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A.S.(MD) No.190 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on	20.03.2024
Orders Pronounced on	13.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

A.S.(MD) No.190 of 2019

S.Ramamoorthy

...Appellant/Defendant

Vs.

M/s.Sri Mahalakshmi Agencies,
represented by its Proprietor
K.Murugesan

...Respondent/Plaintiff

PRAYER: First Appeal is filed under 96 of Code of Civil Procedure r/w. Order XLI Rule 1 and 1A of Code of Civil Procedure, to set aside the judgment and decree dated 11.01.2017 made in O.S.No.108 of 2013 on the file of the First Additional District Judge (PCR), Tiruchirappalli.

For Appellant : Mr.H.Lakshmi Shankar
for Mr.K.S.Kathiravan
For Respondent : Mr.J.A.Punithan

JUDGMENT

This appeal has been preferred against the decree and judgment dated 11.01.2017 passed in O.S. No. 108 of 2013 on the file of the I Additional



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District Judge (PCR), Tiruchirappalli, wherein the respondent/plaintiff had filed a suit against the appellant/defendant for the relief of recovery of money and the suit was decreed. Aggrieved by the said decree and judgment, the defendant has preferred this appeal.

2. The brief averments of the plaint are as follows: The plaintiff and the defendant are close relatives. There were money transactions between them. In the year 2008, the defendant approached the plaintiff and his brother Mahalingam for obtaining loan of Rs. 2 lakhs for starting a new business. Both the plaintiff and his brother agreed to pay the said amount. Accordingly, on 17.06.2008, the plaintiff paid a sum of Rs. 1 lakh through a cheque in the name of "Sri Mahalakshmi Hardwares" via Indian Overseas Bank, Sathanur, Trichy. The defendant agreed to pay an interest of 18% per annum and assured to repay the amount with interest within two years. Since the defendant is a close relative, they paid the said money through a cheque without any documents. When the defendant failed to repay the principal amount with interest as agreed, the plaintiff, along with his brother, issued a notice dated 01.06.2011, which was received by the defendant. After receiving the notice, the defendant issued a reply with false allegations. Therefore, the plaintiff filed this suit.



3. The brief averments of the written statement and additional written statement filed by the defendant are as follows:

(i) The suit is false, frivolous, and vexatious and is not maintainable either in law or on facts; it is liable to be dismissed in limine. The plaintiff and the defendant are closely related to one another. But there was no money transaction between them based on the family relationship as alleged by the plaintiff. The defendant never borrowed a sum of Rs. 2 lakhs from the plaintiff and his brother Murugesan for starting a new business.

(ii) The averments of the plaint that the defendant obtained money as loan and alleged demands by the plaintiff are denied as false. The allegations in the plaint that on 17.06.2008, the plaintiff gave a sum of Rs. 1 lakh via cheque from Indian Overseas Bank in the account of "Sri Mahalakshmi Agencies" as a loan to the defendant are false. The lawyer's notice was issued on 01.06.2011, demanding the return of the principal amount and interest, was suitably replied by the defendant. The plaintiff and his brother are collusively trying to make unlawful enrichment from the defendant. The plaintiff and the defendant are close relatives, and during the lifetime of the defendant's father, a joint family business named "Sri Mahalakshmi Hardwares" was started in K.K. Nagar, Trichy. After the demise of the defendant's father, the defendant worked in his father's place in the family business. All of a sudden, the



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plaintiff and other family members wished to push the defendant out of the family business by making a meager settlement of Rs. 2 lakhs. The defendant, however, demanded Rs. 15 lakhs as his share of the joint family business's profit, having worked in the family business for nearly 20 years and the defendant's demand was refused by the plaintiff and filed a false case.

(iii) The plaintiff's brother as the proprietor of "Mahalakshmi Hardwares," also filed a similar suit in O.S. 440 of 2011 for the recovery of Rs. 1 lakh before the Sub Court and the present suit is filed by the plaintiff in the individual capacity. The suit amount was only given as a part settlement amount. Under the above said circumstances, the plaintiff is not entitled to the relief as prayed for. The suit amount was given only as a part settlement. The defendant already filed a suit for partition against the plaintiff and the sons and daughter of Mahalingam in O.S. No. 179 of 2009 on the file of the I Additional District Court, Tiruchirappalli. To wreck vengeance against the defendant, the plaintiff filed this suit. If the plaintiff had paid the alleged amount, he should have filed the suit immediately after 2009. Per contra, the present suit filed in the year 2011 to threaten the defendant for compromise the suit in O.S. No. 179 of 2009.

