

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:10.11.2016

DATE OF DECISION:03.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.634 of 2009

T.P.Paramjothi

... Appellant

Vs

P.R.Karupaiah

... Respondent

This appeal is filed under Section 96 of Civil Procedure Code against the decree and judgement dated 15.11.2007 passed in O.S.No.1399 of 2005 on the file of the VII Additional District Judge, City Civil Court, Chennai.

For Appellant : Mr.B.R.Shankaralingam  
For Respondent : Mr.M.Aravindkumar

J U D G E M E N T

The defendant in O.S.No.1399 of 2005 on the file of VII Additional District Judge, City Civil Court, Chennai is the appellant. The respondent/plaintiff had filed the suit for recovery of a sum of Rs.5,25,500/- with interest at 24% per annum.

2. According to the plaintiff, the defendant had borrowed a total sum of Rs.7,57,550/- from the plaintiff on several dates. The details of the borrowings are as follows:

- 1), Rs.20,000/- on 04.03.1999 secured by a mortgage.
- 2) Rs.1,00,000/- on 10.1.2001.
- 3) Rs.1,00,000/- on 05.03.2001.
- 4) Rs.1,00,000/- on 15.4.2001.
- 5) Rs.1,00,000/- on 15.6.2001 and
- 6)Rs.3,37,550/- on 13.1.2002 by depositing title deed.

3. The above borrowings dated 10.1.2001, 05.03.2001, 15.04.2001, and 15.06.2001 are secured by promissory notes and the borrowing on 13.1.2002 is secured by a mortgage by deposit of title deed. The plaintiff would contend that the defendant who

has paid interest on the aforesaid borrowings till December, 2001, stopped paying interest. A complaint was made by the plaintiff, before the Additional Chief Metropolitan Magistrate in CrI.M.P.No.4378 of 2002. The complaint was registered in Crime No.92 of 2003 under Sections 406,420 read with Section 34 of Indian Penal Code against the defendant. When the investigation in Crime No.92 of 2003 was in progress, it is claimed that a compromise was entered and the defendant agreed to pay a sum of Rs.5,25,000/- towards the principal amount along with interest at 24% per annum from 13.04.2003. The amount remains unpaid at the said date and the defendant did not keep up the promise instead he sent a legal notice through his counsel on 8.7.2004. The said legal notice dated 08.07.2004 was replied by the plaintiff through his counsel on 23.07.2004. The plaintiff had also subsequently issued a notice on 15.02.2005 and filed the suit for recovery of money.

4. The defendant filed a written statement contending that the borrowings are not true. He would further contend that the alleged acknowledgment or undertaking dated 13.01.2003 was obtained under coercion in the presence of the police officials. Though the defendant would admit that the borrowing of Rs.20,000/- was made on 04.03.1999, he would claim that the present suit based on the undertaking is barred by limitation. It was also contended by the defendant that the borrowings were at Manapakkam out side the jurisdiction of the City Civil Court and hence, the City Civil Court does not have the jurisdiction.

5. The learned VII Additional District Judge, City Civil Court, Chennai who tried the suit, framed the following issues:

- 1) Whether the suit is barred by limitation?
- 2) Whether the City Civil Court has got jurisdiction to entertain the suit?
- 3) Whether the suit has been filed on the basis of mortgage or on the basis of promissory note?
- 4) Whether the defendant had borrowed monies on the security of promissory notes dated 10.01.2001, 5.3.2001, 15.4.2001 and 15.6.2001?
- 5) Whether the plaintiff is entitled to decree as prayed for in the suit?
- 6) To what other reliefs the plaintiff is entitled to?

6. On a consideration of oral and documentary evidence, learned VII Additional District Judge, City Civil Court came to the conclusion that undertaking dated 13.1.2003 filed as Ex.B10

would be valid and binding on the defendant and the defendant is bound to discharge the suit debts. The learned Additional District Judge, City Civil Court, Chennai also found that the promissory notes dated 15.04.2001, 10.01.2001 and 15.06.2001 were in fact executed by the defendant. The learned Additional District Judge, City Civil Court also took note of the fact that DW2, a witness to the promissory notes had deposed that the promissory notes were signed by the defendant at the plaintiff's residence in Chennai. Taking note of the above factors, as well as the admission made by the defendant in his evidence that he had paid the interest at the borrowing under Exs.A4 to A7 promissory notes, decreed the suit for a sum of Rs.5,25,000/- with interest at 24% per annum from the date of suit till the date of decree and at 6% per annum from the date of decree till date of realisation.

