



S.A(MD)Nos.501 of 2017 and 476 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.02.2024

Pronounced on : 12.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)Nos.501 of 2017 and 476 of 2021

and

C.M.P(MD)No.6355 of 2021

S.A(MD)No.501 of 2017

K.Selvamuthukumar

... Appellant/Appellant/Plaintiff

Vs.

S.R.Krishnan

... Respondent/Respondent/Defendant

PRAYER in S.A(MD)No.501 of 2017:-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment passed by the Principal District Judge, Sivagangai, dated 24.11.2016 in A.S.No.30 of 2015, confirming the decree and judgment of the Subordinate Judge, Sivagangai, dated 09.06.2015 passed in O.S.No.9 of 2007 and decree the suit as prayed for with costs.



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S.A(MD)No.476 of 2021

K.Selvamuthukumar

... Appellant/Appellant/Defendant

Vs.

S.R.Krishnan

... Respondent/Respondent/Plaintiff

PRAYER in S.A(MD)No.476 of 2021:-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment passed by the Subordinate Judge, Manamadurai, dated 07.04.2021 in A.S.No.162 of 2019, confirming the decree and judgment of the Principal District Munsif, Manamadurai, dated 14.07.2017 passed in O.S.No.53 of 2007 and dismiss the suit with costs throughout.

For Appellant : Mr.S.Parthasarathy in both SAs

For Respondent : Mr.K.K.Kannan in both SAs

COMMON JUDGMENT

The Second Appeal in S.A(MD)No.501 of 2017 is filed against the judgment and decree dated 24.11.2016 passed in A.S.No.30 of 2015 on the file of the Principal District Court, Sivagangai, confirming the judgment and



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decree dated 09.06.2015 passed in O.S.No.9 of 2007 on the file of Sub Court, Sivagangai.

2. The appellant is the plaintiff and the respondent is the defendant in O.S.No.9 of 2007 on the file of Sub Court, Sivagangai. The appellant/plaintiff filed the suit for recovery of money.

3. The Second Appeal in S.A.(MD)No.476 of 2021 is filed against the judgment and decree dated 07.04.2021 passed in A.S.No.162 of 2019 on the file of the Sub Court, Manamadurai, confirming the judgment and decree dated 14.07.2017 passed in O.S.No.53 of 2007 on the file of the Principal District Munsif Court, Manamadurai.

4. The appellant is the defendant and the respondent is the plaintiff in O.S.No.53 of 2007 on the file of the Principal District Munsif Court, Manamadurai. The respondent/plaintiff filed the suit for ejectment.



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5. For the sake convenience, the parties are referred as plaintiff and defendant as arrayed in O.S.No.9 of 2007 on the file of the Sub Court, Sivagangai.

6. Case of the plaintiff: (Case of the appellant K.Selvamuthukumar)

The suit property belonged to the defendant. On 22.01.2000 the defendant borrowed Rs.1,50,000/- from the plaintiff and the defendant accepted that in lieu of interest the plaintiff would be in possession of the suit property. To that effect, the defendant executed an unregistered Othi deed in favour of the plaintiff. The plaintiff demanded repayment of money from the defendant, who failed to repay. When dispute arose between them, the plaintiff presented petition before the District Collector, Sivagangai. That petition was forwarded to the Police Station, Thiruppachethi for disposal. During police enquiry, the defendant agreed about the othi loan and executed a consent letter dated 16.10.2004 in the presence of the police official and gave undertaking that he would repay the loan amount with other expenses incurred by the plaintiff regarding repair works and tax within 22.01.2005. in spite of that also, the defendant has not repaid the loan amount. Hence, the



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plaintiff sent legal notice dated 18.10.2006. The defendant sent reply notice dated 20.11.2006 alleging the plaintiff is in the suit property as a tenant, who paid Rs.5,000/- as advance and monthly rent is Rs.1,000/-. The contents stated in the reply notice are false. Therefore, the plaintiff filed the suit for recovery of Rs.1,50,0000/-.