(iv) The defendant never obtained a loan from the plaintiff. Therefore, no question of interest and payment arises. Therefore, the suit is liable to be dismissed.



4. Based on the above said pleadings, the trial Court has framed the following issues:

1. Whether the plaintiff is entitled to the amount claimed?
2. What other relief is the plaintiff entitled to?

5. Before the trial Court, on the side of the plaintiff, PW1 was examined and marked Ex.A1 to A5. On the side of the defendant, DW1 was examined and marked Ex.B1.

6. After considering the evidence adduced on both sides, the trial Court decreed the suit. Aggrieved by the said decree and judgment, the unsuccessful defendant has filed this appeal on the following grounds:

(i). The decree and judgment of the trial Court are against the law, weight of evidence, and probabilities of the case.

(ii). The respondent/defendant had not produced any documents like promissory notes, cheques, acknowledgment receipts, or any evidence to show that the loan transactions took place between the appellant and the respondent.

(iii). The appellant/defendant, in the reply notice, accepted the receipt of the cheque as a share in the joint family business and not as a loan. But the trial Court held that the appellant failed to produce any document to show that



the alleged cheque was given to him only towards his share in the joint family business, which is erroneous. The trial Court wrongly shifted the burden into the appellant and decreed the suit.

(iv). The respondent issued the pre-suit notice in his individual name, but the suit was filed in the name of "Mahalakshmi Agencies." The respondent has not produced any document to show that the respondent is a proprietary concern, while the appellant pleaded that it is a partnership concern.

(v). The trial Court failed to consider that the appellant's father and the respondent/plaintiff are biological brothers and there was a dispute in respect of the property, and thereby, the appellant filed the suit. In order to wreck vengeance, the present suit has been filed with false allegations.

(vi). The trial Court failed to consider that the brother of the respondent/plaintiff also filed a similar case for the recovery of money. The respondent/plaintiff relied on Ex.A5/alleged bank statement, which does not contain the seal of the bank or signature. Therefore, the above said document is not evidence at all.

(vii). The trial Court wrongly held that the appellant has not produced his bank account to show that the disputed cheque amount was not credited to his account, which is against the principles of law.



(viii). The trial Court failed to consider that Ex.A4/bank statement related to the current account and that account is a cash credit account, and through said account, money lending cannot be done.

(ix). The respondent/plaintiff admitted that he filed income tax returns but did not produce the statement before the Court.

(x). The trial Court failed to consider that the respondent/plaintiff has not produced any documents to prove that the amount transferred through one account to another account was given as a loan. Therefore, the judgment and decree passed by the trial Court are liable to be set aside.

7. The learned counsel appearing for the appellant/defendant would contend that the appellant and the plaintiff are close relatives, and the appellant's father was a partner in the plaintiff's partnership firm. The appellant's father and the plaintiff are brothers. After the demise of the father of the appellant, he worked in the plaintiff's concern for more than 20 years. Thereafter, due to a misunderstanding between the family members, they wanted to exclude the plaintiff from the business, and thereby they settled Rs. 2 lakhs to the appellant/defendant, but he demanded Rs.15 lakhs. The above-said fact has been proved through Ex.B1/notice that is prior to the filing of the suit itself; the said notice was issued. In that notice, the appellant/defendant clearly stated that he was the partner of the plaintiff's concern and he



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demanded a sum of Rs.15 lakhs for the work done in the company. But whereas, they have paid only Rs.2 lakhs, and the remaining amount of Rs.13 lakhs was to be paid by the defendant. By calling upon the said amount, he issued the said notice. But the plaintiff has not denied the said notice either in the plaint or in the evidence. Therefore, the non-denial amounts to admission. Further, the plaintiff has not filed any documents to show that the amount was paid to the plaintiff as a loan amount. It is an admitted fact that the plaintiff transferred a sum of Rs.1 lakh from the account of "Mahalakshmi Traders" to the account of the plaintiff, and no amount was paid through a cheque in the name of the plaintiff. Therefore, the plaintiff has to prove that the said amount was issued for a loan purpose, and there are no documents to show that the said amount was lent as a loan. Thus, there is no question arising about the interest. However, the trial Court failed to consider the said aspects and erroneously decreed the suit. Therefore, the decree and judgment passed by the trial Court are liable to be set aside.

