

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.11.2017
PRONOUNCED ON : 13.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1138 of 2001

Preetha ..Appellant/Plaintiff
(Declared Major and the guardian
father discharged from his guardianship
vide order of the court dated 02.07.2001
made in CMA No.3306/2001)

Vs.

Ramachandran ..Respondent/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree on the file of the II Additional District Judge, Salem dated 26.02.1999 made in A.S.No. 43 of 1997 reversing the judgment and decree on the file of the Principal Sub Judge, Salem dated 12.12.96 made in O.S.No.71of 1989.

For Appellant : Mr.K.P.H.Thulasiraman

For Respondent : Mr.D.Shivakumaran

JUDGMENT

This second appeal is directed against the judgment and decree dated 26.02.1999 passed in A.S.No. 43 of 1997, on the file of the II Additional District Judge, Salem reversing the judgment and decree dated 12.12.96 passed in O.S.No.71of 1989, on the file of the Principal Sub Court, Salem.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of money.

4. The case of the plaintiff, in brief, is that the defendant has received loan from the plaintiff, for the purpose of putting up a complex building in Venkataramanaicker street, Shevapet, Salem and the agreed rate of interest is 24% and the plaintiff is maintaining an account in the name of the defendant in the usual course of business and the amounts received have

been given credit to the earlier amounts due and as per the accounts of the plaintiff, the defendant owes a sum of Rs.49,140/- out of which, the principal amount is Rs.47,000/- and the remaining amount being the interest and the last three payments made by the defendant to the plaintiff are by way of cheques dated 26.09.88, 27.10.88 and 30.12.88. After the issuance of the last cheque above stated, misunderstanding arose between the parties, on account of which, the defendant has refused to make further payments and informed that no amount is due from him to the plaintiff and hence, the plaintiff issued a legal notice dated 11.01.89 to the defendant, calling upon him to pay the suit amount and the defendant sent a reply to the same containing false allegations and hence the suit for recovery of money.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts and it is false to state that the defendant borrowed amounts for putting up complex building in Shevapet and false to say that the agreed rate of interest is 24% and it is further false to state that amount of Rs.49,140/- is due from the defendant. The defendant took hand loan from the plaintiff for a short while and repaid the same to the plaintiff. Lastly, an amount of Rs.7,260/- was due to the plaintiff and the said amount was repaid by means of three cheques and the entire amount due to the plaintiff had been discharged. The accounts and the income tax assessment of the plaintiff are only self serving documents and not binding on the defendant and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case PW1 has been examined and EXs.A1 to A3 were marked and on the side of the defendant DW1 was examined and EXs. B1 to B7 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On appeal by the defendant, the judgment and decree of the trial Court were set aside and consequently, the first appellate court, by allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial question of law was formulated for consideration.

"In the absence of any other independent evidence or corroborative evidence can mere entries in books of account alone be held to be sufficient either in proof of liability or discharged of liability, more so in view of Section 34 of the Indian Evidence Act?"

9. According to the plaintiff, in brief, the defendant borrowed loan from him for the purpose of putting up a complex building in Shevapet, Salem and the agreed rate of interest towards the loan transaction is 24% and after giving credit to the loan amount re-paid by the defendant, still a sum of Rs.49,140/- is due towards principal and interest and as the defendant failed to pay the same despite requests and legal notice and on the other hand, the defendant having sent a reply repudiating the claim of the plaintiff, according to the plaintiff, she has been necessitated to lay the suit for recovery of the balance amount.

10. Per contra, it is the case of the defendant that he has not taken loan from the plaintiff for the purpose of putting up complex building as pleaded and only hand loan was taken by the defendant from the plaintiff and the said loan had been duly discharged by him periodically and no amount is due to the plaintiff and hence, the suit is liable to be dismissed.

11. The defendant examined as DW1, during the course of cross-examination has clearly admitted that he owns a complex building at Venkataramanaicker street, Shevapet and for constructing the said complex, Sathyasekaran i.e. father of the plaintiff was monitoring and for the purpose of putting up the said construction, he had borrowed the loan from the plaintiff during 1983-84 and further, he has also admitted that the rate of interest for the loan transaction is 24%. It is thus found from the admission of the defendant, examined as DW1, that he has taken loan from the plaintiff only for the purpose of putting up complex as pleaded by the plaintiff and the rate of interest is 24%. Therefore, the case of the defendant that he has taken only hand loan from the plaintiff as such cannot be readily accepted. Be that as it may, as seen from the pleadings contained in the written statement, the defendant has not disputed the suit claim made by the plaintiff. All that he would state is that the loan incurred by the defendant from the plaintiff has been discharged. Inasmuch as the plea of discharge has been taken by the defendant, it is seen that as rightly found by the trial Court, it is for the defendant to establish the plea of discharge put forth by him.

12. Now, according to the plaintiff, all the amounts re-paid by the defendant towards the loan obtained by him from the plaintiff has been duly given credit to and even thereafter, still a sum of Rs.49,140/- is due from the defendant, towards the principal and interest and as the defendant failed to pay the said amount, according to the plaintiff, she has been necessitated to lay the suit for recovery of the same. Inasmuch as the defendant has not disputed the suit claim as such, it is found that the defendant has to establish that he has discharged the suit claim made in the plaint. For the said purpose, it is found that the defendant has produced certain accounts books and placed reliance upon the entries entered in the accounts books,

to sustain his defence. Inasmuch as the defendant has not disputed his liability to pay the suit claim and on the other hand, has only pleaded discharge, it is seen that as rightly argued by the plaintiff's counsel, there is no necessity for the plaintiff to produce any accounts books for sustaining her claim. Accordingly, it is found that the plaintiff has produced only Ex.A1, statement of accounts, for sustaining her case. From Ex.A1, it is seen that even after the payment of three instalments by the defendant by way of cheques, still the suit amount is due from the defendant. Accordingly, it is found that the suit has come to be laid by the plaintiff.