7. Aggrieved by the said judgement and decree, the defendant has come forwards with this appeal.

8. I have heard Mr.B.R.Sangaralingam, learned counsel appearing for the appellant and Mr.Aravindkumar, learned counsel appearing for the respondent.

9. The following points emerge for determination in this appeal:

- 1) Whether the claim by the defendant that Ex.A10 undertaking was executed by him under coercion is true?
- 2) Whether the suit is not barred by limitation?
- 3) To what other relief is the plaintiff is entitled to ?

10. Mr.B.R.Sangaralingam, the learned counsel appearing for the appellant taking me through the Exhibits, particularly Ex.A10 undertaking letter as well as the evidence of PW1 and DW2 would contend that the plaintiff having admitted that Ex.A10 was pursuant to a Panchayat held at the Office of the Police Commissioner at Egmore proves that Ex.A10 has emerged under suspicious circumstances and it cannot form the basis that the decree against the defendant.

11. On the other hand Mr.M.Aravindkumar, learned counsel appearing for the respondent would contend that Ex.A10 is dated 13.01.2003. The defendant had signed in Ex.A10, undertaking to pay a sum of Rs.5,25,000/- within three months i.e. on or before 13.04.2003. A perusal of Ex.A10 would show, the President of Manapakkam village Panchayat, Panchayat Union Chairman and a

member of the Panchayat apart from 2 others, have signed as witnesses to the said document.

12. The learned counsel would submit that though the defendant claimed that the document has been obtained under coercion but he did not choose to react for over 1 ½ years. He chose to issue notice only on 08.07.2004 claiming that the document was procured by coercion. The learned counsel would further submit that a suitable reply was sent to the notice dated 08.07.2004 on 23.07.2004 and the plaintiff had issued the suit notice on 15.02.2005 and the suit itself was filed on 03.03.2005.

13. According to the learned counsel, the fact that the defendant had not taken any steps to challenge Ex.A10 from 13.01.2003 till the date of filing of the suit i.e. on 03.03.2005, for nearly two years, would go to show that the attempt of the defendant is only to wriggle out of the liability which he had admitted under Ex.A10.

14. I have gone through the material evidence on record. The defendant in his evidence as DW1, in cross-examination has stated as follows:

“சென்னை மத்திய குற்றப் புலனாய்வு பிரிவில் வாதி ஒரு புகார் கொடுத்தார். அந்த போலீசார் விசாரித்த பொழுது ஊர்க்காரர்கள் முன்னிலையில் சமாதானம் பேசி ரூ.5,25,000/-த்திற்கு ஒரு கடிதம் எழுதிக் கொடுத்தேன் வா.சா.ஆ.10-ல் உள்ள கையொப்பம் என்னுடையது தான். எனது மனைவியும் அதில் கையொப்பம் இட்டுள்ளார். என் ஊர் மணப்பாக்கம்.”

15. The above categorical admission made by the defendant in his evidence and the fact that he had not taken any steps to challenge Ex.A10 for nearly 2 years, would show that Ex.A10 has not been signed by the defendant under threat or coercion. Though, the defendant would deny his signature in Exs.A4 to A7 promissory notes, the Trial Court on the basis of the evidence of the witnesses to the said documents had come to the conclusion that the said documents have in fact been executed by the defendant. It is also found by the Trial Court, the defendant has in fact admitted the signatures in Exs.A4 to A7. The attempts made by the defendant to discredit Exs.A5 to A7 by summoning the daughter of the plaintiff as DW4 has not yielded any positive results.

16. As already seen, Ex.A1 mortgage deed and the borrowing made there under has been admitted by the defendant. The Trial Court has found that the promissory notes Ex.A4 to A7 have been executed by the defendant. After the said transactions, Ex.A10 has emerged, wherein respectable persons belonging to the village of the defendant have signed as witnesses. If only the

defendant/respondent claimed that Ex.A10 was obtained under coercion is true, he could have examined the witnesses who had signed in Ex.A10, as all of them belong to his village. The non-examination of any of the attestors to Ex.A10 by the defendant would militate against his contention that Ex.A10 has been obtained under coercion or by threat. Whereas the execution of Ex.A10 is accepted and the contents of the document reveals that the defendant had borrowed money from the plaintiff and that he had agreed to repay the same on or before a particular date.