8. The learned counsel appearing for the respondent/plaintiff would contend that the appellant/defendant approached the respondent/plaintiff and his brother by demanding a loan for starting a business, and the same was also agreed upon by the plaintiff and his brother. They each paid the amount of Rs. 1 lakh to the appellant/defendant, and he also agreed to pay a sum of 18%



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interest per annum. Thereafter, he failed to repay the amount, thereby issued a notice on 01.06.2011. After the receipt of the notice, he issued a false reply stating that the amount was paid to the share of his business, and again, there is an outstanding balance of Rs. 13 lakhs, but the said averments have not been proved by the defendant. Since the defendant admitted the receipt of the amount, he has to prove the contrary but failed to prove the case. The trial Court has correctly decreed the suit. Therefore, the judgment and decree passed by the trial Court are in order, and the present appeal is liable to be dismissed.

9. For the sake of convenience and brevity the parties hereinafter will be referred to as per their status/ranking in the trial Court.

10. This Court heard both sides and perused the records. Upon hearing both sides and perusing the records, the points for determination in this appeal are as follows:

1. Whether the amount paid by the plaintiff in favour of the defendant is a loan amount?
2. Whether the plaintiff is entitled to a decree for the recovery of money as against the defendant?
3. Whether the decree and judgment passed by the trial Court are



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sustainable in law and on facts?

4. Whether this appeal is to be allowed or not?

5. To what relief is the appellant entitled?

Point No.1

11. The plaintiff has filed the suit for the relief of recovery of money as against the defendant. According to the respondent/plaintiff, the appellant/defendant borrowed a sum of Rs. 2 lakh as a loan and agreed to pay a sum of 18% per annum as interest. Since they are close relatives, no documents were obtained for the loan amount. The amount was paid through the account of "Sree Mahalakshmi Agencies". According to the appellant/defendant, he admitted the receipt of the amount through the bank. But according to him, the said amount was paid for settlement towards the work done in "Mahalakshmi Traders," i.e., the plaintiff's concern. Therefore, this Court has to decide whether the amount was given as a loan or for the work done by the defendant to the plaintiff's concern. In this context, on the side of plaintiff, PW1 was examined and marked Ex.A1 to A5. On the side of the defendant, DW1 was examined and marked Ex.B1. Ex.A1 is the notice issued by the plaintiff dated 01.06.2011. Ex.A2 is an acknowledgement card. Ex.A3 is a reply notice given by the defendant dated 06.06.2011. Ex.A4 is a certificate of registration in the name of "Sri Mahalakshmi Hardwares" dated



10.01.2007. Ex.A5 is a statement of Indian Overseas Bank Account of "Sri Mahalakshmi Hardwares". Ex.B1 is an Advocate notice issued by the defendant to the plaintiff in the month of September 2009.

(i) PW1 filed a proof affidavit reiterating the plaint averments stating that the defendant borrowed a sum of Rs. 2 lakhs from the plaintiff and his brother. The defendant also agreed to pay a sum of 18% per annum as interest, and thereafter, he did not repay the amount, thereby issuing a notice. The plaintiff admitted the notice issued by the defendant in the month of September 2009. In the said notice, he stated that he demanded Rs. 15 lakhs for the partnership business, and already Rs. 2 lakhs were paid to him, and the remaining Rs. 13 lakhs have to be paid to him. The said contention was admitted by the plaintiff. In this context, the plaintiff, during his cross-examination, stated that “ ராமமூர்த்தி எனக்கு வாதி நிறுவனத்தில் பங்கு தாரர் என்றும் அதில் தனக்கு பாகம் வேண்டும் என்றும் 2009 ல் அறிவிப்பு அனுப்பியிருந்தார் என்றால் சரிதான். அந்த அறிவிப்பை இந்நீதிமன்றத்தில் தாக்கல் செய்தேனா என்றால் என் அண்ணனிடம் கொடுத்துவிட்டேன். அந்த அறிவிப்பில் அவர் தான் நிறுவனத்தில் 20 வருடமாக வேலை பார்த்ததாகவும் தனக்கு ரூ. 15 லட்சம் வரவேண்டும் என்று அறிவிப்பு அனுப்பியிருந்தார் என்றால் சரிதான். என்னிடம் காட்டப்படுவது அந்த அறிவிப்பின் நகல் என்றால் சரிதான். அது பிவாசா 1 ஆகும். அதற்கு நான் பதில் அறிவிப்பு அனுப்பினேனா என்றால் என் அண்ணனிடம் சொன்னேன் அவர் அனுப்பினாரா என்று தெரியாது.” Therefore, from the above evidence of PW1, it reveals that already the defendant



