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C.A.No. 3784 OF 1999  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3784 OF 1999

S. THYAGARAJAN.....APPELLANT(S)

VERSUS

PARTHASARATHI MUDALIAR & ORS.....RESPONDENT(S)

O R D E R

The Plaintiff is the appellant. The plaintiff Semu Gramani executed an usufructury mortgage on 14.11.1921 in favour of the first defendant M/s Valjee Kanjee & Co.. The mortgage amount was Rs.8,000/- and the mortgagee stipulated that the mortgagor would repay the mortgaged amount with interest at 24% per annum with quarterly rests and the mortgagor would be debarred from re-demanding the property after a period of three years. The mortgagee Valjee Kanjee & Co. leased the mortgaged property to the mortgagor Semu Gramani, the father of the appellant. On 10.9.1923, the mortgagor authorised the mortgagee to dispose of part of the properties to discharge certain debts in return of the remaining properties with certain documents and thus the mortgagor handed over possession of the mortgaged property and authorised the mortgagee to collect rents. While mortgagee was in possession of the property, in 1924 the wife of the original mortgagor, the mother of the present appellant filed a suit on behalf of herself and her children for a declaration that the mortgage was not binding on them. That suit was dismissed on 28.10.1925 and it has become final. On 22.12.1925, the original mortgagor Semu Gramani executed Ex.B-16 document in favour of the mortgagee. Exhibit B-16 was to the following effect :-

"I am not able to pay the amount due to you upto now under the mortgage deed executed by me in your favour on the 14th of November, 1921. As per the terms in the said mortgage deed to the effect that I am debarred from redeeming the mortgage if the amount due to you under the said mortgage deed is not paid within the three years from the said date and the properties mortgaged deed shall vest absolutely in you as and by way of absolute sale. You have become the absolute owner of all the said properties according to the said terms. Neither I nor my heirs have got anything to do with the said properties. I have asked the tenants in the said properties to attend to you and you are entitled to collect the rents and appropriate it for yourself as a vendee. You are to pay all the taxes from this date."

After the Exhibit B-16 document, mortgagee executed various documents in favour of third parties. The defendants 2 to 35 are the alienees under the various documents executed by the mortgagee.

The plaintiff-appellant filed the present suit for a decree for redemption of the mortgage deed dated 14.11.1921. The defendants resisted claim raising various contentions. It was alleged by the defendants that Exhibit B-16 completely extinguished the rights of the plaintiff and thereafter alienees had become absolute owners of the properties. Even if a plaintiff had any right over these properties under the original mortgagor, after the execution of Exhibit B-16 the subsequent possession of the mortgagee or the alienees were under a hostile animus and they acquired title by adverse possession. The plaintiff contended that Exhibit B-16 being a document which was not registered and it was not stamped in accordance with the provisions of the Stamp Act the same was not binding and did not create any right in favour of the mortgagees. The Trial Court, after elaborate consideration of the various issues held that the plaintiff was not entitled to claim any relief asked for in the plaint. Aggrieved by the same, the plaintiff filed an appeal and the appeal was considered by the learned Single Judge of the Madras High Court and dismissed. The plaintiff filed a Letters Patent Appeal and the same was dismissed. Aggrieved by the same the present appellant is before us.

Heard counsel for the appellant and also counsel for the respondents.

Counsel for the appellant contended that Exhibit B-16 was not a registered document and the defendant cannot say that it was binding on the plaintiff and it will not effect the rights of the plaintiff. We are unable to accept the contention. We have noticed that as per the terms of original mortgage the mortgagor would not be able to redeem the property after a period of th

ree years and the interest stipulated was also at a high rate. Exhibit B-16 was only in confir-  
mation of the original terms in the mortgage deed. Moreover, the plaintiff filed the suit with  
inordinate delay. The original mortgagor Semu Gramani died in 1937. Even at that time the pla-  
intiff must have been 28 years old. The plaintiff's mother filed the suit in 1924. The plain-  
tiff must have been a party to that suit being represented through his mother. That suit was d-  
ismissed. Even after the death of the original mortgagor in 1937 the plaintiff waited for a lo-  
ng period and he filed the suit in 1965.

In view of the explicit terms in Exhibit B-16, we do not think that the plaintiff had any subs-  
isting right over the property and the subsequent conduct showed that despite several alienati-  
ons effected by the mortgagee the plaintiff remained quite and came to Court very late. The fi-  
nding of the Division Bench is correct and needs no interference by this Court.

The appeal is disposed of.

No costs.

.....J.  
(K.G.BALAKRISHNAN)

.....J.  
(Dr.AR.LAKSHMANAN)

New Delhi;  
October 27, 2004.  
ITEM NO.102

COURT NO.7

SECTION XII

S U P R E M E C O U R T O F I N D I A  
Record of Proceedings

Civil Appeal No.3784 of 1999

S. ThyagarajanAppellant (s)

VERSUS

Parthasarathi Mudaliar & Ors.Respondent(s)

Date :27/10/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G.BALAKRISHNAN  
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Appellant (s)Mr. Sunil Mathews, Adv.

For Respondent (s)Mr. V. Prabhakar, Adv.  
Mr. R.S. Krishna Kumar, Adv.  
Mrs. Revathy Raghavan, Adv.

UPON hearing counsel, the Court made the following  
O R D E R

The Appeal is disposed of in terms of the signed order.

No costs.

(SUKHBIR PAUL KAUR) (VEERA VERMA)  
COURT MASTER COURT MASTER