



A.S.(MD) No.191 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on	20.03.2024
Orders Pronounced on	06/13/24

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

A.S.(MD) No.191 of 2019

S.Ramamoorthy
M/s.Sri Mahalakshmi Agencies,
represented by its Proprietor
K.Mahalingam

...Appellant/Defendant
Vs.
...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.110 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 as against the decree and judgment dated 11.01.2017 passed in O.S.No.110 of 2013 on the file I Additional District Judge (PCR), Tiruchirappalli, wherein the respondent/plaintiff herein filed a suit as against



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the appellant herein 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 for obtaining loan of Rs. 2 lakhs to open 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 filed by the defendant are as follows:



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(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 defendant denies obtaining any loan and the demands made by the plaintiff 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 jointly by Mahalingam and his brother Murugesan to the defendant, with false allegations demanding the return of Rs.2,00,000/- Principal amount and interest and the same was suitably replied to 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 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, the defendant's demand was refused by the plaintiff and filed a false case.

(iii) The plaintiff's brother Murugesan, also filed a similar suit in O.S. 438 of 2011 for the recovery of Rs. 1 lakh with interest. 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.



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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 no document was marked.

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.A4/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.



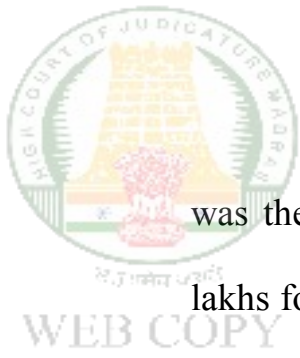
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(viii). The trial Court failed to consider that Ex.A4/bank statement related to the current account and that account is a cash credit account, and through said account, money lending cannot be done.

(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 contends 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 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 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 aspect 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



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Rs. 1 lakh to the appellant/defendant, and he also agreed to pay a sum of 18% interest per annum. Thereafter, he failed to repay the amount, thereby issuing 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. 15 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 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 transferred by the plaintiff in favor 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?



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3. Whether the decree and judgment passed by the trial Court are sustainable in law and on facts?
4. Whether this appeal is allowed or not?
5. To what relief is the appellant entitled?

Point No.1:

11. The plaintiff has filed the suit against the defendant for the relief of recovery of money, alleging that he borrowed money for starting a business and he also paid a sum of Rs. 1 lakh on 17.06.2008 by way of a cheque drawn on Indian Overseas Bank in the account of "Sree Mahalakshmi Hardwares". The defendant also agreed to pay the said amount within two years with interest at 18% per annum. Thereafter, the defendant failed to pay the amount and filed the suit. The defendant admitted the receipt of the amount but denied that it was received as a loan and it was towards the settlement of an amount related to partnership business. In this context, on the side of the plaintiff, PW1 was examined and marked Ex.A1 to A5. On the side of the defendant, DW1 was examined, but no document was marked.

(i) PW1 during the course of cross examination stated that "பிரதிவாதி ராம மூர்த்தி தாக்கல் செய்துள்ள அ.வ.எண் 109/09 வழக்கு பற்றி தெரியும். அவர் மேற்படி வழக்கை தாக்கல் செய்ததால் தான் நாங்கள் இந்த வழக்கை தாக்கல் செய்தோம் என்றால் சரிதான். இந்த வழக்கில் பிரதிவாதி என்னிடம் பணம் வாங்கியதற்காக எந்த ஆவணமும் தாக்கல் செய்யவில்லை என்றால் சரிதான்."

"Therefore, from the above said evidence, it is clear that the plaintiff has filed the suit only for counterblast to the suit filed by the appellant/defendant in



O.S.No.109 of 2009. Further, the plaintiff admitted that he has not filed any documents to show that the amount was given to the defendant as a loan.

(ii) Moreover, the plaintiff, in his cross-examination, stated that

"வாதி நிறுவனத்தின் பெயர் மகாலட்சுமி ஏஜென்சி ஆகும். வாசா 1 அறிவிப்பை மகாலட்சுமி ஏஜென்சிக்கு அனுப்பவில்லை என்றால் சரிதான். வாசா1 அறிவிப்புக்கும், இந்த வழக்கிற்கும் சம்மந்தம் இல்லை என்றால் சரிதான். வாசா4 வங்கி முத்திரை இல்லை என்றால் சரிதான். வாசா4 ல் மகாலிங்கம் என்று பெயர் இல்லை என்றால் சரிதான்." Therefore, the plaintiff admitted that the amount was settled through "Mahalakshmi Agencies" and the notice was issued under his individual name, and Ex.A4 does not contain the bank's seal. Therefore, the evidence of PW1 creates serious doubt over the lending of money to the appellant/defendant.