demanded a sum of Rs. 15 lakhs from the plaintiff and his brother, and already Rs. 2 lakhs were paid. In the notice itself, it was contended that the defendant already received Rs. 2 lakhs towards the settlement, and the remaining Rs. 13 lakhs has to be paid. Therefore, the defense of the defendant has been probabalized. Under such circumstances, it is for the plaintiff to prove that the said amount of Rs. 1 lakh transferred from the "Mahalakshmi Traders" account was paid as a loan. But in order to prove the same, they have not produced any documents. Even according to the plaintiff, the amount was transferred from "Mahalakshmi Hardwares". While so, how the plaintiff filed this case on his individual capacity has to be explained. The plaintiff is not a proprietor of 'Mahalakshmi Traders'. While so, how he filed the suit on his individual capacity has to be explained. But there is no explanation in that regard.

(ii) Further, PW1 in his evidence stated that “ பிரதிவாதி ராமமூர்த்திக்கு என்னை பாதுகாவலராக என் தந்தையார் நியமித்தார் என்றால் சரிதான். அவர் 2008 ல் தனியாக ஒரு கடை ஆரம்பித்தார் என்றால் சரிதான். அதுவும் ஹார்டுவேர்ஸ் நிறுவனம் என்றால் சரிதான். அதற்கு முன்பு எங்கள் கடையில் வேலை பார்த்தார் என்றால் சரியல்ல. கடை தொடங்கு வதற்கு முன்பு பிரதிவாதி ராமமூர்த்தி என்ன வேலை செய்து வந்தார் என்று எனக்கு தெரியாது.” Therefore, the plaintiff being the guardian for the defendant not even stated what the job done by the defendant prior to starting the business and also admitted that the defendant in the year 2008 started a Hardware business. While so, the transfer of money



from the account of "Mahalakshmi Traders" to the defendant's account could not be paid as a loan amount unless there is strong evidence adduced by the plaintiff. Further, it is admitted by the plaintiff that the said account of "Mahalakshmi Traders" in which the amount transferred to the plaintiff's account was a CC account, and it is only started for the purpose of business. Therefore, the mere production of Ex.A5 is not sufficient to prove that the said amount transferred from "Mahalakshmi Traders" as a loan amount. Further, Ex.A5 does not contain any seal of the bank or any signature, and the same was also admitted by the plaintiff.

(iii) Further, the plaintiff in the cross-examination stated that “பிரதிவாதி வேலை செய்த விவரம் எங்கள் கணக்கு புத்தகத்தில் உள்ளது என்றும் அதை வேண்டுமென்றே தாக்கல் செய்யவில்லை என்றால் சரியல்ல. என் பெயரிலும் பிரதிவாதி ராமமூர்த்தி பெயரிலும் கே. சாத்தனார் ஐ ஓ பி வங்கியில் கூட்டாக ஒரு கணக்கு துவங்கப்பட்டது என்றால் ரூபகம் இல்லை. வாதி நிறுவனத்திற்கு பாகஸ்தர்கள் என்ற அடிப்படையில் கூட்டாக ஒரு கணக்கு துவங்கப்பட்டது என்றால் சரியல்ல”. Therefore, the plaintiff is not in a position to say about the bank joint account held in the name of the plaintiff and defendant.

(iv). Further, according to the plaintiff, the amount was borrowed in the year 2008, and the suit was filed in the year 2011 at the verge of limitation. There is no explanation as to why the plaint was presented on the last date of limitation. Further it is admitted fact that there was a civil dispute pending between the parties from the year 2009. While so, the conduct of the plaintiff



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by filing the suit on the last date of lapse of limitation creates doubt over the genuinity of the claim. Therefore, from the above discussions, it is clear that there is a dispute pending between the plaintiff and the defendant in respect of properties. It is also admitted by the plaintiff that the defendant already issued notice prior to the suit. In the said notice Ex.B1, the defendant demanded a sum of Rs.15,00,000/- towards his share in the Mahalakshmi Traders and admitted that Rs.2 lakhs money was paid towards part settlement. But the said notice was received by the plaintiff and no reply was sent and not even denied the said notice. Moreover, the reply notice averments have not been denied by the plaintiff either through the plaint or in the evidence. Therefore, he admitted that already the amount of Rs. 2 lakhs was settled with the defendant towards the business purpose, and further both the plaintiff and his brother paid the amount from the account of "Mahalakshmi Traders," which also shows that the amount was taken from the business account. Therefore, it also reveals that it is not a loan amount and it was settled for the dispute between the parties in respect of their business.

