notified u/s 58(f) of the Act. There is evidence to show that when the first defendant applied for a loan he

produced the documents before the Kumbakonam branch of the bank and after it was scrutinised by the legal adviser, they were forwarded to the

Madurai Office for the purpose of deposit. Both the plaintiff and the first defendant knew that the documents could be deposited only at the

Madurai Office and the Kumbakonam branch had no authority to receive the documents and create an equitable mortgage, in Ex. A-128 which is

with reference to the Schedule E properties, the first defendant himself has stated that the document relating to that property was handed over in

the Madurai Office as a deposit of title deeds in order to secure the payment of a loan of Rupees 10,000. Therefore, the documents were received

by the Kumbakonam branch in order to forward the same to the Madurai Office so that they could create an equitable mortgage by deposit of title

deeds at Madurai. The bank seems to have followed this procedure of receiving the documents and forwarding them to Madurai Office for the

purpose of deposit, though the evidence of P.W. 1 was to the effect that after the scrutiny of the documents by the legal adviser at Kumbakonam

the documents were taken over by the first defendant and brought to Madurai and handed over to the bank as deposit of title deeds. We are of the view that even if the procedure adopted by the bank was to receive the documents through their local branch at Kumbakonam and forward the same for the purpose of depositing in Madurai, a legally valid equitable mortgage would be created. Section 58(f) of the Act does not require that the debtor himself must in person produce the documents and deposit the same in any of the towns mentioned in that section. If the intention was to deposit the documents in the town mentioned in that section and the documents were forwarded either through the agent of the debtor or through the agent of the creditor, the ultimate deposit shall be deemed to have been made only in the town notified in that section and not in the place where the documents in fact were received for the purpose of deposit in the notified town. A similar case arose for consideration in the decision in *K. J. Nathan v. Maruthi Rao*, AIR 1965 SC 450. In that case also the creditor was functioning from Madras, but the documents were received by their representative at Kumbakonam and thereafter the deeds were sent by registered post to the creditor at Madras. The question for consideration was whether that created a legally valid mortgage. The Supreme Court held that there was a legally valid mortgage by deposit of title deeds and the receipt by the agent of the creditor at Kumbakonam did not alter the legal position in any way. It may be pertinent to note that the Supreme Court pointed out that the person who received the document at Kumbakonam might be treated either as the agent of the creditor or as the agent of the debtor; but that will not make any difference on the validity of the mortgage. It is true as pointed out by the learned counsel that the Supreme Court in that case further relied on certain discussion of the debtor subsequent to the receipt of the documents by the creditor at Madras. But, that is only to fortify the earlier opinion that even by sending the documents by registered post a legally valid mortgage by deposit of title deeds could be created. Therefore, the receipt of the documents by the Kumbakonam branch of the plaintiff-bank and forwarding the same to the Madurai central office for the purpose of deposit and creating a mortgage, does not in any way affect the legal validity of the equitable mortgage.

3. We may point out that there are a number of documents to show that the documents were handed over to the plaintiff-bank as evidencing an

equitable mortgage and it is not necessary for us to refer to all the documents relevant to the same as the court below had referred to them in detail.

Suffice it to say there is singular absence of evidence on behalf of the defendants in support of their contention that the documents were handed

over to the plaintiff-bank only for the purpose of showing that the first defendant was a solvent person and not as for creating a mortgage by

deposit of title deeds. For the foregoing reasons, we confirm the judgment and decree of the court below. Learned counsel for the appellant also

contended that the promissory note executed by the first defendant along with his minor daughter is not valid in law. We fail to see any ground for

holding that such a document was not valid in law. It is true that no liability could be enforced as against the minor executant, but the first defendant

who was also a party to the document could not escape the liability. Further that promissory note was executed only as a security for due payment

of the loan which was a different transaction. The promissory note was executed by the first defendant as a security in addition to the security of

the equitable mortgage. Therefore, no prejudice could arise to the first defendant by reason of the fact that the promissory note has been held to be

a valid document executed by the first defendant. The learned counsel for the appellant then pointed out that the first defendant also raised the

question that he had no valid title to some of the properties and that they belonged either to his wife or daughter and that the decree could not be

executed as against those properties. The trial court had left that issue to be decided in the execution proceedings. The appellant therefore could

not be aggrieved by the decision of the court below on this question. But what the learned counsel for the appellant states is that since some of the

properties of the first defendant are admittedly included in the securities, the bank could proceed against those properties in the first instance so

that the properties in which the wife and children are claiming interest could be saved, if the other properties are sufficient to meet the liability of the

bank. We agree with the appellant in this submission. We therefore direct that in the first instance the plaintiff-decree-holder shall execute the

decree, if the amount is not paid, as against the properties mentioned in the B schedule and those properties which stand in the name of the first

defendant and set out in the other schedules. Only if the decree could not be satisfied from the sale proceeds of these properties then the further

question would have to be considered as to whether the other properties are the properties of the wife and daughter of the first defendant or the self-acquired properties of the first defendant and on such a finding the executability of the decree as against those properties will have to be considered. Subject to this observation the appeal is dismissed. There will be no order as to costs. The appellant will pay the court fee due to the Government.