

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2017

PRONOUNCED ON : 05.12.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1247 of 2001

1.Lakshmi Devamma
2.Padma
3.Shobha Rani
4.Rajeswari
5.Vijaya
6.Venkatesh

... Appellants/Defendants

Vs.

V.Chinnappa

... Respondent/Plaintiff

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 03.04.2000 in A.S.No.105 of 1999 on the file of the Court of the Principal District Judge, Dharmapuri at Krishnagiri, confirming the Judgement and Decree dated 06.09.1999 in O.S.No.309 of 1996 on the file of the Subordinate Court, Hosur.

For Appellants : Mr.C.R.Muralidharan
For Respondent : Mr.V.Nicholas

J U D G M E N T

Challenge in this Second Appeal is made to the Judgment and Decree dated 03.04.2000 passed in A.S.No.105 of 1999, on the file of the Principal District Court, Dharmapuri at Krishnagiri, confirming the Judgment and Decree dated 06.09.1999 passed in O.S.No.309 of 1996, on the file of the Subordinate Court, Hosur.

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 defendants are the legal representatives of one B.Ramaiah, who died on 18.10.1994 and the plaintiff and the deceased B.Ramaiah

were jointly doing Real Estate business and in connection with the same, they had purchased and sold few items of land in Avalapally village. Consequently, on account of the difference of opinion with regard to their business transaction, a settlement was reached on 20.01.1994 between the plaintiff and B.Ramaiah, in the presence of Panchayatdars and the terms of the settlement was reduced to writing on the same date, wherein, B.Ramaiah and the 6th defendant had signed the document along with the plaintiff, accepting the terms and conditions contained therein. As per the settlement reached, B.Ramaiah has to pay the plaintiff a sum of Rs.1,90,000/- and towards the said amount, B.Ramaiah issued four post dated cheques in favour of the plaintiff, drawn on Dharmapuri Central Co-operative Bank, Hosur Branch, one for Rs.40,000/- and the other three for Rs.50,000/- each and undertook to arrange necessary amounts in the Bank to enable the plaintiff to encash the same, as and when presented. The plaintiff, thereafter, presented the cheque for Rs.40,000/- for encashment and got the same encashed and the other three cheques each for Rs.50,000/- though were presented by the plaintiff for encashment, had been returned by the Bank for the reasons as "payment stopped by drawer" and "funds insufficient". Hence, the plaintiff on 03.08.1994, issued a legal notice to B.Ramaiah, calling upon him to pay the cheque amounts within 15 days or face prosecution and thereafter, on sending further notices through certificate of post, which had been received by B.Ramaiah and as B.Ramaiah failed to comply the demand made, in connection with the same, the plaintiff preferred criminal complaint against B.Ramaiah in C.C.No.170 of 1994, on the file of Judicial Magistrate Court No.II, Hosur and summons was ordered to be sent to B.Ramaiah and as B.Ramaiah has been reported to be dead on 18.10.1994, the plaintiff had obtained back the documents from the Criminal Court for filing the suit and accordingly, the defendants, who are the legal representatives of the deceased B.Ramaiah are bound to discharge the debt amount due from B.Ramaiah to the plaintiff and hence, the suit for appropriate reliefs.

5.The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts. It is no doubt true, that the defendants are legal representatives of the deceased B.Ramaiah, who died on 18.10.1994, and there is no privity of contract between the plaintiff and B.Ramaiah, as claimed in the plaint and they have not done any business as claimed in the plaint jointly and it is false to state that in respect of the real estate transaction carried on by them, misunderstanding arose and resultantly, the settlement was reached on 20.01.1994 between them, in the presence of Panchayatdars and the defendants specifically deny the same. The plaintiff has not given the details of the business transaction said to have been carried on jointly with B.Ramaiah and the amounts due in respect

of the business transaction from B.Ramaiah to the Plaintiff and the cheques pleaded in the plaint are fabricated and received under threat, coercion in order to gain unlawful enrichment and the alleged agreement dated 20.01.1994 is also the result of threat and the alleged Panchayat Muchilika is not executed by B.Ramaiah and the 6th defendant as pleaded and the plaintiff and his son with the help of their henchmen threatened the deceased B.Ramaiah and the 6th defendant with arms and forcibly took their signature on six blank papers and written stamp papers and threatened them with dire consequences and hence, there is no privity of contract as such between the plaintiff and the deceased B.Ramaiah. There is no any outstanding due from B.Ramaiah to the plaintiff and the plaintiff has encashed the cheque and seems to have got Rs.40,000/- under the forged cheque on 31.03.1994 and the plaintiff is bound to return the said amount and the defendants did not receive any notice and the transaction pleaded in the plaint is not true and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs.1 to 3 were examined, Exs. A1 to A11 were marked. On the side of the defendants, DW1 was examined, Exs.B1 to B5 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties, the Courts below were pleased to accept the case of the plaintiff and accordingly, decreed the suit in favour of the plaintiff as prayed for. Aggrieved over the same, the present second appeal has come to be preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