13. As seen above, the defendant though has taken a plea in the written statement that he had taken only hand loan from the plaintiff, still, during the course of trial, he has chosen to mark the accounts books and placed reliance upon the entries contained therein that he has discharged the suit amount. However, when the entries found in the accounts books marked on the side of the defendant, particularly, the entries of discharge pleaded by the defendant, and when the same has not been admitted by the plaintiff, it is for the defendant to establish the said entries with independent evidence to sustain his defence. When according to the defendant, the entries found in Ex.B1 are found to be accepted by the plaintiff, equally, he must also place material to show that the other entries found in his accounts books marked as Exs.B2 to B7 are also acknowledged by the plaintiff. However, with reference to the entries found in Exs.B2 to B7, there is no material placed, on the part of the defendant, to hold that the plaintiff has acknowledged the genuineness of the same. In such view of the matter, mere entries in the accounts books by themselves would not be sufficient to hold that the defendant has discharged his liability. In this connection, counsel for the plaintiff has placed strong reliance upon Section 34 of the Indian Evidence Act. A bare reading of the Section 34 of the Indian Evidence Act would go to show that the entries in the books of accounts would not alone be sufficient evidence to charge any person with liability. Further, as seen from the decision reported in AIR 1998 SC 1406 (Central Bureau of Investigation Vs. V.C.Shukla and others) relied upon by the plaintiff's counsel, even if the entries found in the accounts books are correct and authentic, the same by itself cannot, without independent evidence of their trustworthiness, fix a liability upon a person. Such being the position of law, it is seen that the entries in books of accounts cannot be treated as a substantive evidence for accepting the case of a party and the entries could only be relied upon as a corroborative piece of evidence for sustaining the case of a party. Such being the position, it is found that the defendant by marking certain account books and placing reliance upon the entries contained therein, could not be held to have placed proof as regards the plea of discharge made by him towards the suit claim. Particularly, when the entries found in the said account books are not acknowledged by the

plaintiff to be genuine and trustworthy, it is for the defendant to establish his case by adducing further reliable and acceptable evidence. As regards his defence, when acceptable and convincing materials with reference to the same are not forthcoming on the part of the defendant, it is seen that the first appellate court has erroneously dislodged the well considered reasonings and conclusions of the trial Court for upholding the plaintiff's case.

14. It is found that the first appellate Court has disbelieved the plaintiff's case, on the footing that the plaintiff has not placed his statement of accounts to sustain his claim. However, when the defendant has not disputed his liability to pay the suit amount and has only taken the defence of discharge, in my considered opinion, there is no need for the plaintiff to place any statement of accounts to buttress her claim. Still, the plaintiff has marked it as Ex.A1, to show that the defendant is due and liable to pay the suit amount. On the other hand, the defendant having taken the plea of discharge, has placed only certain account books to sustain the said plea. However, when the said entries are found to be not accepted to be true by the plaintiff, particularly, on a comparison of the entries found in Ex.B1 having been accepted by the plaintiff, it is seen that the other entries cannot be relied upon, to accept the defendant's version and thereby, reject the plaintiff's case.

15. The income tax returns of the defendant, marked as Ex.B6, would go to show that as on 31.03.87, the defendant still owes a sum of Rs.57,000/- to the plaintiff and by 31.03.88, he is shown to have paid a sum of Rs.7,000/- towards interest. Therefore, it is found that even as per the own income tax returns of the defendant as on 31.03.87, when admittedly the defendant owes a sum of Rs.57,000/- and when according to the admitted case of the parties, a sum of Rs.7,600/- had been paid by the defendant by way of three cheques, it is found that inasmuch as the defendant had not paid the balance amount, the plaintiff had been necessitated to institute the suit against the defendant. As regards the plea of discharge, the defendant relied upon the entries in the account books. However, the entries in the account books themselves would not form substantive piece of evidence or independent evidence towards the proof of discharge or the discharge of liability. Particularly, when, even as per Section 34 of the Indian Evidence Act, such entries shall not alone be sufficient evidence by themselves, it is found that the first appellate court has wrongly rejected the plaintiff's case and upheld the defendant's version, merely on the uncorroborated entries found in the accounts books of the defendant. In such view of the matter, it is found that the defendant having accepted the suit claim and pleaded only discharge and as the defendant has failed to establish the plea of discharge put forth by him, as rightly held by the trial Court, the defendant is liable to pay the suit

claim and in such view of the matter, as rightly argued by the plaintiff's counsel, the first appellate court fell in error in relying upon the entries in the books of accounts of the defendant as substantive piece of evidence, for upholding his version.

16. In the light of the above discussion, when it is found that the above approach of the first appellate court is not correct and in accordance with law, resultantly, I hold that the substantial question of law formulated in this second appeal is answered in favour of the plaintiff and against the defendant.

17. In conclusion the judgment and decree on the file of the II Additional District Judge, Salem dated 26.02.1999 made in A.S.No. 43 of 1997 are set-aside and the judgment and decree on the file of the Principal Sub Judge, Salem dated 12.12.96 made in O.S.No.71 of 1989 are confirmed and accordingly the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District Court, Salem.
2. The Principal Sub Court, Salem.

Copy to: The Section Officer,
Vr Section, High Court, Madras. (2-copies)

- + 1 cc to Mr. D. Shivakumaran, Advocate Sr. 80351
- + 1 cc to MR. K.P.H. Thulasi Raman, Advocate Sr.80035

S. A.No.1138 of 2001

SSI (CO)
EU(29/01/2018)