7. Case of the Defendant: (Case of respondent S.R.Krishnan)

The defendant never paid Rs.1,50,000/- to the plaintiff and never executed the alleged deed. The plaintiff's father is retired employee of revenue department and at this instance the plaintiff forged the alleged deed. The defendant stated this fact in his reply notice. The plaintiff has to prove legally that his father filed a petition to District Collector and it was forwarded for police enquiry, in the said police enquiry the defendant admitted the obtaining of loan of Rs.1,50,000/- and also executed an undertaking letter dated 16.10.2004. The unregistered Othi deed and the alleged letter executed before police officials are not legally acceptable. The plaintiff has been inducted as tenant in the suit property, which is belonged to the defendant. The plaintiff agreed to pay monthly rent at Rs.1,000/- p.m. and



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also paid Rs.5,000/- as advance. The relationship between the defendant and the plaintiff is only landlord and tenant. Again the plaintiff gave another petition to the District Collector and the same was forwarded for police enquiry, after police enquiry the said petition was closed on 20.10.2005. Thereafter, the plaintiff did not pay rent and the advance was adjusted from December 2005 to April 2006. The plaintiff is in arrears of rent from May 2006. The defendant issued reply legal notice to the plaintiff. Further, even prior to suit on 28.02.2007 the defendant issued legal notice to the plaintiff seeking possession as per Transfer of Property Act. The plaintiff gave reply on 5.3.2007. These facts were suppressed by the plaintiff So, the suit is liable to be dismissed.

8. On the same set facts, the defendant (S.R.Krishnan) filed suit for ejectment in O.S.No.53 of 2007 on the file of the Principal District Munsif Court, Manamadurai against the plaintiff (K.Selvamuthukumar), who resisted the case for ejectment alleging the same averments made in plaint in O.S.No.9 of 2007.



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Before the Trial Court

O.S.No.9 of 2007

9. During trial of O.S.No.9 of 2007, on the side of the plaintiff, the plaintiff was examined as P.W.1 and two witnesses were examined as P.W.2 and P.W.3 and marked 7 exhibits as Ex.A.1 to Ex.A.7. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and Ex.B.1 to Ex.B.8 were marked. Ex.X1 and Ex.X2 were also marked.

10. After hearing both the learned Sub Judge, Sivagangai concluded that the plaintiff is not entitled to the suit amount and dismissed the suit by passing judgment and decree dated 09.06.2015. Aggrieved by the judgment and decree in O.S.No.9 of 2007, the plaintiff preferred the Civil Appeal in A.S.No.30 of 2015 before the District Court, Sivagangai. The First Appellate Court after hearing both and after perusing material records of the case dismissed the appeal in A.S.No.30 of 2015 by passing judgment dated 24.11.2016 and confirmed the judgment and decree passed in O.S.No.9 of 2007.



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11. Challenging the judgment and decree of the First Appellate Court, the defendant has preferred this Second Appeal in S.A.(MD)No.501 of 2017 and the same has been admitted for file on 02.03.2021 on the following substantial questions of law:-

(i) Whether the courts below were right in concluding that the plaintiff has not proved Ex.A.1 on the ground that the stamp paper, on which it is written, stands in the name of a different person, overlooking the fact that the Sub-Rule (2) Rule 6 of the Indian Stamp Act, which requires the document to be written on a stamp paper which was purchased either in the name of party of the document or power of attorney of the party, has been omitted by G.O.Ms.No42602/6-2/1983, dated 20.08.1983?

(ii) Whether the Courts below were right in concluding that Article 29 of the limitation Act would apply, despite the fact that the document prescribed a particular period for repayment?

(iii) Whether the Courts below are right in rejecting the evidence of D.W.2 when he has specifically deposed supporting the case of the plaintiff and has not been treated as a hostile witness by the defendant under section 154 of the Evidence Act.?