(1) In the absence of any privity of contract between the plaintiff and the predecessor of the defendants, or the necessary proof as to the existence of any legally valid debt or liability in favour of the plaintiff, whether the Courts below are correct in decreeing the suit of the plaintiff for recovery of money?

(2) When Ex.A1 Muchilika/agreement and the cheques alleged to have been issued thereunder are not legally valid and binding for lack of consideration and is further vitiated on account of the same having been brought about under duress and coercion, whether the Courts below are correct in decreeing the suit solely on the basis of the contents thereof and without any proof as to

the existence of any legally enforceable debt or liability in favour of the plaintiff?

(3) In the absence of any proof as to the nature, manner and purpose for which the debts had been allegedly incurred by their predecessor whether the defendants are legally or morally obliged and liable to discharge the same? And

(4) Whether the judgments and decrees of the Courts below are vitiated and unsustainable on account of its failure to consider the oral and documentary evidence adduced in the proper perspective, resulting in perverse findings rendered thereon and which are based on no evidence?

9. Briefly stated, it is the case of plaintiff that he and the deceased B.Ramaiah were engaged in real estate business and on account of misunderstanding which had arisen between them in connection with the said business a panchayat was convened and in the said panchayat held on 20.01.1994, B. Ramaiah had agreed to pay the outstanding amount due from him to the plaintiff and the same having been quantified at Rs.1,90,000/-, it is the case of the plaintiff, accordingly on the same day, a Muchillika had been entered between the parties and accordingly, the plaintiff, B.Ramaiah and his son, 6th defendant had signed the Muchilika and based on the above said Muchillika, it is the further case of the plaintiff that four postdated cheques were issued by B.Ramaiah, one for Rs.40,000/- and other three cheques each for Rs.50,000/- for fulfilling his obligations and promises under the panchayat Muchilika and it is the further case of the plaintiff that the cheque for Rs.40,000/- was presented and the same got honoured and received the amount and when the other three cheques were presented for encasement, the same had been returned for the reasons "funds not available or stopped by the drawer" and accordingly, the plaintiff had issued legal notice to B.Ramaiah to pay the amount within the stipulated time and as he had refused to comply with the demand, according to the plaintiff, he had lodged the Criminal complaint against B.Ramaiah under Section 138 of the Negotiable Instruments Act and on the summons being sent to B.Ramaiah, returned with the endorsement as he had died, according to the plaintiff, he had obtained the documents filed by him in the criminal court for the purpose of recovery of the amount by way of a Civil action due to him by B.Ramaiah and accordingly, it is his case that in as much as the defendants are the legal heirs of the deceased B.Ramaiah, they are bound to pay the amount to the plaintiff and hence the suit.

10. The Defendants have disputed the validity of the panchayat Muchillika said to have been entered into between the plaintiff and B.Ramaiah and the 6th defendant on 20.01.1994 and further according to the defendants, B.Ramaiah and the plaintiff had not done any real estate business jointly as pleaded and hence, there is no question of any outstanding amount due to B.Ramaiah from the plaintiff as putforth and hence, it is stated that without any basis, the plaintiff had obtained the panchayat Muchillika and if really, real estate business had been done by B.Ramaiah and the plaintiff jointly, details of the same would have been disclosed in the plaint and further according to the defendants, the panchayath Muchillika above stated and the four cheques pleaded in the plaint were obtained by exercising threat and coercion and accordingly, the signatures of B.Ramaiah and the 6th defendant had been obtained on blank papers and stamp papers and also in the cheques and they had not been issued in respect of any antecedent debt due from B.Ramaiah to the plaintiff, in connection with the real estate business and hence, the plaintiff is not entitled to lay the suit based on the above said invalid documents and the plaintiff having gained unlawful enrichment by encashment of one cheque is liable to return the said amount and hence according to the defendants, there is no cause of action for the plaintiff to institute the suit and the suit is liable to be dismissed.

