

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1121 of 2014

1.Nagendiran
2.Padma

...Appellants/Plaintiffs

Vs.

1.Jayamaruthi
2.Chennakesavan
3.Dhanalakshmi

...Respondents/Defendants

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 26.06.2013 made in A.S.No.27 of 2012 on the file of the learned Subordinate Judge, Tirupattur, Vellore District reversing the judgement and decree dated 12.08.2011 made in O.S.No.284 of 2006 on the file of the learned District Munsif, Tirupattur.

For Appellants : Mr.B.Jagadeesan

JUDGEMENT

The plaintiffs in O.S.No.284 of 2006 on the file of the learned District Munsif, Tirupattur are the appellants in this appeal. The respondents are the defendants in the suit. The suit was filed for return of 8 sovereigns of gold jewels and cash of Rs.45,000/- or in alternative, for recovery of Rs.90,000/- with interest @6% per annum. The suit was decreed by the trial Court by decree and judgement dated 12.08.2011. As against the same, the respondents herein filed an appeal in A.S.No.27/2012 on the file of the learned Subordinate Judge, Tirupattur. The learned Subordinate Judge, by decree and judgement dated 26.06.2013 allowed the appeal and set aside the decree and judgement of the trial Court. Challenging the same, the appellants are before this Court with this second appeal.

2.This appeal has come up today for admission. I have heard the learned counsel for the appellants and I have also perused the records carefully.

3.The case of the appellants would be as follows:-

The appellants are the parents of one Mrs.Gajalakshmi who was given in marriage to the first respondent herein on 07.02.2003. The respondents 2 and 3 are the parents of the first respondent. At the time of marriage, a sum of Rs.45,000/- and gold jewels weighing 8 sovereigns were presented as dowry. After the marriage, Mrs.Gajalakshmi, was harassed demanding dowry by the respondents herein. Finally, Mrs.Gajalakshmi, committed suicide on 16.06.2003. A criminal case was registered against the respondents herein for the alleged offences under Sections 498A and 304(b) I.P.C., and Section 4 of the Dowry Prohibition Act. The said criminal case finally came up for hearing before the learned Additional District and Sessions Judge, Fast Track Court, in S.C.No.43 of 2004. The said case was ended in acquittal by judgement dated 30.11.2004. Thereafter, the appellants/plaintiffs issued legal notice to the respondents herein demanding return of the above amount. That was not properly responded to. Therefore, the appellants/plaintiffs filed the present suit for recovery of the said amount and jewels.

4.As I have already pointed out, the trial Court decreed the suit whereas, the First Appellate Court set aside the decree and judgement of the trial Court on the ground that the suit was barred by limitation. According to the First Appellate Court, the suit was not filed within three years from the date of death of the deceased i.e., on 16.06.2003.

5.The learned counsel for the appellants would submit that the said conclusion arrived at by the First Appellate Court is not factually correct. According to him, the plaint was presented on 27.04.2006. Thus, according to them, since, the suit was presented even before the expiry of three years period of limitation which expired on 16.06.2006, the finding of the First Appellate Court that the suit is barred by limitation is not correct.

6.A perusal of the decree and judgement of the trial Court would go to show that, according to the Appellate Court, the suit was presented only on 14.10.2006 i.e., far beyond the period of limitation. The learned counsel would further submit that he has got instructions to say that the suit was presented only on 27.04.2006. This argument cannot be accepted in view of the date of suit as mentioned in the decree passed by the trial Court. Thus, in my considered opinion, the First Appellate Court was right in holding that the suit is barred by limitation.

7.The learned counsel for the appellants would submit that since, the criminal case was pending, the appellants/plaintiffs did not present the suit during the pendency of the same. In my considered opinion, in this case, the pendency of the criminal case would not extend the period of limitation.

8.Apart from that, the learned counsel for the appellants has

not raised any other ground worth considering. All the other grounds are on questions of fact, in which, there is no question of law involved. Thus, I do not find any infirmity in the decree and judgement of the First Appellate Court warranting interference. More particularly, I hold that there is no substantial question of law warranting admission of this second appeal.

9. In the result, the second appeal fails and accordingly, the same is dismissed.

Sd/-
Assistant Registrar (J)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Subordinate Judge,
Tirupattur.

2. The District Musnif,
Tirupattur.

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VD (CO)
PSI (11.03.2015)

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