(v). The defendant issued a notice in the month of September 2009 demanding Rs. 15 lakhs, and already Rs. 2 lakhs were paid to him, and Rs. 13 lakhs have to be paid, and the said notice was not replied to by the plaintiff. Even after the notice, the plaintiff has not taken any steps to file the suit immediately after the notice. The present suit was filed in the year 2011.



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Further, the plaintiff herein has not issued any pre-suit notice, and both the plaintiff and his brother who has filed suit as against the same defendant jointly issued the notice. It shows that the plaintiff and his brother joined together and filed suit. The above said circumstances show that there was a dispute between the parties in respect of the business and the properties. The payment of money made by two brothers who are related to the plaintiff's concern and the joint notice issued by them all show that they joined together and filed the suit. Therefore, the defence of the defendant is probabalized that the plaintiff paid a sum of Rs. 2 lakhs for the business purpose from the account of "Mahalakshmi Traders," and the plaintiff failed to prove that the amount was given as a loan to the defendant. Thus, the point is answered.

Point No.2:

12. The plaintiff filed the suit as against the defendant for the recovery of money, alleging that they transferred the money from the account of "Mahalakshmi Traders," as loan which the defendant denied. This Court in the previous point decided that the above said transferred amount from "Mahalakshmi Agencies" was not a loan given to the defendant; instead, it was settled for business purposes. Therefore, the plaintiff is not entitled to recover money from the defendant. Thus, the point is answered.

Point Nos.3 and 4:

13. The plaintiff before the trial Court filed a suit for recovery of



money, and the trial Court framed proper issues. Before the trial Court, on the side of the plaintiff, PW1 was examined and marked Ex.A1 to A5. On the side of the defendant, DW1 was examined and marked Ex.B1. The trial Court, after considering the evidence, decreed the suit by holding that the defendant admitted the receipt of money from the plaintiff, and thereby he has to prove that the said money was not a loan but only for the business partnership settlement. However, the defendant failed to prove the same, and thereby the trial Court decreed the suit. The trial Court failed to consider that the defendant issued a notice in September 2009 demanding a sum of Rs. 15 lakhs, in which Rs. 2 lakhs were settled, and the remaining Rs. 13 lakhs had to be paid by the plaintiff. The plaintiff also admitted the said notice, and thereafter, they did not take any steps to file the suit immediately and also failed to produce any documents to show that the money was paid as a loan to the defendant.

(i). The trial Court wrongly placed the burden on the defendant. Since the plaintiff filed the suit for the recovery of money, they have to prove that the said money paid from the account of "Mahalakshmi Traders" was a loan amount. The "Mahalakshmi Traders" are not engaged in money lending business but doing hardware business and have a current account mainly for business transactions. It is also admitted by the plaintiff that the amount was paid from the account of "Mahalakshmi Traders" to the plaintiff's account.



Therefore, it is the duty of the plaintiff to prove that the said amount was paid towards the loan amount.

(ii). Normally, the loan amount would be paid by obtaining some documents. However, in this case, since the plaintiff and the defendants are close relatives, no documents were obtained. But at the same time, the amount was paid from the current account of the plaintiff to the account of the defendant. Although the defendant admitted the said receipt of the amount, according to him, it was a settlement for the partnership business. Though the defendant has not produced any documents to show the partnership business, once the plaintiff alleges that from the plaintiff's business account the amount was paid, it is for him to prove that the said amount was a loan amount and the plaintiff miserably failed to prove his contention. But the above-said aspects have not been considered by the trial Court. Therefore, the judgment and decree passed by the trial Court are unsustainable, and the same are liable to be set aside by allowing this appeal.

Point No.5

14. This Court in the previous point decided that the respondent/plaintiff failed to prove that the amount was given as a loan to the appellant/defendant. Therefore, the respondent/plaintiff is not entitled to the suit amount. Consequently, the appeal should be allowed by setting aside the decree and judgment of the trial Court. Apart from this relief, the appellant is



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not entitled to any other relieves.

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15. In the result, this appeal is allowed and the judgement and decree dated 11.01.2017 passed in O.S.No.108 of 2013 on the file of the First Additional District Judge (PCR), Tiruchirappalli are set aside and the suit is dismissed. No costs.

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To

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