

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.01.2017

Coram:

The Honourable Mr.Justice M.M.SUNDRESH

S.A.No.830 of 2015
& M.P.No.1 of 2015

1.A.P.Sreedharan

2.Mrs.S.Selvi .. appellants/Defendants

Vs.

Mrs. N.Bhuvaneswari .. Respondent/plaintiff

Second Appeal is filed under Section 100 C.P.C., as against the judgment and decree dated 04.03.2015 made in A.S.No.199 of 2014 on the file of VII Additional City Civil Court, Chennai, reversing the judgment and decree dated 18.01.2013 made in O.S.No.4051 of 2011 on the file of VIII Assistant City Civil Court, Chennai.

For appellantss : Mr.S.Rajendrakumar
M/s. Spam Associates

For respondent : Mr.M.S.Palaniswamy

JUDGMENT

The defendants, who suffered a decree at the hands of the lower Appellate Court in a suit for recovery of money, are the appellants herein, seeking to set aside the same, has filed the above second appeal.

2. At the time of admission on 04.09.2015, the following substantial questions of law have been framed.

1. When Ex.A2 and Ex.A3 promissory notes are unstamped, can the first appellate Court rely on the same in evidence and pass a decree based on the same?
2. Whether the first appellate Courts have justification to try the suit when the

plaintiff herself has admitted that defendants had executed Exs.A1 to A3 at her house situate at Kottivakkam (Kanchipuram District)?

3. When the plaintiff having filed application for sending Exs.A1 to A3 for expert opinion but failed to take it to its logical conclusion, is the Court below correct in law in not drawing adverse inference?

4. Whether the first appellate Court is correct in arriving that the suit is not barred by limitation based on Ex.A-4, legal notice dated 15.04.2011?

3. The suit has been laid based upon three documents. Ex.A1 is the loan agreement said to have been executed by the defendants in favour of the plaintiff. Exs.A2 and A3 are the promissory notes. As the loan amount has not been paid, Ex.A4 notice was issued to the defendants. Though it was received by the defendants, they did not reply, suit has been filed. The trial Court dismissed the suit on the ground that the suit is barred by limitation since the evidence available would show that the loan has been obtained in the year 2010. The loan due to one Prema is sought to be enforced through the promissory notes executed in favour of the plaintiff, which is not permissible in law. The lower Appellate Court reversed the judgment and decree of the trial Court by holding that the execution of Exs.A1 to A3 are not in dispute. Ex.A1 is the loan agreement dated 12.05.2010 for a sum of Rs.5,00,000/- mentioned therein. The lower appellate Court has also exercised its power under Section 73 of the Indian Evidence Act, 1872, by comparing the signature in the vakalath. The fact that the defendants did not reply to the notice has also taken into consideration while decreeing the suit.

4. The learned counsel appearing for the appellants submits that the lower appellate Court has committed an error in merely relying upon the legal notice issued as the starting point of limitation. The lower Appellate Court has not considered the evidence of plaintiff whereas the loan has been obtained from Prema. She has also made a statement of loan transaction in the year 2006.

5. The learned counsel appearing for the respondent submits that the defence taken in the written statement is that the signatures of the defendants have been misused. Once the signatures found to be that of the defendants, the onus is rightly on them to dispel the presumption. As the findings are rendered on facts, no interference is required.

6. Ex.A1 is the loan agreement executed by the defendants in favour of the plaintiff. The lower appellate Court found that the agreement is proved. When once Ex.A1 is proved, then there is no question of limitation involved. The evidence of the plaintiff has to be read in its own context. It is the case of the plaintiff that the defendants obtained loan from one Prema for a partial amount mentioned in the suit claim. The plaintiff has discharged the suit amount at the request of the defendants and for that the defendants executed the consent documents. Therefore, it is not, as if, the limitation would start from the date of issuance of legal notice. Though giving a reply to the legal notice cannot lead to adverse inference, this fact was taken into consideration while considering the relief sought for among other things. In such view of the matter, this Court is of the view that there is no error in the judgment and decree rendered by the lower appellate Court. It is not, as if, the lower appellate Court decreed the suit merely based upon promissory notes viz., Exs.A2 and A3. The appellants have not questioned the admissibility of the documents. Accordingly, this Court does not find any substantial questions of law involved in the present appeal. The second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

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To

Sub Assistant Registrar

1. VII Additional City Civil Court,
Chennai.
2. VIII Assistant City Civil Court,
Chennai.
3. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.Rajendra kumar, Advocate, S.R.No.4635
+1cc to Mr.Palanisamy, Advocate, S.R.No.5243

KJI (CO)
RS (15/02/2017)

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