IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.894 of 2008

V.S.Ramalingam .. Appellant/Plaintiff

Vs

1.B.Laalitha
2.B.Vijayasri
3.V.B.Ramakrishnan
4.V.B.Leela
5.V.B.Anandakumar .. Respondents/Defendants

This appeal is filed under Section 96 of C.P.C. Read with Order 41 Rule 1 C.P.C. against the Judgement and Decree dated 10.12.2007 in O.S.No.8863 of 2006 on the file of VII Additional City Civil Court, Madras.

For Appellant :Mr.V.Suryanarayana Reddy

For Respondents :Mrs.Sujatha Rangarajan for RR 1 to 5

J U D G E M E N T

The plaintiff, whose suit for recovery of a sum of Rs.6,78,125/- was dismissed by the Trial Court, is the appellant in this appeal. The suit itself is based on Ex.A1 dated 16.10.2003, which according to the plaintiff is an acknowledgment of debt executed by the defendants acknowledging the borrowing made by them under the promissory note dated 30.06.2000. The plaintiff has claimed interest on the said borrowings at 15% per annum. The defendants did not repay the amount inspite of notice dated 17.08.2006, hence, the suit came to be filed.

2. The defendants would resist the suit contending that they did not borrow any money from the plaintiff and did not execute any document whatsoever in favour of the plaintiff. The defendants would further contend that the plaintiff was working as the Chief Manager in Tamil Nadu State Apex Cooperative Bank Limited, Royapuram Branch. The defendants have borrowed a sum of Rs.8,10,000/- from the bank for the purpose of putting up a

construction in their property. The said borrowing was made on 7.9.2001 and the defendants deposited the title deeds relating to their property situated at No.1, Balaraman Street, Thiru-vi-ka-nagar, Chennai-600 082, with the bank on 24.10.2002. The plaintiff had in fact signed the acceptance of such deposit of title deeds as security for the said debt.

3. The defendants would contend that the plaintiff has created Ex.A1 namely, acknowledgment of the debt by forging their signatures. Thus it could be seen that the case of the defendants is one of the total denial.

4. On the above pleadings, the learned VII Additional City Civil Court, Madras framed the following issues:

1. Whether the plaintiff is entitled to the relief as prayed for in the suit?
2. What other relief the plaintiff is entitled to?

5. The plaintiff has examined himself as PW1 and Exs.A1 to A7 were marked. On the side of the defendants, the 1st defendant was examined as DW1 and Exs.D1 and D2 were marked.

6. The learned VII Additional City Civil Court, Chennai on consideration of oral and documentary evidence, came to the conclusion that Ex.A1, the alleged acknowledgment of debt has been created on a comparison of the signatures found in the said document along with the admitted signatures found in the vakalath and in the written statement as that of not to the defendants. Upon such findings, the learned VII Additional City Civil Judge, Chennai dismissed the suit.

7. Aggrieved by the said dismissal, the plaintiff has preferred the above appeal.

8. I have heard, Mr.V.Suryanarayana Reddy, learned counsel appearing for the appellant and Mrs.Sujatha Rangarajan, the learned counsel appearing for the respondents.

9. The following points arise for determination in this appeal.

1.Whether the conclusion of the Trial Court that Ex.A1 alleged acknowledgment of debt is not true and valid document could be sustained?

2.Whether Ex.A1 could be treated as acknowledgment of debt falling within Section 18 of the Limitation Act?

10. The appellant has also taken out two applications one in CMP.No.19666 of 2016 under Order 41 Rule 27 of C.P.C. seeking to produce the mortgage deed dated 31.08.2001 executed by the defendants in favour of the Tamil Nadu Apex Cooperative Bank Limited, Royapuram Branch as additional document in this appeal and another one in CMP.No.19667/2016 seeking to refer the suit document namely, Ex.A1 dated 16.10.2003 for comparing the signatures with the admitted signatures found in the mortgage deed dated 31.08.2001. The respondents/defendants have filed counter resisting the said applications.