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O.S.No.53 of 2007 (filed by defendant S.R.Krishnan in O.S. No.9 of 2007)

12. During trial of O.S.No.53 of 2007, on the side of the plaintiff, the plaintiff was examined as P.W.1 and one B.Muthu was examined as P.W.2 and marked 10 exhibits as Ex.A1 to Ex.A10. On the side of the defendant (K.Selvamuthukumar/plaintiff in O.S.No.9 of 2007), two witnesses were examined as D.W.1 and D.W.2 and Ex.B1 to Ex.B6 were marked.

13. After hearing both the learned Principal District Munsif, Manamadurai concluded that the plaintiff is entitled to the suit claim of ejectment and decreed the suit by passing judgment and decree dated 14.07.2017. Aggrieved by the judgment and decree in O.S.No.53 of 2007, the defendant (K.Selvamuthukumar/Plaintiff in O.S.No.9 of 2007) preferred the Civil Appeal in A.S.No.162 of 2019 before the Sub Court, Manamadurai. The First Appellate Court after hearing both and after perusing material records of the case dismissed the appeal in A.S.No.162 of 2019 by passing judgment dated 07.04.2021 and confirmed the judgment and decree passed in O.S.No.53 of 2007.



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14. Challenging the judgment and decree of the First Appellate Court, the defendant has preferred this Second Appeal in S.A.(MD)No.476 of 2021 and the same has been admitted for file on 17.02.2022 on the following substantial question of law:-

" Whether the Courts below were right in holding that it is not necessary to go into the genuineness of Exhibit B.2 unregistered mortgage deed on the ground that the same has already been decided by the Courts in a connected proceedings when the connected proceedings are already pending in an admitted second appeal?"

15. Heard both sides and perused the records in these Second Appeals. The learned counsel for the appellant/plaintiff made lengthy arguments by relying catena of citations. Per contra the learned counsel for the respondent/defendant also made lengthy arguments against the case of the plaintiff.

16. On hearing both and on perusal of records, it is mainly attacked on the unregistered Othi document, which is marked as Ex.A1 in O.S.No.9 of 2007 and as Ex.B2 in O.S.No.53 of 2007. It is also mainly attacked on the



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alleged letter executed by the defendant before police official during enquiry upon the petition allegedly given by the father of the plaintiff.

17. The learned counsel for the appellant/plaintiff argued that the suit property is dwelling house, the possession of which was given to the plaintiff on receipt of Rs.1,50,000/- by the respondent/defendant on execution Ex.A1 unregistered Othi deed. At the time of execution, the deed was unregistered and the document was marked on payment stamp duty penalty. The learned counsel for the appellant/plaintiff submitted that though the Ex.A1 is unregistered, it can be used for collateral purpose i.e., the amount received by the defendant can be taken into consideration. He further argued that according to document, the defendant received Rs.1,50,000/- on 22.01.2000 and so, the plaintiff has proved the advance of loan of Rs.1,50,000/-, but the Courts below failed to appreciate the contents of the documents. In support of his argument, the learned counsel for the appellant relied on the following citations:

(1) 2001 (1) Law Weekly 613 (Joseph, P /v/ M.T.Santiago)



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(2) 1997 (2) CTC 517 (Kousalya Ammal /v/ Valliammal)

(3) (2008) 3 MLJ 1488 (Mad NOC) (Murugan /v/ Sumathradevi & Anr.)

(4) (2009) 1 MLJ 961 (Selvan /v/ Mohamad Gani)

(5) 2004 (1) Law Weekly 706 (Bondar Singh & Ors /v/ Nihal Singh & Ors.)

(6) 2014 (3) Law Weekly 609 (K.R.Sivadesikan Pillai /v/ Ravichandran)

(7) 2014 (6) CTC 773 (R.Munusamy /v/ G.Krishttappillai and Ors.)

18. On consideration of the above citations, except the citation **2014-3 Law Weekly 609**, other citations were arisen out of Civil Revision Petitions. Of course, on consideration of the above citations, unregistered document can be marked as evidence for any collateral transaction. However, in this case, the respondent/defendant vehemently contended that the document was created and forged at the instance of the plaintiff's father, who was working as revenue official. When the said document resisted as forged by the defendant, it is bounden duty of the plaintiff to establish or prove the said unregistered Othi as rightly observed by the Courts below.



