



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 891 OF 2016 (MON)

BETWEEN:

M/S. CHANDAN EXPORTERS,
BY ITS PROPRIETOR P.S.CHANDAN,
S/O. P.K.SHIVANANDAPPA,
AGED ABOUT 36 YEARS,
R/O. APMC YEARD 'C' BLOCK,
DAVANAGERE-570 001.

.. APPELLANT

(BY SMT.MONICA PATIL, ADVOCATE)

AND:

SRI. SIDDANUR REVENNA SIDDAPPA & CO.,
REPRESENTED BY ITS PARTNER
K.M.REVANNA SIDDAPPA
S/O LATE MALLAPPA, AGED ABOUT 58 YEARS,
MERCHANT AND COMMISSION AGENT
RMC YARD, 'C' BLOCK,
DAVANAGERE-570 003.

.. RESPONDENT

(BY SRI.R.GOPAL, ADVOCATE)

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF CPC, 1908, AGAINST THE JUDGMENT AND DECREE DATED 17.02.2016, PASSED IN O.S.NO.105/2008 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE, DAVANAGERE, DISMISSING THE SUIT FOR RECOVERY OF MONEY.



THIS APPEAL, HAVING BEEN RESERVED FOR JUDGEMENT,
COMING ON FOR PRONOUNCEMENT THIS DAY,
UMESH M. ADIGA, J., PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

This appeal is filed by the plaintiff in
O.S.No.105/2008, challenging the judgment and decree
dated 17.02.2016, passed by the learned II Addl. Senior
Civil Judge, Davanagere (for short 'trial Court').

2. The appeals i.e., RFA.No.891/2016 and
RFA.No.893/2016 are clubbed, but on perusal of the
records, they are not interconnected. Except that, the
plaintiff is same person in both the suits, but material facts
vary. They pertain to different sale transactions, different
cause of actions and different defendant. The trial Court
also decided them separately. Hence, separate judgments
are passed.



3. We refer to the parties as per their ranks before the trial Court.

4. It was the case of the plaintiff that himself and defendant are merchants and commission agents. Both are dealing in maize business. Plaintiff is running his business in the name and style of M/s.Chandan Exporters at APMC Yard, Davanagere. Defendant is carrying on his business in agricultural products at RMC Yard Davanagere.

5. The defendant approached the plaintiff to provide financial assistance during the period from 12.10.2007 to 09.11.2007. Accordingly, between the said dates, plaintiff paid total amount of Rs.26,20,000/- to the defendant through six cheques respectively. The defendant agreed to repay the said amount with interest at the rate of 1.75% per month. From the date of loan till the date of filing of suit, the defendant was liable to pay interest of Rs.6,02,723/-. Including principal and interest, he was liable to pay Rs.32,28,723/-. In spite of several requests by the plaintiff, the defendant did not repay the loan



amount. Therefore, plaintiff filed the suit to recover the same.

6. Contentions of the defendant are that plaintiff used to purchase the maize from him on credit basis. Plaintiff purchased 3,713 bags of maize from the defendant at the rate of Rs.740/- per quintal on credit basis under the credit bill bearing No.84, dated 03.10.2007. The total value of the said maize was Rs.26,45,870/-. The maize was transported from the shop of the defendant on 03.10.2007 to Railway goodshed yard in 24 lorries, particulars of which were described in the written statement. The plaintiff also agreed to pay the interest on the said amount, if it was not paid within a week. Plaintiff failed to pay the same within a week. Hence, plaintiff was liable to pay interest at the rate of 18% p.a.

7. It is the further contention of the defendant that plaintiff issued six cheques towards part payment of amount of Rs.26,20,000/- and still he was liable to pay



Rs.44,552/-. To recover the same with interest, defendant filed suit in O.S.No.220/2009. The claim of the plaintiff is false and prayed to dismiss the suit filed by the plaintiff.

8. The trial Court after considering the contentions of both the parties, framed necessary issues.

9. During the trial of the case, plaintiff examined himself as PW-1 and got marked Exs.P-1 to P-14 and defendant examined DW-1 and got marked Exs.D-1 to D-24.

10. The learned trial Judge after hearing both the parties and appreciating pleadings and evidence on record, dismissed the suit by the impugned judgment.

11. We have heard the arguments of learned counsel for both the parties and perused the materials placed on record.

12. The learned counsel for the appellant/plaintiff vehemently contended that the trial Court has not



appreciated the evidence of the parties properly. The defendant in his written statement clearly admitted that he received the cheques from the plaintiff and withdrawn the amount from the bank. In view of the same, there was no need to prove it. The learned trial Judge erroneously believed the created and concocted documents produced by the defendant. Therefore, the said findings are erroneous. With these reasons, she prayed to allow the appeal.

13. The learned counsel for the respondent vehemently contended that the trial Court properly appreciated the evidence. The defendant has not admitted the case of plaintiff, but admitted the receipt of cheques from the plaintiff and withdrawal of the amount from the bank. Plaintiff issued the said cheques not towards alleged loan to defendant, but to pay the amount of maize purchased by him from defendant. The plaintiff has not produced any corroborative material to support his contention. On the contrary, the defendant placed oral



evidence as well as documentary evidence in support of their contention. That was rightly believed by the trial Court. The findings of the learned trial Judge does not call for interference by this Court. Hence, prayed to dismiss the appeal.

