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S.A.No.270 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.270 of 2019

A.Palanisamy

... Appellant

-Versus-

A.Velusamy

... Respondent

Appeal filed under Section 100 of C.P.C. against the judgement and decree dated 28.02.2011 made in A.S.No.51 of 2010 on the file of the Additional District Judge and Fast Track Court No.IV, Coimbatore at Tiruppur confirming the judgment and decree dated 19.01.2010 made in O.S.No.290 of 2007 on the file of the Principal Subordinate Judge, Tiruppur.

For Appellant : *Mr.Kausik for*
Mr.V.Anandhamoorthy

For Respondent : *Mr.A.Kripakaran*

JUDGMENT

The present second appeal arises out of judgment and decree of the



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Additional District and Sessions Judge cum Fast Track Court No.IV, Tiruppur

in A.S.No.51 of 2010 dated 28.02.2011 in confirming the judgment and decree of the court of Principal Subordinate Judge at Tiruppur in O.S.No.290 of 2007 dated 19.01.2010.

2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

3. O.S.No.290 of 2007 is a suit for recovery of money. The appellant is the plaintiff. He had entered into an agreement of sale with the defendant on 09.06.1994. In terms of the agreement, the plaintiff agreed to purchase the property of the defendant at Rs.1,25,000/-. On the date of agreement itself, a sum of Rs.75,000/- was paid as advance. The time for execution of the sale deed was three years. He would plead that from the date of agreement, the plaintiff was ready and willing to perform his part of the contract, but the defendant was postponing the same. He issued a suit notice demanding a sum of Rs.75,000/- to be refunded to him on 27.04.2006 which was effectively replied to by the defendant on 05.05.2006. A rejoinder notice was issued on 31.05.2006. The plaint came be presented for recovery of amount of



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Rs.75,000/- paid under the agreement on 07.06.2006.

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4. On service of summons, the defendant filed a written statement denying the agreement and pleaded that it is only a loan transaction. He would plead that he had borrowed a sum of Rs.30,000/- from one B.M.N.Prabu Financing Company situated at Coimbatore. He would plead that at the time of borrowing the amount, the said finance company had taken his signature on blank stamp papers, blank sheets, promissory notes etc., towards repayment of the loan. He would add that the entire loan transaction was completed in October 1999 and though the financier agreed to return the stamp papers, he failed to do so. He would also allege that the plaintiff is none else than the close friend of Prabakaran, the financier and the suit agreement had been created utilising the said Stamp Papers and had been presented for recovery of the alleged sum of money stipulated therein. Hence, he would seek for dismissal of the suit.

5. On the basis of these pleadings, the learned Trial Judge framed the following issues:



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- “1. தாவா சொத்தைப் பொறுத்து, வாதியும் பிரதிவாதியும் 9.6.1994 நாளிட்டு தாவா கிரைய ஒப்பந்த ஆவணத்தை ஏற்படுத்திக் கொண்டதாக கூறுவது உண்மையா?
2. தாவா சொத்திற்கு கிரையம் பேசப்பட்ட தொகையில் கிரைய முன் பணமாக ரூ.75000/ வாதியிடமிருந்து பிரதிவாதி பெற்றுக் கொண்டதாக வாதி கூறுவது உண்மையா?
3. வாதிக்கு, முிரதிவாதி செலுத்த வேண்டிய தாவா தொகைக்காக தாவா சொத்தை சார்ஜ் செய்வதற்கு வாதி உரிமை பெற்றுள்ளாரா?
4. வாதிக்கு வழக்குரையில் கேட்டுள்ள பரிகாரம் கிடைக்கத்தக்கதா?
5. வேறு என்ன பரிகாரங்கள் வாதிக்கு கிடைக்கத்தக்கது?”

6. On the side of the plaintiff, he examined himself as PW1 and another witness as PW2. Ex.A1 to Ex.A5 were marked. On the side of the defendant, he examined himself as DW1 and marked Ex.B1 to Ex.B7.

7. On a detailed appreciation of the evidence that had been let in before him, the learned trial judge came to a conclusion that the suit is barred by time and hence, dismissed the same.

8. Aggrieved by the same, a regular appeal was preferred before the learned District Judge cum Fast Track Court - IV, at Tiruppur. The appeal was received in A.S.No.51 of 2010 and it came to be dismissed on 28.02.2011, against which the present second appeal.