11. Mr.V.Suryanarayana Reddy, the learned counsel appearing for the appellant would contend that the Trial Court has erred in comparing the admitted signatures found in the vakalath and in the written statement with the disputed signatures found in Ex.A1. According to him, the comparison should be done with the contemporaneous documents and not with the documents that emanated after filing of the suit. He would further contend that the Court not being an expert should not have ventured to compare the signatures and come to the conclusion as to the genuineness of the documents.

12. He would also submit that the copy of the mortgage deed dated 31.08.2001 contains the signatures of the defendants and the same could be compared with the disputed signatures found in Ex.A1 by sending the documents for expert opinion. CMP.No.19666 of 2016 has been filed seeking permission to produce the said mortgage deed dated 31.8.2001 as additional evidence.

13. I have gone through the affidavit filed in support of the applications. I find that the requirements under Order 47 Rule 27 have not been satisfied. The plaintiff, who was the Chief manager of the Tamil Nadu State Apex Cooperative Bank Limited, Royapuram Branch, at the relevant point of time cannot claim ignorance of the execution of the mortgage deed. It is the plaintiff, who has received the original documents deposited by the defendants as security for the borrowings made by them from the Tamil Nadu Apex Cooperative Bank Limited, Royapuram Branch on 24.10.2002, in his capacity as Chief Manager.

14. Apart from that, the certified copy, which is now sought to be produced in the appeal contains only the signature of the 1st defendant, it does not contain the signatures of other defendants. Even if the said document is received in evidence, the same will not be of any assistance, in comparing the genuineness of the signatures of all the defendants in Ex.A1. The facts that evolve from the documents itself create considerable cloud on the genuineness of Ex.A1. A reading of Ex.A1 shows that the defendants have acknowledged the execution of the promissory note after having borrowed a sum of

Rs.3,50,000/- promising to repay the same with 15% per annum interest. It further reads that the defendants have executed the document on 30.06.2000, evidencing the deposit of original document bearing No.2450/71 dated 27.5.1971 to the plaintiff, his wife and his son as security for the loan received from them. It further recites that the said property shall stand as security towards the promissory note and other debts. As already stated, the plaintiff has treated it as an acknowledgment of debt and has filed the suit for recovery of money simplicitor. The suit is not based on mortgage deed.

16. The defendants had contended that the sale deed namely document No.2450/71 dated 27.05.1971 was deposited with the bank namely, the Tamil State Apex Cooperative Bank Limited, Royapuram Branch on 24.10.2002 by the defendants and the letter to that effect was acknowledged by the plaintiff himself in his capacity as Chief Manager.

17. A perusal of the Ex.B2 would show that the original document bearing No.2450/71 was in fact deposited with the bank on 24.10.2002. If that be so, it is not known as to how Ex.A1 recites that document was deposited with the plaintiff, his wife and his son on 30.06.2000. Therefore, the claim of the plaintiff that he is not aware of the execution of the Mortgage Deed cannot be believed.

18. In fact the defendants' consistent case is that they have borrowed money from the Tamil Nadu State Apex Cooperative Bank Limited, Royapuram Branch, and mortgaged the property in favour of the said bank. It is also contended by the defendants that the plaintiff was the Chief Manager of the said bank's Royapuram Branch at that point of time. Therefore, the reasons set out by the plaintiff for non-production of mortgage deed, which is sought to be produced as additional evidence in this appeal are not acceptable. Hence, I do not find any merit in these application seeking permission to produce the copy of the mortgage deed dated 31.08.2001 as additional evidence. As regards CMP.No.No.19667 of 2016, the same will have to be rejected for the simple reason, the plaintiff has not produced any admitted signatures of the defendants to enable comparison with the disputed signatures. The copy of the Mortgage Deed dated 31.08.2001 also does not contain the signatures of all the defendants.

