



01N THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.3.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

S.A.No.18 of 2015

and

M.P.Nos.1 & 2 of 2015

P.Asokan

.. Appellant/Appellant/
Defendant

vs.

R.Rajalakshmi

... Respondent/Respondent/
Plaintiff

Second Appeal preferred Under Sec.100 of C.P.C. against the judgement and decree dated 31.07.2014 passed by the II Additional Subordinate Court, Salem, in A.S.No.20 of 2014, confirming the decree and judgement dated 16.12.2010 passed by the I Additional District Munsif, Court, Salem, in O.S.NO.1060 of 2007.

For appellant : Mr.A.Nagarathinam

JUDGEMENT

The sole defendant in O.S.No.1060 of 2007 on the file of the I Additional District Munsif, Salem, is the appellant herein. The defendant in the suit is the respondent. The said suit was filed for recovery of money to the tune of Rs.89,700/- with subsequent interest. The trial Court, by judgement and decree, dated 16.12.2010, partly decreed the suit for a sum of Rs.65,000/- with subsequent interest from the date of filing of the suit till the date of judgement at the rate of 9% p.a. Challenging the same, the appellant filed an appeal in A.S.No.20 of 2014 before the II Additional Subordinate Judge, Salem. By judgement and decree dated 31.7.2014, the lower appellate Court dismissed the appeal, thereby confirming the decree and judgement of the trial Court. As against the same, the appellant/defendant is before this Court with this second appeal.

2. This second appeal has come up today for admission.

3. I have heard the learned counsel for the appellant and I have also perused the records carefully.



4. The case of the plaintiff is that she intended to take the immovable property of the defendant on a 'bogiam' for a period of three years, for which she paid a sum of Rs.65,000/- to the defendant, on 07.02.2006. But subsequently for her own reasons, she could not go ahead with the said arrangement and thus, she did not take the property on 'Bogiam' and instead she demanded Rs.65,000/- from the defendant. The defendant did not repay the same. Therefore, the plaintiff filed the suit for recovery of the said sum with interest, which works out to Rs.24,700/- for the period between 7.2.2006 and 06.09.2007, namely, the date of suit, at the rate of 24% per annum. Thus, the total claim made in the suit was for a sum of Rs.89,700/- and for future interest.

5. The defendant contested the suit stating that the said 'Bogiam' arrangement is not true. He further stated that he had borrowed a sum of Rs.10,000/- from the plaintiff, for which he was paying interest. All the repayments made by him were all entered in Ex.B1-Kaichathu Book. While so, on 07.02.2006, the plaintiff came to his house and under threat and coercion obtained his signatures in blank stamp papers and green papers. Now using the same, the plaintiff has created the said document, under Ex.A1, as though she has paid the amount to the defendant. It is the further case of the defendant that the above stated amount of Rs.10,000/- which he had borrowed from the plaintiff was subsequently repaid. Thus, absolutely no more dues from the defendant, it was contended.

6. Based on the above pleadings, the trial Court framed appropriate issues.

7. On the side of the plaintiff she was examined as P.W.1 and two documents were exhibited and on the side of the defendant, two witnesses were examined and one document was marked as Ex.B1.

8. Having considered the said evidences available, the trial Court decreed the suit in part, which was confirmed by the lower appellate Court. That is how the appellant/defendant is before this Court with this second appeal.

9. In this second appeal it is submitted by the learned counsel for the appellant/defendant that the execution of Ex.B1 has not been proved in accordance with law and the same is also not admissible in evidence and the same is an unregistered document. He would further submit that the Courts below have not at all considered Ex.B1 by framing appropriate issues on the same.

10. I have considered the above submissions.



11. All these contentions, in my considered opinion, are liable to be rejected for more than one reason. First of all, the present suit has not been filed based on Ex.B1, but based on the original cause of action of payment of Rs.65,000/- to the defendant. The suit was filed on 17.9.2007 i.e. well within the period of limitation. Though it is stated that no such amount was paid and there was no such agreement entered into between the plaintiff and the defendant, two Courts below, on appreciation of evidence, have come to the factual conclusion that payment of Rs.65,000/- to the defendant by the plaintiff has been proved. Since the conclusion is essentially on facts, I do not find any reason to interfere with the same, more particularly, because, the Courts below have recorded sound reasons for such conclusion.

12. Turning to Ex.B1, the grievance of the appellant is that there was no issue framed by the trial Court on the same.

13. In my considered opinion, it is not necessary that there should have been an issue framed in respect of Ex.B1. Issue needs to be framed only on facts in issue. So far as the relevant facts are concerned, there is no need to frame any issue.

14. Here in this case, the fact in issue was as to whether the plaintiff paid Rs.65,000/- to the defendant and whether the defendant is liable to repay the same or not? For this fact in issue, the trial Court had framed appropriate issues. Whether any amount was really borrowed earlier by the defendant from the plaintiff or not is not at all an issue and therefore, in my considered opinion, the trial Court was right in not framing any issue in respect of Ex.B1. Further, the Courts below have held that Ex.B1 has got nothing to do with the suit transaction. The Courts below have also taken note of the material contradiction between the evidence adduced by D.W.1 and D.W.2. Thus, in my considered opinion, the Courts below were right in decreeing the suit and I find no substantial question of law, warranting admission at this stage.

15. In the result, the second appeal fails and the same is accordingly dismissed. No costs. Connected miscellaneous petitions are dismissed.

msk

Sd/-
Assistant Registrar (IV)

/True Copy/

Sub-Assistant Registrar



To

1. The II Additional Subordinate Court, Salem

2. The I Additional District Munsif, Court, Salem

WEB COPY

+1 C.C. To MR.A.Nagarathinam, Advocate in SR.NO.15515

S.A.No.18 of 2015

GGK(CO)

sd : 10/12/2015