

Madras High Court

T.S. Madhavan vs Sudarsan Chit Funds, A Unit Of ... on 22 February, 1980

Equivalent citations: (1980) 2 MLJ 478

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ORDER S. Natarajan, J.

1. On a short ground this revision can be disposed of.

The first respondent in the revision is a Chit Fund Company. In respect of Chit group : No. VE-1. Book No. 16 the second respondent became a subscriber on 7th July, 1969, and at the auction held on 7th January, 1972 the second respondent became the successful bidder. In token of having received the consideration amount at the auction, the second respondent executed a promissory note and the petitioner and respondents 3 and 4 joined the execution, of the promissory note as sureties. In addition, an item of property belonging to the third respondent was given as security.

2. In respect of a later chit conducted by the first respondent, namely Group No. VB-1 Book No. 6, the petitioner herein became a subscriber on 8th July, 1969, and he was the successful bidder at the auction held on 8th December, 1969. For receipt of consideration and for payment of the balance under the chit he executed a promissory note and respondents 2 and 3 joined the execution of the promissory note as sureties. As security for this transaction also the third respondent's property was offered as security.

3. The 1st respondent filed two suits O.S. No. 165 of 1976 and O.S. No. 167 of 1976 on the file of the Court of the Subordinate Judge, Vellore, for recovery of monies due under the two chits. The former suit related to the earlier chit transaction, while the latter suit related to the later chit transaction. Both the suits were filed on the same day. In O.S. No. 167 of 1976 which relates to the later chit transaction, the petitioner herein raised an objection in his written statement that the filing of the two suits by the first respondent offended Section 67(A) of the Transfer of Property Act inasmuch as the first respondent was not entitled to split the transaction and therefore the later mortgage became unenforceable. Thereupon, the first respondent filed a petition I.A. No. 553 of 1977 for certain amendments being carried out in the plaint in O.S. No. 165 of 1976. The amendments sought to be carried out attempt to get over the objection raised by the petitioner by including therein the relief in respect of the second chit transaction. The petitioner opposed the amendment petition and contended that if the amendment was allowed, it will virtually amount to the decreeing of O.S. No. 167 of 1976 without taking note of the objection raised by the petitioner and the allowing of the amendment will be contrary to the mandate contained in Section 67(A) of the Transfer of Property Act.

4. Learned Subordinate Judge, has over-ruled the objection of the petitioner and for that purpose he has relied upon the decisions contained in *Md. Salib v. T.G. Adam Sahib*, *Manohar Lal v. N.B.M. Supply Gurgaon*, *Deonandan v. Pearay* A.I.R. 1935 Pat. 365, and *Pradhulal v. Godawari Bai* A.I.R. 1955 Ajmer 50.

5. Mr. Lakshmanan learned Counsel for the petitioner states that the cases referred to by the learned Subordinate Judge in his order do not have any application to the present case, because in all those cases a suit on the second mortgage had not been filed. But in the instant case, the Chit Fund Company already filed a suit on the second mortgage and this factor made all the difference in so far as the objections raised by the petitioner are concerned.

6. On account of one feature, I do not think it necessary to consider the objections of the petitioner on its merits. The petitioner herein is not the mortgagor who is affected by the first respondent splitting up the mortgage and filing two suits. Under the later chit, the petitioner is the principal debtor and under the earlier chit he is a guarantor or surety. Therefore, even assuming that the petitioner's objection about the clubbing of the mortgages is sustained, the petitioner's liability will not be effaced in any manner. It must be remembered, for each of the transactions a promissory note has been executed by the principal debtor as well as the sureties. In addition, property security has been given by the third respondent herein. We must consider that will happen if the petitioner's objections are sustained. If the first respondent given up his right to proceed against the property in the second suit, the personal liability of the principal debtor and the sureties will not get exonerated in any manner. That liability will always be there. In fact, if such a course is followed, the petitioner will be put to greater jeopardy, because, instead of proceeding against the property offered as security, the Chit Fund Company can personally proceed against the principal debtor or any one of the sureties. Therefore, this is not a case where the interests of the petitioner are affected in any manner, because he is admittedly not the mortgagor and it is not his property that has been offered as security.

Alternatively, it cannot be said that the petitioner has acquired a vested right and the state of affairs should not be disturbed by the amendment petition, because as pointed out above, if the first respondent is driven to the necessity of not enforcing the security in respect of the second chit transaction, then the petitioner's liability will not get effaced, but, on the other hand, it will become more burdensome because of the removal of the property security.

7. Therefore, I am of opinion that the revision is devoid of merit and accordingly it will stand dismissed, but there will be no order as to costs.