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19. On perusal of Ex.A1 - Othi deed, the stamp paper was sold by one V.Muthukrishnan, Court Stamp Vendor, Palayamkottai, Tamilnadu and it was purchased by one Mani, Madurai. Date of sale of stamp paper is 30 Nov 1999. The said stamp paper is used for writing of Othi as if executed by the defendant in favour of the plaintiff both were residing at Thiruppachethi Village of Sivagangai District on 22.01.2000. At this juncture, the appellant/plaintiff's side submitted that as sub rule (2) of Rule 6 of the Indian Stamp Act, that "Every paper, on which the stamp has been engraved or embossed purchased by a person or his duly constituted attorney either by act of parties or by operation of law or by status, shall be used only for the purpose of executing a document, in which that person or his duly constituted attorney is party", that sub rule was omitted by G.O.Ms.No. 42602/6-2/1983, dated 20.08.1983 by the Tamil Nadu Government and hence, there is no bar in using the stamp paper by the plaintiff though it stands in some other name.

20. It is the definite case of the defendant, since the plaintiff's father was working in revenue department at his instance the stamp paper was used for forging the document. The plaintiff did not deny that his father working



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in revenue department. Section 2 (11) of the Indian Stamp Act, defines how a document should be duly stamped. Section 35 states that the instrument not duly stamped is inadmissible in evidence. Though the Rule 6 (2) was omitted, the plaintiff has not established that a stamp paper purchased by a person can be used by some other person at some other district. The Courts below correctly appreciated the evidence of the plaintiff as P.W.1, who deposed in his cross examination that “நான் பிரதிவாதிக்கு கொடுத்த கடன் தொகைக்காக அவர் எனக்கு ஒரு ஒத்தி ஆவணம் எழுதிக்கொடுத்திருக்கிறார். 22.03.2000 அன்று பத்திர காகிதம் வாங்கிய அன்றே வா.சா.ஆ.1 எழுதப்பட்டது.....” P.W.2 - Sathiyamoorthy, who is the scribe of the said document deposed as “வா.சா.ஆ.1 முத்திரைத்தாள் பாளையங்கோட்டை முத்துக்கிருஸ்ணன் என்பவரிடம் இருந்து மதுரையைச் சேர்ந்த மணி என்பவர் பெயரில் வாங்கப்பட்டதாக உள்ளது. சாட்சிகளில் சப்பாணி என்பவர் முதலில் கையொப்பம் இட்டு தன் தகப்பனார் பெயரை எழுதினார்/ அதன் பின்னர் தங்கசாமி கையெழுத்து போட்டு அவரது அப்பா பெயரை எழுதினார்...” One of the witnesses to the document Thangasamy was examined as P.W.3 who deposed that ‘எழுதியதும் சாட்சியும் என்று வா.சா.2 திரு.சத்தியமூர்த்தி கையொப்பம் இட்டதை தான் பார்க்கவில்லை’.

On perusal of Ex.A.1 – Deed, the witnesses have not written their father’s



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name. On perusal of evidence of plaintiff as P.W.1 admitted that P.W.2 is his relative and P.W.3 is friend of his father. In the above circumstances, the Courts below correctly came to the conclusion that Ex.A.1 - Deed is not proved by the plaintiff.

21. Moreover, when the defendant disputed the document, the plaintiff has not taken steps to prove his signature through handwriting expert opinion. The plaintiff admitted that the document can be used only for collateral purpose as he filed the suit for recovery of money only. The plaintiff has not stated in his pleadings that at the time of execution of Ex.A.1 - Othi deed, the title documents of the suit property was handed over to the plaintiff while he stated that possession was handed over to him by the defendant. On perusal of Ex.A.1, there is no content regarding interest. No prudent man would execute Othi deed on obtaining money without interest and it is in general while writing Othi deed or usufructuary mortgage deed, the possession would be handed over to the loan giver in lieu of interest. Further, the plaintiff has not produced any revenue records for payment of tax to prove Othi. These circumstances create cloud upon the genuineness of the Ex.A.1 as rightly held by the Courts below.