17. I am afraid that the defendant cannot resail from Ex.A10 claiming that the same was obtained in the presence of police officials. In view of the above, I am unable to agree the contentions of learned counsel for the appellant and I do not see any reason to interfere with the factual findings of the Trial Court which are based on an appropriate appreciation of the oral and documentary evidence.

18. The learned counsel appearing for the appellant would submit that the interest awarded at 24% per annum is on the higher side as the borrowings were not for commercial purpose. A reading of Ex.A1 mortgage deed shows that the borrowing was for family purpose and for discharging certain small loans. Of course, the promissory note Ex.A4 does not reveal the purpose of borrowings, Exs.A5,A6, and A7 state the borrowings are for his own purpose and they do not show that borrowings are for commercial purpose.

19. Though Mr.Arvindkumar, learned counsel appearing for the respondent would insist the grant of interest on the contractual rate, I find grant of interest at the rate of 24% per annum is on the higher side. Therefore, I am not inclined to grant interest 24% per annum for the period during from which the suit was pending. Considering the nature of the borrowings as well as the facts and circumstances of the case, I am of the opinion that an interest at 12% per annum would be just and reasonable. I therefore, modify the judgement and decree of the Trial Court only with reference to the rate of interest reducing it from 24% per annum to 12% per annum from the date of suit till date of decree. The Trial Court has granted 6% interest after the decree and the same is confirmed.

20. In fine the appeal is allowed in part modifying the judgement and decree of the Trial Court as follows:

1.The decree with reference to principal sum of Rs.5,25,000/- is confirmed.

2.The rate of interest alone is reduced to 12% per annum from the date of suit till date of decree.

3.The grant of interest after the decree is confirmed.

Further there will be no order as to cost in the appeal considering the nature of the proceedings.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

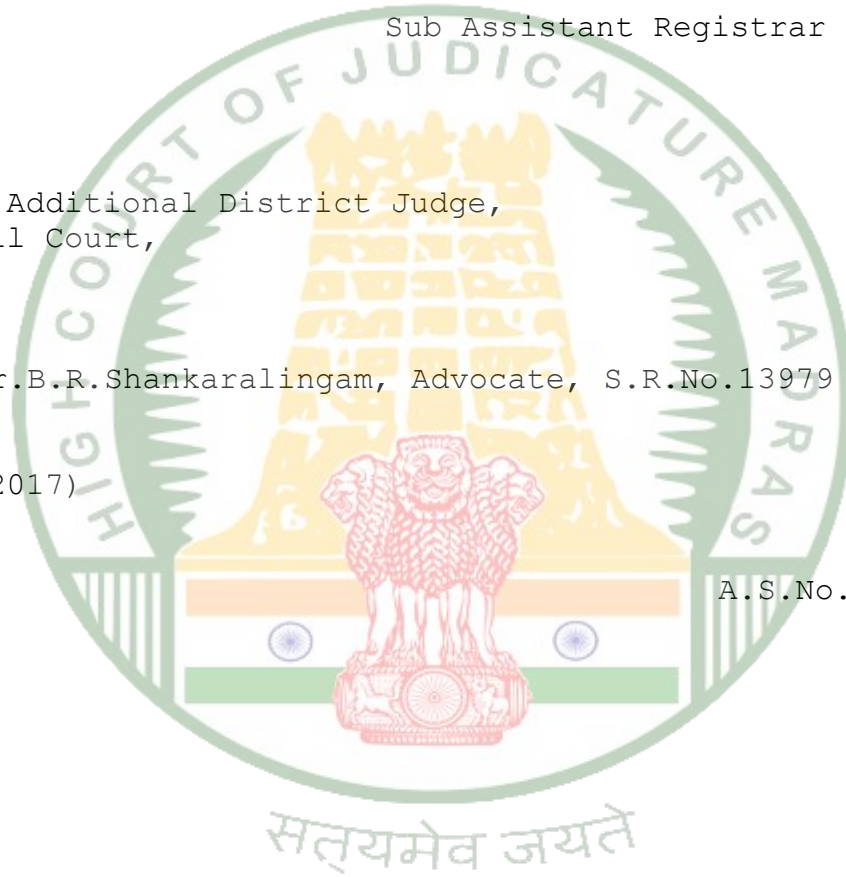
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To  
The VII Additional District Judge,  
City Civil Court,  
Chennai.

+1cc to Mr.B.R.Shankaralingam, Advocate, S.R.No.13979

VSN(CO)  
RS(17/03/2017)

A.S.No.634 of 2009



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