

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

SA.No.352/2017 & CMP.No.8265/2017

R.Perumal

..Appellant /1st Appellant/
1st Defendant

Versus

1.N.Gururajan

..1st Respondent/Respondent/
Plaintiff

2.R.Shanmugam

3.P.Appasamy

2& 3 are Partners

M/s.Lucky and Company,

81, Jawaharlal Nehru Street,

Pondicherry - 605 001

..Respondents 2&3 /
Appellants 2&3/ Defendants 2&3

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 26.06.2014 made in A.S.No.36 of 2011 on the file of the III Additional District Judge, (FAC) Pondicherry confirming the Judgment and Decree dated 30.04.1998 made in O.S.No.93 of 1990 on the file of the Additional Subordinate Judge, Puducherry.

For Appellant : Mr.D.Ravichander

For R1 / Caveator : Mrs.Usha Ramman for R1

JUDGMENT

The first defendant / Judgment Debtor who lost before the Courts below, is the appellant herein.

2 The 1st respondent / plaintiff had instituted a suit in OS.No.93/1990 for recovery of a sum of Rs.95,000/- with interest and subsequent cost based on Ex.A.1 - Pronote dated 29.04.1978 executed by the defendants. It is the case of the plaintiff / 1st respondent that based on Ex.A.1-Pronote that the defendants 1 and 3 are the partners of M/s.Lucky and Company and they borrowed a sum of Rs.50,000/- on 29.04.1978 from the plaintiff and also executed Ex.A.1-Suit Pronote for the amount received and they also undertook to repay the same with interest

@ 18% per annum. It is further averred by the plaintiff that for the due repayment of the loan one S.A.Manjini Mudhaliar also created an equitable mortgage in favour of the plaintiff by depositing the tile deeds as a collateral security for the repayment of Pronote consideration and despite very many demands, the defendants did not agree to pay the amount and therefore, the plaintiff was constrained to issue Lawyer's Notice under Ex.A.2 and however, notices were returned to the plaintiff and therefore, the plaintiff came forward to file the suit for recovery of money.

3 The defendants had entered appearance and filed their written statement refuting the allegations made in the plaint and would state that the suit is barred by limitation for the reason that the suit Pronote is dated 29.04.1978 and however, the suit was filed on 28.02.1990 and the defendants also took a stand that the defendants had actually borrowed a sum of Rs.40,000/- only from the plaintiff and they have have discharged their duties promptly and in any event, the interest claimed on the principal amount is excess and would also contend that no equitable mortgage has been created with Majini Mudhaliar for due and prompt repayment of amount under Ex.A1 and prays for dismissal of the suit.

4 The Trial Court, on a perusal of the pleadings had framed the following issues:-

- Whether the suit as against the partners of the partnership firm namely M/s.Lucky and Co., without impleading the said partnership as a party is tenable in the factual circumstances of this case?
- Whether the plaintiff lent a sum of Rs.50,000/- to the defendants on 29.04.1978? If so, whether the defendants executed the suit pronote in favour of the plaintiff?
- Whether the suit is barred by limitation?
- Whether the suit is hit by Order 2 rule 2 of CPC in view of the previous proceedings?
- Whether the defendants discharged the actual sum of Rs.40,000/- borrowed by them?
- Whether the plaintiff is entitled for the suit amount with subsequent interest?
- To what other relief?

5 During the course of trial, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A5. On behalf of the defendants, the 3rd defendant examined himself as DW1 and two other witnesses were also examined and Exs.B1 to B13 were marked.

6 The Trial Court, on a consideration of the pleadings and oral and documentary evidences, found that when the suit was filed, the French Civil Code was in force and the Indian Limitation Act was passed by the Parliament on 05.10.1963 and it came into force in respect of the Union Territory of Puducherry only on 01.01.1964 and as such, the suit is not barred by limitation. Insofar as the plea of discharge is concerned, the Trial Court found that Exs.B6 to B13 filed on behalf of the defendants to prove the discharge, did not disclose that the amounts paid, pertain to the suit transaction and in any event, the defendants should have taken care to get endorsement as to the discharge of their duty ; but, they did not do so and also found that the testimonies of D.Ws.2 and 3 are formal in nature. The Trial Court recording the said findings, had decreed the suit as prayed for, with interest and cost vide judgment and decree dated 30.04.1998.

7 The defendants / judgment debtors, aggrieved by the judgment and decree of the suit by the Trial Court, filed an appeal in AS.No.640/1996 before this Court and upon Amendment of Puducherry Civil Courts Act, in respect of pecuniary jurisdiction with effect from 01.11.2005, the suit was transferred from the file of this Court to the District Court, Puducherry, and renumbered as AS.No.36/2011.

8 The Lower Appellate Court, on going through the Grounds of Appeal, framed the following point for determination:-

Whether the Judgment and Decree of the Trial Court is liable to be set aside?