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22. It is the definite case of the respondent/defendant that the plaintiff was inducted as tenant by way of oral tenancy for monthly rent of Rs.1,000/- and the plaintiff paid Rs.5,000/- as advance and the plaintiff failed to pay rent from May, 2006 he filed suit for ejectment. The alleged unregistered othi deed was marked as Ex.B2. The learned counsel for the respondent/defendant contended that there is no content in the alleged Ex.A1 and Ex.B2 - Othi deed that the appellant/plaintiff was permitted to be in possession in lieu interest and a common man would make such contents in usufructuary mortgage deed after getting mortgage loan. The learned counsel for the appellant/plaintiff submitted that as per Ex.A1 and Ex.B2 - Othi deed, exclusive possession was given to the plaintiff by the defendant. As per section 6 of Specific Relief Act, person in exclusive possession cannot be presumed to be a tenant on that basis, for which he relied on decision of the Hon'ble Supreme Court reported in **(2017) 1 MLJ 598 (S.Balakrishnan /v/ V.Gokilnath and anr)**. On perusal of the decision, of course a person in exclusive possession cannot be presumed to be a tenant. But, in this case on hand, the respondent/defendant stated that the appellant/plaintiff was inducted as tenant and accordingly terminating tenancy issued Ex.A5 legal notice. As already stated supra, the appellant/plaintiff failed to prove the execution of Ex.A.1 and Ex.B.2 - Othi



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deed and he has not produced any tax receipt as othidar in support of his exclusive possession.

23. The appellant/plaintiff has further contended that the respondent/defendant has not filed any rent receipt, the respondent/defendant has deposed that he has not issued any receipt towards rent and that the courts below has not correctly appreciated the evidence and relied on decision of this court reported in **1995-2 Law Weekly 705 (Fathuma and Anr. /v/ K.S.kadherkani)**. On perusal of the decision, it is clear that in that case the plaintiff alone examined and no other independent witness was examined to prove oral tenancy and also notice terminating tenancy was not issued. Whereas in this case on hand, Ex.A.5 termination notice under Section 106 of TP Act was issued to the appellant/plaintiff and also independent witness was examined as P.W.2 to support the case of the respondent/defendant. So, the citations are not applicable to the facts of the case.

24. On perusal of records, the respondent/defendant proved the oral tenancy by examining P.W.2 - Muthu. Moreover, in the reply notice - Ex.A.4



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marked in O.S.No.9 of 2007 and the same was marked as Ex.A.2 in O.S.No. 53 of 2007 clearly stated about the relationship of landlord and tenant between defendant and plaintiff and stoutly denied the deed of Othi. Further, the Courts below held that the alleged Othi deed is not valid document as held in O.S.No.9 of 2007 and A.S.No.30 of 2015, the Courts below concluded that the alleged Othi deed is not valid in the eye of law and also held that the defendant proved tenancy and decreed for ejectment. It is now raised objection on appellant/plaintiff side that when the Second Appeal is pending before this Court regarding the decision of the alleged Othi deed, the decree for ejectment is not sustainable in law.

25. Per contra, on the respondent/defendant side it is argued that the appellant/plaintiff has not filed any injunction petition or stay petition to stay the operation of decree of the earlier suit and hence, there is no bar for Courts below to take into consideration of the decision regarding Ex.B2 - Othi deed before the Courts of law in the earlier suit. Admittedly, the Second Appeal is filed against the concurrent finding of the Courts below and also the appellant/plaintiff has not established that there is stay order passed by this Court and the same was pending at the time of trial of suit for ejectment and



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hence, the Courts below were right in holding that it is not necessary to go into the genuineness of Ex.B2 - unregistered mortgage deed on the ground that the same has already been decided by the Courts in a connected proceedings when the connected proceedings are already pending in an admitted the Second Appeal. Therefore, the first question of law in both appeals are answered against the appellant/plaintiff.