11. Materials placed on behalf of the plaintiff would go to show that Exs.A1 panchayat Muchillika dated 20.01.1994 had been entered into between the parties in the presence of panchayatdars as pleaded by the plaintiff. In this connection, the plaintiff has examined himself as PW.1 and the panchayatdars and the persons associated with the panchayat had been examined as PWs.2 and 3 and from the evidence adduced by PWs 1 to 3 seen cumulatively, it would go to show that as putforth by the plaintiff, in respect of the business transactions held between the plaintiff and B.Ramaiah, as amounts were due to the plaintiff from B.Ramaiah, agreeing to pay the amount, it is seen that B.Ramaiah as well as his son namely the 6th defendant had signed in the panchayat Muchilika in the presence of Panchayatdars and accordingly for discharging their obligations accepted under Ex.A1 panchayat Muchilika, it is seen that they had issued four postdated cheques as pleaded in the plaint and therefore it is seen that the panchayat Muchilika Ex.A1 has been validly executed between the parties namely the plaintiff and B.Ramaiah and 6th defendant in the presence of Panchayatdars, accordingly, PWs.2 and 3 being witnesses to the above said transaction has clearly spoken about the same in their evidence and as rightly found by the Courts below nothing has been elucidated to disbelieve their testimony as regards the execution of Panchayat Muchilika between the parties concerned and as putforth by the plaintiff.

12. It is not the case of the defendants that the signature of B.Ramaiah and 6th defendant are not available in Ex.A1 panchayat Muchilika. They would admit their signatures in the said document and it is also not the case of the defendants that four postdated cheques had not been issued by B.Ramaiah in favour of the plaintiff as pleaded. What they would plead is that, the plaintiff and his men using arms and weapons, threatened B.Ramaiah and his son with dire consequences and out of such threat, coercion and fear had obtained signatures in the blank papers and stamp papers and also obtained cheques from them unlawfully and illegally, thus, according to the defendants, the above said documents had not been validly exchanged between the parties, pursuant to the business transaction done by the plaintiff and B.Ramaiah and also the said documents had not come out as the outcome of a valid Panchayt as pleaded by the plaintiff, hence it is the case of the defendants that the plaintiff cannot enforce the above said document for the recovery of the suit amount.

13. However the above defence version put forth by the defendants cannot be accepted in any manner and as determined by the Courts below, if really, the plaintiff and his men had used weapons and arms and putting the deceased B.Ramaiah and his son in fear of life had illegally and unlawfully obtained their signatures in blank papers and stamp papers and also obtained cheques from them as pleaded by the defendants, as rightly determined and as rightly argued by the plaintiff, B.Ramaiah or the defendant as the case may be would have immediately taken appropriate legal action against the plaintiff. However it is seen that admittedly no legal action what so ever has been taken by either by B.Ramaiah during his life time or by the defendants at any point of time till the laying of the suit by the plaintiff. Atleast one would have expected them to issue a legal notice to the plaintiff narrating their versions as to the obtainment of the signature in the blank papers as pleaded and also the obtainment of cheques as pleaded by using threat, coercion etc.,. However, when the deceased B.Ramaiah and the defendants after the alleged incident as putforth by them had not taken any action against the plaintiff would only go to disclose that inasmuch as their defence version is false, it is rightly held that they had not initiated any appropriate legal action against the plaintiff. On the other hand, it seen that it is only the plaintiff on the dishonour of the three cheques issued by B.Ramaiah, who had initiated the criminal case against B.Ramaiah and as by then, B.Ramaiah had died, it is seen that the plaintiff had obtained the documents filed in the criminal court for the purpose of laying the Civil action and accordingly, laid the present suit. In such view of the matter, the pleadings putforth by the defendants that the Panchayath Muchilika Ex.A1 and the cheques marked as Ex.A2 to A4 had been

illegal and unlawfully obtained by the plaintiff using threat, force etc., cannot be accepted in any manner and it is seen that the above pleas had been made only for the purpose of this case to stifle the plaintiff's case.

14. As above seen, as regards the business transactions between the plaintiff and B.Ramaiah and the misunderstanding that had arisen between them in connection with the same and the Panchayat held with reference to the same and also the execution of Panchayat Muchilika Ex.A1 on 20.01.1994, as pleaded by the plaintiff, have been clearly deposed by the plaintiff as well as Pws 2 and 3. It is found from their evidence that as B.Ramaiah owed money to the plaintiff in connection with the business transactions, accordingly, Ex.A1 Muchilika and the cheques Ex.A2 to A4 have come to be issued as putforth by the plaintiff.