(iii) Further, PW1 stated in his cross examination that"நிறுவனத்தை துவங்கியதில் இருந்து கணக்கு வழக்கை தாக்கல் செய்தால் யார் யார் பாகஸ்தர்கள் என்று தெரிய வரும் என்றால் சரிதான். பழைய பதிவி சான்றிதழை தாக்கல் செய்தால் அது கூட்டான்மை நிறுவனமா அல்லது தனி நிறுவனமா என்று தெரிய வரும் என்றால் சரிதான். பிரதிவாதி என்ன தொழில் செய்கிறார் என்று தெரியாது. முன்பு என்ன தொழில் செய்தார் என்றும் தெரியாது." Therefore, from the evidence of PW1, it reveals that he has not produced the previous records in respect of the plaintiff's concern, and he has not even know what was the job done by the defendant. While so, how could he lend money to the defendant for the purpose of business? This contradictory evidence of the



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plaintiff shows that he suppressed the material facts.

(iv) Further PW1 stated in his cross examination that "ராமமூர்த்தி பாக பிரிவினை வழக்கை தாக்கல் செய்த பின்பு 2009 ல் பிரதிவாதி ராமமூர்த்தி எனக்கு நிறுவனத்தின் பாகஸ்தார் என்று தனக்கு 13 லட்சம் ரூபாய் வரவேண்டும் என்று ஒரு வழக்கறிஞர் அறிவிப்பு எனக்கு அனுப்பினாரா என்றால் இல்லை. முருகேசனுக்கு அனுப்பினாரா என்றால் அனுப்பினார். அதை அவர் என்னிடம் சொன்னார். முருகேசன் அதற்கு பதில் அறிவிப்பு அனுப்பினாரா என்றால் அது பற்றி தெரியாது." Therefore, PW1 admitted that the defendant issued notice in the year 2009 itself. But the present plaint was filed only in 2011, on the last day of the limitation period.

(v) Since the amount was paid through the business account of "Mahalakshmi Traders," it has to be presumed that the amount transaction was for business purposes unless the contrary is proved. Therefore, the plaintiff has to prove that the amount was issued as a loan, but no documents or sufficient evidence were adduced by the plaintiff to prove that claim. However, the trial court failed to consider this aspect and wrongly shifted the burden to the defendant to prove otherwise.

(vi) In an ordinary suit, if the defendant admits the receipt of the amount, he has to prove the contrary. However, in this case, there was a business transaction between the parties, and the account is also a business account. The amount was paid through a cheque, not in person. Therefore, the plaintiff has to prove that the cheque was issued as a loan and not for business purposes. But the plaintiff has not filed any document to prove the same, and



the document Ex.A4 also does not contain the bank's seal.

(vii) Moreover, the reply notice averments have not been denied by the plaintiff, either through the plaint or in the evidence. Therefore, he admitted the averments that the amount of Rs.2 lakhs was settled with the defendant for business purposes. Both the plaintiff and his brother paid the amount from the account of "Mahalakshmi Traders," and it indicates that the amount was not a loan amount but was settled for a dispute between the parties regarding their business.

(viii) Therefore, as discussed above, this Court is of the opinion that the plaintiff has failed to prove that the amount was given as a loan to the defendant. Per contra, the defendant probalilized his defense. Thus, the point is answered."

Point No.2:

12. The plaintiff filed the suit against the defendant for the recovery of money, alleging that he paid the money from the account of "Mahalakshmi Traders," which the defendant denied. This Court in the previous point decided that the above said payment of 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, this point is answered.



Point No.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 no document was marked. 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 or file any documents.

(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.110 of 2013 on the file of the First Additional District Judge (PCR), Tiruchirappalli are set aside and the suit is dismissed.

No costs.

13.06.2024

Index : Yes/No
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Citation : Yes/No
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To

The First Additional District Judge (PCR), Tiruchirappalli.



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