26. The next contention raised by the appellant/plaintiff is that the respondent/defendant executed Ex.A.1 - Othi deed dated 22.01.2000 with specific content that he received Rs.1,50,000/- and he would repay the same within 5 years. The learned counsel for the appellant/plaintiff argued that as per Limitation Act, Article 19 says for filing a suit for recovery of money the suit has to be filed within three years when the loan is made, Article 28 says for filing suit on a single bond, where a day is specified for payment, the suit has to be filed within three years from the day so specified. Article 29 says for filing the suit on a single bond, no such day is specified, the suit has to be filed within three years from the date of executing the bond and Article 30 says for filing suit on a bond subject to a condition, the suit has to be filed within three years when the condition is broken. He further contended that

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in this case, the respondent/defendant executed Ex.A1 - Deed on receipt of money on 22.01.2000 on condition that he would repay the money within 5 years. So, in this case, the limitation period would start after expiry of five years i.e., 22.01.2005 the suit has been filed in the year 2007, so the suit is filed within the limitation, but the Courts below erred in concluding that the suit is barred by limitation. In support of his argument the learned counsel relied on the judgment of this Court reported in **1970 (1) MLJ 156**, in which it is held as follows:

“It is well settled that, where a mortgage deed fails for want of registration or attestation or for any other purpose, it is admissible as evidence of a personal covenant contained therein for payment of the amount. It cannot also be disputed that where a time limit is fixed for the repayment of money in a simple money bond, limitation will start only from that date.”

27. On perusal of the plaint, the suit has been filed for simple recovery of money and Court fee paid under Section 22 of TNCF Act. The suit has not been seeking mortgage decree and court fee paid under Section 33 of TNCF Act. The Courts below correctly observed that the appellant/plaintiff has pleaded in his plaint in paragraph No.7 as follows:



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“வாதியிடம் இந்தப் பிரதிவாதி ரொக்கமாக ரூ.1,50,000/ கடனாகப் பெற்றுக்கொண்டு அதற்கு ஆதரவாக முன் பாராவில் கூறியவண்ணம் 22.01.2000ம் தேதியிட்டு ஒரு பதிவில்லாத ஒத்திப்பத்திரம் எழுதிக்கொடுத்து இருப்பதில் ஒத்தி அடிப்படையில் வாதி இவ்வழக்கில் பிரதிவாதி மீது யாதொரு பரிகாரமும் கோரவில்லை. மேற்படி ஆவணத்தில் பிரதிவாதி வாதியிடம் இருந்து பெற்ற கடனாகப் பெற்றுக்கொண்டு இருப்பதை ஒப்புக்கொண்டு மேற்கண்ட ஆவணம் எழுதிக்கொடுத்திருப்பதை வாதியும் மேற்கண்ட 22.01.2000 ஆம் தேதியிட்ட ஆவணத்தினை உபய தரப்பினருக்கு இடையே ஏற்பட்டுள்ள பணபரிமாற்றம் சம்பந்தமாக மேற்படி ஆவணத்தை அடிப்படையாகக் கொண்டு அந்த வகைக்காக மேற்படி ஆவணத்தினை அடிப்படையாகக் கொண்டு இவ்வழக்கை தாக்கல் செய்திருக்கிறார்.....”

From the above averments it is very clear, the suit has not filed on the basis of Othi, the suit is filed for recovery of money as seen from very averment that “22.01.2000 ஆம் தேதியிட்ட ஆவணத்தினை உபய தரப்பினருக்கு இடையே ஏற்பட்டுள்ள பணபரிமாற்றம் சம்பந்தமாக மேற்படி ஆவணத்தை அடிப்படையாகக் கொண்டு அந்த வகைக்காக...”.