19. As already pointed out, it is the case of the defendants right from the inception of the proceedings is that they have not signed Ex.A1 and their signatures have been forged. Therefore, it is for the plaintiff to have proved the said document by examining the other witnesses. Though one of the attestors is stated to have died, the another attestor is

none else than wife of the plaintiff. He has not chosen to enter the box to prove the document.

20. The plaintiff could have very well taken steps for having Ex.A1 referred to an expert pending suit. Without doing so and having forced the Trial Court to compare the signatures by itself, the plaintiff cannot, in my opinion, seek reference of the disputed signatures to an expert. Hence, C.M.P.No.19667/2016 is also devoid of merits. The above applications are dismissed.

Point No.1 in the appeal.

21. As already stated, the defence is one of the total denial. The plaintiff has not chosen to examine the attesting witnesses to the document. He has also failed to seek to refer the document to an expert opinion to ascertain genuineness of the signatures found in Ex.A1. Apart from the above feature, I also find that intrinsic evidence also negatives the claim of the plaintiff. The document Ex.A1 recites that the original sale deed dated 27.05.1971 bearing Document No.2450/71 has been handed over to the plaintiff as early as on 30.06.2000. Ex.B2 which is a letter evidencing the deposit of title deeds with the Tamil Nadu State Apex Coopertive Bank Limited Royapuram Branch, dated 24.10.2002, disclose that the original sale deed was deposited with the bank on 24.10.2002. It should be pointed out at this juncture that it is the plaintiff, who was the Chief Manager of the said bank at the relevant point of time and it is he who had acknowledged the receipt of original sale deed bearing No.2450/71 on behalf of the bank on 24.10.2002.

22. Therefore, it is clear that the recital in Ex.A1 cannot be treated as true. The plaintiff has chosen to treat Ex.A1 as acknowledgment of debt. I am afraid, it cannot be treated as acknowledgment of debt. As per Section 18 of the Limitation Act in order to constitute the valid acknowledgment of debt, it should have been executed within the period prescribed for the suit, in respect of any property or rights.

23. Ex.A1 is dated 16.10.2003. It purports to acknowledge the borrowings made on 30.06.2000. It is beyond the period of three years prescribed in the Limitation Act. However, V.Suryanarayana Reddy, leaned counsel appearing for the appellant would contend that Ex.A1 is not just an acknowledgment of debt, it creates an equitable mortgage. Unfortunately, the plaintiff's suit is not based on mortgage. Ex.B2, belies the statement made in Ex.A1. The Hon'ble Apex Court has on various occasions, highlighted the dangers of the exercise of comparison of signatures by Courts. I am inclined to agree with the learned counsel appearing for the appellant on his submissions that

comparison of signatures in the documents, after the suit is not justified.

24. I do no think that the above fact alone would be sufficient for the plaintiff to succeed in the appeal. De hors the comparison of the signature, I am of the considered opinion that the plaintiff has not established that Ex.A1 was really an acknowledgment of debt. The plaintiff has also not chosen to produce the promissory note dated 30.06.2000.

25. As already pointed out that the evidence available in the form of Ex.B2 would clearly militate against the claim of the plaintiff on the basis of Ex.A1. Therefore, I do not see any reason to interfere with the findings of the Trial Court. Hence, the appeal is dismissed confirming the judgement and decree of the Trial Court dated 10.12.2007 in O.S.No.8863 of 2006 on the file of VII Additional City Civil Court, Madras. There will be no order as to cost in this appeal. CMP.Nos.19666 and 19667 of 2016 are dismissed as stated above.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The VII Additional City Civil Court, Madras.

Copy to: The Section Officer, VR Section, High Court, Madras.

+ 1 cc to M/s. V. Suryanarayana Reddy, Advocate Sr.72305
+ 1 cc to Mrs. Sujatha Rangarajan, Advocate SR.44183

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PPA(CO)
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