9 The Lower Appellate Court, on the issue of limitation, found that the suit transaction relates to the date 29.04.1978 and the suit was filed on 28.02.1990 and the said suit was for recovery of money on the basis of Pronote. However, the Lower Appellate Court found that the French Civil Code is not applicable and the suit is filed on the basis of Promote as well as on equitable mortgage and it is well within the time limit prescribed under Article 62 of the Limitation Act and therefore, it is not barred by limitation. Insofar as the plea of discharge is concerned, the Lower Appellate Court found that admittedly, there were lot of transaction between the plaintiff and the defendants and in the absence of any specific evidence in the form of an endorsement, as to the discharge of the amount due and payable by them as per the Pronote, it cannot be stated that the defendants had discharged their duty and the testimonies of D.Ws.2 and 3 are not sufficient to uphold the stand taken by the defendants and citing the said reasons, has dismissed the appeal filed by the defendants / judgment debtors vide impugned judgment and decree dated 26.06.2014. Challenging

the legality of the same, the present Second Appeal is filed.

10 In the Memorandum of Grounds of Second Appeal, the following substantial questions of law are raised by the appellants / defendants:-

"a. When the Law of Limitation had come into effect from 01.01.1964 and the same was also extended to the Union Territory of Pondicherry still are the Courts below right in holding that the suit is in time by applying French Code Civil.

b. Will the law of Limitation not repeal the French Code Civil when the same was extended to the Union of Territory of Pondicherry, still are the Courts below right in following the French Code Civil ignoring the existence of Limitation Law of Indian Limitation Act.

c. Is not the suit liable to be dismissed for non joinder of necessary party when the plaintiff has categorically pleaded that the loan transaction was for the purpose of partnership firm and when admittedly the partnership firm was not made as a party to the suit.

d. Are the courts below right in ignoring the defence of the defendants that there is discharge and to establish the same Exs.B2 and B3 were filed and the plaintiff having not cross examined the defendants on the defence of discharge still are the courts below right in decreeing the suit?

11 Mr.D.Ravichander, learned counsel appearing for the appellant / 1st defendant / judgment debtor would vehemently contend that the suit is hopelessly barred by limitation for the reason that the suit Pronote is dated 29.04.1978 and admittedly, the plaint was presented only on 28.02.1990 and the Courts below have not taken into consideration the ratio laid down in the judgment rendered by the Hon'ble Supreme Court of India reported in 2013 [10] SCC 472 [Gotham Chand Vs. Arumugam @ Tamilarasan]. It is the further submission of the learned counsel appearing for the appellant that the appellant / 1st defendant had proved his discharge under Exs.2 to 13 and the Courts below have not properly appreciated the said exhibits despite the oral testimonies of D.Ws.2 and 3 and prays for interference.

12 Per contra, Mrs.Usha Ramman, learned counsel appearing for the 1st respondent / Caveator / decree holder would contend that the points urged herein by the learned counsel for the appellant / judgment debtor, was elaborately considered by

the Trial Court as well as by the Lower Appellate Court and both the Courts below had reached the conclusion to uphold the claim of the plaintiff / 1st respondent / Decree holder and since the findings are concurrent in nature, interference may not be warranted at the hands of this Court under the exercise of its jurisdiction under section 100 of the Code of Civil Procedure and prays for dismissal of the Second Appeal with cost.

13 This Court paid its best attention to the rival submissions and also perused the impugned judgments passed by the Courts below.

14 On the issue of limitation, the Lower Appellate Court has recorded the finding that the suit is based upon the Pronote as well as the equitable mortgage executed by Manjini Mudhaliar by way of collateral security and in the light of the fact that it was also based upon mortgage, it was entertained. No doubt, the Indian Limitation Act came into force in respect of the Union Territory of Puducherry on 01.01.1964 and the suit was filed on 28.02.1990. If it is the a suit on Pronote simplicitor, it would have been barred by limitation ; but, as rightly found by the Lower Appellate Court, it was let on mortgage also. Further, the suit was decreed on the basis of Pronote only ; but for the purpose of limitation, while numbering the suit, the Trial Court took note of the fact that it was let on the basis of the equitable mortgage created by the third party by way of collateral security and as such, the findings rendered by the Lower Appellate Court that the suit is within the time as per Article 62 of the Limitation Act, 1963, warrants no interference.

15 As regards, discharge pleaded by the appellant / judgment debtor, this Court is of the view that they have failed to prove his discharge though they have examined D.Ws.2 and 3. The plaintiff and defendants had running accounts and very many payments were made and the defendants have failed to prove their discharge pleaded by them and Exs.B6 to 13 was in respect of the suit pronote. As rightly pointed out by the Lower Appellate Court, the defendants failed to get endorsement on the said Pronote and as such, the discharge pleaded by them, have not been proved and the testimonies of D.Ws.2 and 3 are also formal in nature.

16 The substantial questions of law raised by the appellant / judgment debtor have already been answered by the Courts below. In the considered opinion of the Court, there are no substantial questions of law arise for consideration in this Second Appeal and the concurrent findings recorded by the Courts below are based upon proper appreciation of oral and documentary evidences and therefore, the impugned judgments of the Courts below warrants no interference.

17 In the result, the Second Appeal is dismissed at the admission stage itself confirming the judgments of the Court below. No costs. Consequently, the connected miscellaneous petition is also dismissed.

-s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The III Additional District Judge, (FAC)
Pondicherry
2. The Additional Subordinate Judge
Puducherry.

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

+1 CC to Mr. D. Ravichandar, Advocate sr 40955
+1 Cc to Mrs. Usha Raman, Advocate sr 40781

SA.No.352/2017

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