28. Therefore, the Courts below correctly held that the suit has been filed only for recovery of money on the basis of money transaction between



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the parties since the suit is filed and court-fee paid under Section 22 of TNCF Act, the suit should have been filed within three years from the date of transaction between the parties. Even as per citation relied on by the appellant/plaintiff reported in **2014-3 Law weekly 609 (K.R.Sivadesikan Pillai /v/ Ravichandran)**, this Court observed and held in paragraph Nos.10 and 13 as follows:

“10. It is not in dispute that a lease deed prescribing 10 years as the lease period is compulsorily registrable u/s 17 of the Registration Act. As per section 49 of the Registration Act, such a document if not registered shall not be admitted in evidence. However, the proviso to sec.49 provides that such a document can be used for the purpose of proving a collateral transaction.

13. The right to seek refund of the advance amount or recovery of possession of the property as a tenant would have accrued in 1988 itself and the appellant/plaintiff did not take any such steps. From the date of dispossession itself, the cause of action for refund of advance amount had arise. As such, the suit should have been filed within three years thereafter. As he has caused a delay of more than 10 years, the claim of the appellant/plaintiff is hopelessly barred by limitation.”



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In a suit for recovery of money on the basis of unregistered lease deed, dated 28.08.1987 for a period of 10 years, on which date advance of Rs.15,000/- paid, the suit was filed after 10 years i.e., in the year 1998 has been held as barred by limitation.

29. In the case on hand also, the alleged unregistered Othi deed, dated 22.01.2000, though alleged 5 years, the suit filed for recovery of money which is filed in the year 2007 is barred by limitation. As per citation, the suit should have been filed within three years. So, the Courts below correctly came to conclusion that the suit is barred by limitation relying on the citation reported in **2013(2) CTC 89 (P.Lakshmanan /v/ Muniappan)**. Hence, the question of law is answered against the appellant/plaintiff.

30. The next contention raised by the appellant/plaintiff is that the respondent/defendant executed a letter during police enquiry wherein he admitted that the receipt of money of Rs.1,50,000/- and has given undertaking that he would repay the same by 22.01.2005. The learned counsel for the appellant/plaintiff contended that the respondent/defendant side witness



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D.W.2 has clearly admitted in his evidence that the respondent/defendant executed a hand written letter before the police officer, who made enquiry upon petition filed by one Kalyani, but the respondent/defendant has not treated the D.W.2 as hostile as per section 154 of the Evidence Act.

31. The learned counsel for the appellant/plaintiff argued that the statement before the police is admissible in evidence and Section 25 of the Evidence Act would be attracted only to the criminal proceedings, but the Courts below simply rejected the Ex.A.5 - letter executed by the respondent/defendant before police official. The learned counsel relied on the following citations:

- 1. 1995(1) CTC 526 (Periyasamy /v/ Parvathy and Anr.)**
- 2. 2017(1) MLJ 594 (G.Rama Rajalakshmi /v/ M.Sampath Kumar)**
- 3. 1999(1) MLJ 69 (S.Murugesan and ors /v/ S.Pethaperumal and Ors.)**
- 4. 2002(4) CTC 222 (K.C.Palanisamy /v/ M.Chinnasamy and Ors.)**



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32. On perusal of the above citations, statement before police official can be taken into consideration only after eliciting both side evidences. Most citation held in Civil Revision Petitions only. In this case, the alleged Ex.A5 and evidence of D.W.2 with regard to petition filed by one Kalyani, who is father of the appellant/plaintiff against the respondent/defendant. The enquiry was between the said Kalyani and the respondent/defendant. So, the appellant/plaintiff is not a party to that petition enquiry. It is not the case of the appellant/plaintiff that his father Kalyani has filed the said petition on behalf of the appellant/plaintiff.