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WEB COPY 9. The second appeal was not admitted and notice regarding admission was ordered by this Court on 25.02.2019.

10. On service of summons, Mr.A.Kirubakaran entered appearance for the respondent.

11. I have heard Mr.Kausik for Mr.V.Anandhamoorthy and Mr.A.Kripakaran for the respective parties.

12. Mr. Kausik would submit that the courts below had erred in dismissing the suit. He would state that the burden of proof is on the defendant once he admits to his signatures. He would further plead that the period of limitation for recovery of money in an agreement which creates a charge over the property is 12 years from the date the money becomes due. In this case as the suit had been filed within 12 years from the date of the agreement, it is filed within time.

13. Mr.A.Kripakaran would submit that the suit is barred by time because the notice itself was issued after a period of 12 years, i.e., on



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27.04.2006. He would point out that the agreement does not contemplate any charge over the property in order to attract Section 100 of the Transfer of Property Act. That not being done, he would plead that the suit should have been filed on or before 08.06.1997 and the suit having been filed on 07.06.2006, it is hopelessly barred by time.

14. Mr. Kausik would suggest the following substantial questions of law for the purpose of admitting this appeal:

“a) Whether the courts below is correct in law dismissing the suit by shifting the burden of proof on the plaintiff, particularly when the signature found in the suit document has been admitted by the defendant, cannot be reject the claim unless the defence plea of the fabrication by the plaintiff is proved?

b) Whether the courts below is correct in plaintiff is not entitled to get the refund of advance amount paid by him at the time of agreement dated 09.06.1994 is barred by limitation especially Article 62 of the Limitation Act 1963 provides a period of 12 years?

c) Whether the courts below is correct in law holding the suit claim is barred by limitation and plaintiff is not entitled for charge over the suit property for the recovery of advance amount as per Section 55(6)(b) of



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Transfer of Property Act?”

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15. I have heard both sides and gone through the records.

16. A perusal of the agreement would show that it is not an agreement under which a charge has been created over the property by the agreement of the parties. A charge can be created under Section 100 of the Transfer of Property Act either by agreement of the parties or by law. Since the agreement does not reflect any creation of a charge by consent of parties, I would now have to see whether the charge has been created by law.

17. In terms of Section 55(6) of the Transfer of Property Act, a buyer is entitled to a charge, if he has done everything that he had to do, but the seller had evaded the agreement. Section 55(6) of the Act demands that the plaintiff should have performed all his duties as required under the agreement and the transactions should have failed on account of the seller, who did not perform his part. At the first instance, there is no plea in the plaint that the plaintiff had performed all that was required on his part.

18. The conduct of the plaintiff itself is sufficient to look against him. The agreement had been entered into on 09.06.1994 and the notice itself was issued



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only after the period of 12 years on 27.04.2006. There is absolutely no readiness and willingness demonstrated by the plaintiff. If the buyer had defaulted on the performance of his part of the agreement, then he would not be entitled to a charge under Section 55(6)(b) of the Act. Further there is no plea that he was willing to take delivery of the property on going through the plaint. Therefore, no charge has been created even by law as the plaintiff has not complied with the terms of the agreement. Therefore, the period of limitation that would apply for recovery of money paid under an agreement would be the same period as for a suit for recovery of money, which is three years from the date of transaction.

19. The suit having been filed beyond the period of three years, it is hopelessly barred by limitation. Consequently, I do not find any reason to admit this second appeal. The substantial questions of law suggested by Mr.Kausik do not arise for consideration in the present appeal.

20. In fine, the second appeal is dismissed. The judgment and decree of the court of the learned Additional District Judge cum Fast Track Court No.4, Tiruppur in A.S.No.51 of 2010 dated 28.02.2011 in confirming the judgment



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and decree of the learned Principal Subordinate Judge, Tiruppur in O.S.No.290

of 2007 dated 19.01.2010 is confirmed. No costs.

25.07.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order

To

1.The Additional District Judge and Fast Track Court No.IV, Coimbatore at
Tiruppur



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2.The Principal Subordinate Judge, Tiruppur.

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V.LAKSHMINARAYANAN, J.

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