15. However, it is argued by the counsel appearing for the defendants that inasmuch as the details of the business transactions said to have been done by B.Ramaiah and the plaintiff have not been disclosed in the plaint in detail and the Panchayat Muchilika, Ex.A1 also does not contain the details about the same in extenso, it is contended by him that when there is no material as to on what basis, the amount of Rs.1,90,000/- had been fixed as due from B.Ramaiah to the plaintiff, it is his plea that Ex.A1.Panchayat Muchilika should be declared as a void agreement, as at that point of time both parties were not at consensus ad idem, as to a matter of fact, with reference to any issue between them and in such view of the matter, it is stated that Ex.A1, Panchayat Muchilika is hit by Section 20 of Indian Contract Act and accordingly, the same cannot be enforced by the plaintiff. In this connection, he placed reliance upon the decision reported in (1998) 3 SCC 471 (Tarsem Singh Vs. Sukhminder Singh). However, as rightly putforth by the plaintiff's counsel, if really, the parties were not at consensus ad idem as to the issue pending between them as on 20.01.1994, the date of Panchayath Muchilika, there is no explanation on the part of the defendants as how come they had come to execute the Panchayat Muchilika Ex.A1 and that apart, it has not been explained that as to how come they had issued four cheques in favour of the plaintiff for discharging their obligations recited under Ex.A1, Panchayath Muchilika. The execution of four cheques by itself would only go to show that inasmuch as the details contained in the Panchayat Muchilika, Ex.A1 had been admitted by B.Ramaiah as well as the 6th defendant accordingly, as a follow up measure, the four postdated cheques had also come to be issued by them and it is thus seen that the present argument that Ex.A1 agreement is a void agreement as the parties concerned were under a mistake as to the matter of facts recited therein as such cannot be accepted in any manner. That apart, as already adverted above, the parties associated with

the Panchayat decision had been examined by the plaintiff as Pws 2 and 3 and the plaintiff himself has tendered evidence with reference to the same and when their evidence are found to be trust worthy convincing and reliable and not shown to be suffering from any infirmity during course of cross examination, it is seen that the plaintiff has clearly established the validity of the Panchyat Muchilika, Ex.A1 and in such view of the matter, the contention that the Panchayat Muchilika, Ex.A1 is a void document in the light of Section 20 of the Indian Contract Act cannot be countenanced in any manner. It is thus seen that section 20 of the Indian Contract Act does not apply to the facts of the case.

16. It is argued by the defendants' counsel that there is no material as such placed on the part of the plaintiff to show that really the real estate business was done by the plaintiff and the deceased B.Ramaiah. However, considering the materials placed both on the side of plaintiff and on the side of the defendants, it is found that B.Ramaiah was engaged in real estate business and from the evidence of the plaintiff's witnesses, it is seen that the plaintiff was also engaged in real estate business and accordingly, it is determined by the Courts below from the materials, it could be gathered that both B.Ramaiah and the plaintiff had done real estate business jointly and accordingly, with reference to the said business, they had chosen to execute the Panchayat Muchilika, Ex.A1 in the presence of Panchayadars and therefore, the contention that there is no material at all disclosing the business transactions between the plaintiff and the B.Ramaiah cannot be accepted.

17. In the light of the above discussions, the plea of the defendants that there is no proof of valid contract between the plaintiff and deceased B.Ramaiah as to the execution of Ex.A1, when it is found that the defendants have failed to establish that Ex.A1 Panchayat Muchilika, involved in the matter had been obtained by the plaintiff by threat, duress and coercion and when it is further found that the Panchayat Muchilika, Ex.A1 had come to be executed by the parties only in connection with the debt due from B.Ramaiah to the plaintiff, in connection with the business transactions and it is accordingly seen that Courts below have rightly assessed the materials placed on record, both oral and documentary evidence in the correct perspective, factually as well as legally and had rightly come to the conclusion that the Panchayat Muchilika Ex.A1, is a true and valid document and binding on the defendants, as the legal heirs of the deceased B.Ramaiah.

18. The very fact that, one of the cheques had been honoured as put forth by the plaintiff and when the same also is

admitted by the defendants' and when till date the defendants have not endeavored to lay any action against the plaintiff for the obtainment of the amount received by the plaintiff under the said cheque also would go to show that inasmuch as the cheques in question were issued by B.Ramaiah for the outstanding amount due from him to the plaintiff, it is seen that no further concrete action had been initiated by the defendants as regards the encashment of the one cheque by the plaintiff.

19. In the light of the above position, the substantial questions of law formulated in the second appeal are answered against the defendants and in favour of the plaintiff. In conclusion, the Second Appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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