33. On perusal of records, the original of the said alleged consent letter Ex.A5 has not been filed before this Court and only copy of the same has been marked. On perusal of evidence appellant/plaintiff, who clearly admitted in his cross examination that

“எக்ஸ்.1ல் கண்ட அனைத்து ஆவணங்களும் ஜெராக்ஸ் ஆக இருக்கின்றது/உண்மை நகல் என்று காவல்துறையினர் கையெழுத்து செய்துள்ளார்கள்/ இதன் அசல் காவல்துறையினரிடம் இருக்கின்றது/ திருப்பாச்சேத்தி காவல்துறையினரிடம் இருக்கின்றது. இந்த கோப்பில் என் அப்பா



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மாவட்ட ஆட்சியரிடம் புகார் கொடுத்ததாக சொல்லப்பட்டுள்ளது... சம்பவங்கள் அனைத்தும் என் அப்பாவுக்கும் பிரதிவாதிக்கும் நடந்ததாகதான் சொல்லப்பட்டுள்ளது. என்னைப் பொறுத்து அந்த புகாரில் எதுவும் சொல்லப்படவில்லை/ வீடு. ஒத்தி கொடுக்கல் வாங்கல் சம்மந்தமாக எனக்கும் பிரதிவாதிக்கும் நடந்ததாக சொல்லப்படவில்லை...'

He further clearly deposed as “வா.சா.ஆ.5 ஆவணத்தின் அசல் திருப்பாச்சேத்தி காவல்நிலையத்தில் இருப்பதாக சான்று அளித்துள்ளார்கள். இந்த ஆவணமும் நீதிமன்றத்திலிருந்து சம்மன் அனுப்பி வரவழைக்கப்பட்டுள்ளது/ இந்த ஆவணத்தில் பிரதிவாதி ஆட்சேபணை செய்துள்ளார்/ உண்மை ஆவணத்தினை திருப்பாச்சேத்தி காவல்நிலையத்திலிருந்து வரவழைத்து நிரூபிக்க நான் தயாராக இல்லை..”

So, from the above evidence of the appellant/plaintiff, it is clear that Ex.A5 is only a Photostat Copy and the original of the same is available with Thiruppachethy Police Station and the appellant/plaintiff is not ready to call for the original in order to prove his case. Admittedly, the petition enquiry was made between the father of the appellant/plaintiff and the respondent/defendant as seen from the evidences and records. So, the third question of law is also answered against the appellant/plaintiff.



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34. From the above facts and circumstances, the Courts below found concurrent finding based on evidences adduced in the case. The said findings require no interference by this Court by way of Second Appeal. The citations relied on by the appellant/plaintiff are not applicable to the case of the appellant/plaintiff. Hence, the question of laws framed in these two appeals are answered against the appellant/appellant. Thus, these Second Appeals fail.

35. In the result, the Second Appeal in S.A(MD)No.501 of 2017 is dismissed. The judgment and decree dated 24.11.2016 passed in A.S.No.30 of 2015 on the file of the Principal District Court, Sivagangai, confirming the judgment and decree dated 09.06.2015 passed in O.S.No.9 of 2007 on the file of Sub Court, Sivagangai is confirmed. No costs.

36. In the result, the Second Appeal in S.A(MD)No.476 of 2021 is dismissed. The judgment and decree dated 07.04.2021 passed in A.S.No.162 of 2019 on the file of the Sub Court, Manamadurai, confirming the judgment and decree dated 14.07.2017 passed in O.S.No.53 of 2007 on the file of the



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Principal District Munsif Court, Manamadurai is confirmed. No costs.

Consequently, connected Miscellaneous Petition is closed.

12.04.2024

NCC : Yes / No

Internet : Yes / No

Index : Yes / No

VSD

To

- 1.The Principal District Judge,
Sivagangai.
- 2.The Principal District Munsif,
Manamadurai.
- 3.The Subordinate Judge,
Sivagangai.
- 4.The Subordinate Judge,
Manamadurai.
- 5.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.A(MD)Nos.501 of 2017 and 476 of 2021

P.VADAMALAI, J.

VSD

Pre-Delivery Judgment made in
S.A(MD)Nos.501 of 2017 and 476 of 2021
and
C.M.P(MD)No.6355 of 2021

12.04.2024