

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.288 of 2015

and

M.P.Nos.1 and 2 of 2015 and

C.M.P.No.19978 of 2016

1.Rajavel

2.Abbai

3.Rose

... Appellants/Appellants/
Plaintiff

Vs

Neela

... Respondent/Respondent/Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 04.03.2015 passed in Civil A.S.No.19 of 2013 on the file of the I Additional District and Sessions Judge, Vellore, Vellore District, confirming the judgment and decree dated 16.12.2011 made in O.S.No.156 of 2004 on the file of the Subordinate Judge, Vellore, Vellore District.

For Appellants .. Mr.T.Dhanyakumar

For Respondent .. M/s.S.Gunaseelan

JUDGMENT

The appellants are the defendants in the suit filed for recovery of money on a promissory note. The appellants are the sons and daughter of one Chinnappa Naidu, who is stated to have received a sum of Rs.60,000/- on execution of Ex.A1 - promissory note. The said Chinnappa Naidu died on 09.02.2002 after execution of Ex.A1 dated 06.08.2001. The suit has been laid on 05.08.2004.

2.The trial Court, placing reliance on the evidence of P.Ws. 1 to 3, which is inclusive of witnesses to Ex.A1 and rejecting the contentions of the appellants by way of defence was pleased to decree the suit as prayed for. The lower appellate Court concurred with the reasoning of the trial Court in holding that

the appellants have no direct knowledge about the transaction of Chinnappa Naidu. There is no material to hold that the plaintiff is not a man of means. Merely because the appellants' father was having some properties, it cannot be presumed that he was not in need of money. The argument made that Ex.A1 has been created to wreak vengeance in view of the prior enmity between one Venkatesan, who is the close relative of the plaintiff and the family of the appellants was also negatived on the ground of lack of pleadings. It was further held that it was not necessary to send the document for examination of expert. The lower appellate Court also dismissed the application in I.A. No.70 of 2014, filed by the appellants for receiving the documents and to send the same to the expert.

3.The learned counsel appearing for the appellants submits that as per the decree, the suit has been filed on 11.08.2004 and if so, it is barred by limitation. It is not probable that the deceased Chinnappa Naidu would have executed Ex.A1 as he was a man of means. The application filed for sending the documents to an expert was kept pending. Thus the appeal will have to be allowed.

4.The learned counsel for the respondent submits that the application filed in I.A.No.70 of 2014 has been dismissed along with the appeal. The said order has not been challenged. Even prior to that, similar application was filed in I.A.No.43 of 2013, which was also dismissed. The said order was also not challenged. The suit has been laid only on 05.08.2004 and therefore there is no bar of limitation. The allegation with respect to creation of Ex.A1 to wreak vengeance is not pleaded in the written statement and therefore, it cannot be gone into. By way of reply, learned counsel appearing for the appellants submits that in order to get over the technical plea, C.M.P.No.19978 of 2016 has been filed, seeking permission of this Court to file additional written statement in tune with the evidence let in.

5.It is the case of concurrent finding rendered by the Courts below. The respondent/plaintiff has established her case through the evidence of P.Ws.1 to 3. The defence sought to be set up by the appellants was duly rejected by the Courts below on consideration of relevant materials both oral and documentary. The appellants have not clearly deposed on the signature of their father. The application filed for sending the documents to expert was dismissed on two occasions. On perusal of the original records, it is seen that the plaint was filed on 05.08.2004 and therefore, it is well within the period of limitation. The petition seeking leave to file additional written statement also has to be rejected since it is nothing but an afterthought. Admittedly, at the time of disposing of the suit and appeal, there was no averment to back the allegation

that Ex.A1 has been created for the purpose of harassing the appellants and their father. Even otherwise, the alleged dispute was between one Venkatesan, who is the relative of the plaintiff and the family of the appellants and thus does not include the plaintiff as such.

6.Considering the same, this Court is of the view that the judgments having been rendered on assessing those factual aspects, no substantial question of law is involved in this appeal, warranting interference. Accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

mmi

To

- 1.The I Additional District and Sessions Judge, Vellore.
 - 2.The Subordinate Judge, Vellore.
 - 3.The Section Officer, VR Section, High Court, Chennai
- +1cc to M/s.T.Dhanyakumar, Advocate sr.1704
+1cc to M/s.S.Gunaseelan, Advocate sr.874

S.A.No.288 of 2015

cnr(co)
ss(14/02/2017)

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