14. Following question arises for our determination:

Whether the learned trial Judge erred in not holding that cheques given by the appellant/plaintiff were towards payment of loan to defendant?

15. Our findings on the above point is in the negative for the following reasons:

Plaintiff to prove his case examined himself as PW-1 and he reiterated the plaint averments. In the detailed cross-examination, he admitted several contentions of the defendant which were extracted in the impugned judgment by the learned trial Judge. There is no need to reproduce them. The suit was filed on 01.12.2008. Defendant filed his written statement on 26.06.2009. The trial Court disposed of the suit on 17.02.2016 and it was



pending before the trial Court for a period of seven years. In the cross-examination, PW-1 admits that as per APMC Rules, he has to maintain several registers, vouchers and accounts books in respect of the transaction of purchase and sale made by a shop owner. Plaintiff in his cross-examination admits that such books of accounts were maintained by him. He also stated that he made entries in respect of the present transactions. However, neither he produced them nor assigned any reasons for not producing the same. Hence, the learned trial Judge rightly took adverse inference against the plaintiff for non-production of relevant records.

16. The learned counsel for the respondent relied on the judgment of Co-ordinate Bench of this Court in the case ***Management of State Bank of India -vs- V.M.Mahapurush¹***, wherein it is held that,

" records have not been produced without any reason and in a case where documentary evidence

¹ ILR 1994 KAR 2728



throwing light on matters in issue is admittedly in possession of the parties to the case, no such argument can be allowed to be advanced that they were not summoned and therefore they were not produced, instead an adverse inference or adverse presumption can be and should be drawn against party having and withholding such evidence in his possession and not producing the same for perusal and consideration of the Court.”

The facts in the present case are similar to the facts stated in the above said case and hence the law laid down in the above case shall be made applicable.

17. It is also pertinent to note that in the plaint as well as in the examination-in-chief, the plaintiff stated that he was acquainted with the defendant and both of them are doing the same type of business, however, they had no business transactions prior to the present loan. The amount borrowed, according to the case of the plaintiff was huge sum of Rs.26,20,000/-. Except the said cheques, there are no scrap of documents to show that defendant had borrowed from him. The said conduct of plaintiff appears unnatural. He is not a rustic villager, but



a businessman. Even he did not obtain receipt for payment of said amount. Hence, it is difficult to believe the case of plaintiff.

18. The defendant contended that he sold 3,713 bags of maize to the plaintiff at the rate of Rs.740/- per quintal and total amount was Rs.26,45,870/-. Plaintiff had paid part of the said amount, through six cheques referred in the plaint. He did not pay balance amount. To recover the same, he filed a suit. DW-1 in his evidence stated in detail about the transportation of maize from his shop to Railway godshed through lorry, lorry numbers, total bags sent in each lorry as well as total weight of the said maize and its value. In support of his contentions, he produced Exs.D-2 to D-4, D-6, D-9, D-11 to D-20 and D-22 to D-24. These documents corroborate the case of the defendant. In his cross-examination, nothing was brought out to discard the documents produced by him. At no stretch of imagination, the said contentions of defendant can be considered as admission of the case of the plaintiff.



19. Learned counsel for the appellant/plaintiff submits that said documents are created by defendant. Plaintiff filed a complaint against the purchaser of the maize from him and failed to pay the price of product. While filing the complaint, these documents were given to police. Defendant obtained the same and produced them before the Court to make false claim. Plaintiff has not led any evidence to substantiate the said contentions. Fraud has to be pleaded and proved. Mere making bare allegation is not sufficient. Plaintiff failed to prove that defendant played fraud on him. Hence, it does not help plaintiff to disbelieve the contention of the defendant.

20. It appears that, the plaintiff wanted a decree to be passed in his favour on the basis of weakness of the case of defendant. Plaintiff has to stand on his own legs. He cannot get a decree on the basis of weakness in the case of the defendant. He could have produced materials which were said to be available with him to prove his contentions. He failed to produce them and hence he



cannot make grievance against the findings of the trial Court.

21. Appellant relied on the judgment of the Hon'ble Apex Court in the case of **Anita Rani -vs- Ashok Kumar and others.**² The facts of that case are totally different. In that case, both the parties admitted their claim and defendant had contended that part repayment was made in full and final settlement of entire claim. Considering the said contention, the Hon'ble Apex Court held that burden to prove said fact was on defendant. In the present case, defendant has not admitted that he borrowed money from plaintiff. His contention is that towards payment of price of maize purchased by plaintiff, said cheques were issued. Hence, law laid down in the above cited decision is not applicable to the facts of present case.

The learned trial Judge properly appreciated the pleadings and evidence and came to right conclusion. We

² (2021) 20 SCC 257



do not find any reasons to interfere in the said findings.

22. For the aforesaid discussion, we pass the following:

ORDER

Appeal is ***dismissed*** with cost.

The impugned judgment and decree dated 17.02.2016, passed by the learned II Addl. Senior Civil Judge, Davanagere, in O.S.No.105/2008, is confirmed.

Registry to transmit the records along with copy of this judgment to the concerned trial Court without delay.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(UMESH M ADIGA)
JUDGE**

bk/