IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.12.2017

PRONOUNCED ON: 18.12.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. Nos.1691 & 1692 of 2001
& 421 & 422 of 2003

S.A.No.1691/2001

G.Ramanan ... Appellant/Appellant/4th Defendant

Vs.

1. Sulochana ... 1st Respondent/1st Respondent/Plaintiff

2.Union of India
rep.by Post Master General
Chennai.

3.Senior Superintendent of Posts
Post office, Erode.

4. Sub Post Master
Avalpoondurai
Erode District.
... Respondents 2 to 4/Respondents 2 to 4/Defendants 1 & 3

S.A.No.1692/2001

G.Ramanan ... Appellant/Appellant/4th Defendant

Vs.

1.Jayalakshmi ... 1st Respondent/1st Respondent/Plaintiff

2.Union of India
rep.by Post Master General
Chennai.

3.Senior Superintendent of Posts
Post office, Erode.

4. Sub Post Master
Avalpoondurai
Erode District.
...Respondents 2 to 4/Respondents 2 to 4/Defendants 1 to 3

S.A.Nos.421 & 422 of 2003

1. Union of India
Rep.By Post Master General
Mount Road, Chennai.

2.Senior Postal Supervisor Officer
Head Post Office,
Gandhiji Road, Erode - 1.

3. Assistant Post Master
Aaval Poonthurai, Erode.

...Appellants/Appellants/Defendants 1 to 3
(In both)

/vs/

1. Jayalakshmi

... 1st Respondent/1st Respondent/Plaintiff
(in SA.NO.421/2003)

2. G.Ramanan (Ex.Post Master)

... 2nd Respondent/Respondent/4th Defendant
(in SA.NO.421/2003)

1.Sulochana ... 1st Respondent/1st Respondent/Plaintiff
(in SA.NO.422/2003)

2.G.Ramanan(Ex.Post Master)

... 2nd Respondent/2nd Respondent/4th Defendant
(in SA.NO.422/2003)

Common Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 21.07.2000 made in A.S.Nos.17 of 2000, 15 of 2000, 249 of 1999 and 248 of 1999 respectives on the file of the II Additional District Court, Erode, confirming the Judgment and decree dated 17.04.1998 made in O.S.No.291 of 1995, 292 of 1995 respectives on the file of the Additional Subordinate Court, Erode.

For Appellants in S.As.1691 & 1692/2001	: Mr.S.Kadarkarai
For Appellants in S.As.421 & 422/2001	: Mr.N.K.Nithilavani CGSC
For Respondent No.1 in S.As.1691 & 422/2001	: Mr.S.K.Nachimuthu
For Respondents 2 to 4 in S.As.1691 & 1692/2001	: Mr.N.K.Nithilavani CGSC

For Respondent No.1 in S.As.1692 & 421/2003 : Mr.Thirugnanam for M/s.C.H.Pandian

For Respondent No.2 in S.As.421 & 422/2003 : Mr.S.Kadarkarai

COMMON JUDGMENT

These second appeals are directed against the judgments and Decrees dated 21.07.2000 made in A.S.Nos.17 of 2000, 15 of 2000, 249 of 1999 and 248 of 1999 respectively on the file of the II Additional District Court, Erode, confirming the Judgments and decrees dated 17.04.1998 made in O.S.No.291 of 1995, 292 of 1995 respectively on the file of the Additional Subordinate Court, Erode.

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 O.S.No.291 of 1995 is that on 15.10.1986, she deposited a sum of Rs.25,000/- with the Post office of the defendants under one year time deposit scheme vide account No.96495 and subsequently, she deposited a sum of Rs.13,000/- on 03.02.1990 in the same account and the plaintiff had requested for withdrawal of Rs.20,000/- from the said account on 18.10.1988 and the 4th defendant, who was the Post Master at that point of time, received the said amount and deposited the same in R.D.No.4294462 and thus, the plaintiff is due to be paid the above said amount vide the above said R.D.number. The plaintiff is an illiterate person and does not know to read and write in English and reposing confidence on the 4th defendant, she left the custody of her passbook with him and had no reason to suspect the bonafides of the 4th defendant and when the plaintiff approached the 4th defendant for withdrawal of the amount, it was represented by the 4th defendant that the pass book had been misplaced and thereafter, the plaintiff learnt that only a sum of Rs.250/- was available in her account No.96495 and Rs.10/- in R.D.No.4294462 and learnt that the 4th defendant had committed a huge fraud and that, departmental enquiries are pending against him. In this connection, the plaintiff laid the civil action before the Consumer Disputes Redressal Forum, Erode, however, her civil action was dismissed on the ground that only the civil Court can effectively determine the issue involved in the matter and hence, left with no other alternative, the plaintiff has come forward with the suit for recovery of money due to her from the defendants.

5. The case of the defendants 1 to 3, in brief, is that it is false to state that the plaintiff had deposited the amounts

as claimed in the plaint in account No.96495 and also false to state that the plaintiff had deposited the amount in R.D.No.4294426 and only a sum of Rs.250/- and Rs.10/- are lying in the above said accounts of the plaintiff and therefore, the plaintiff cannot lay any action against the defendants for the recovery of the said amount and the suit laid by the plaintiff, without any cause of action, is liable to be dismissed.

6. The 4th defendant are also taken a similar plea as that of the defendants 1 to 3 and contended that the plea of the plaintiff that she had entrusted her passbook with the defendant is false and misleading and the defendant has not committed any fraud on the plaintiff by not allowing the plaintiff to receive the amount lying in the account and hence, the suit is liable to be dismissed.

7. The case of the plaintiff in O.S.No.292 of 1995 is that she had deposited a sum of Rs.10,000/- in account No.96331 on 21.02.1986 of the defendants post office and further, deposited a sum of Rs.3,000/- on 20.03.1989 and also deposited another sum of Rs.3,000/- on 26.03.1991 and in all, a sum of Rs.16,000/- is lying in the said account. Further, the plaintiff made deposit of Rs.7,000/- on 26.02.1987 in the post office of the defendants vide Account No.96329 and withdrew a sum of Rs.2,000/- on 26.12.1990 and a balance of Rs.5,000/- is lying in the said account. Further, the plaintiff has deposited a sum of Rs.3,000/- on 10.04.1988 vide account No.96397 and also further deposited a sum of Rs.2,000/- in the said account on 08.07.1991 and thus, a sum of Rs.5,000/- is lying in the said account. Further, the plaintiff deposited a sum of Rs.4,000/- on 26.05.1988 vide account No.96399 and an additional sum of Rs.1,000/- was deposited in the same account and a sum of Rs.5,000/- is due to the plaintiff under the above said account. The plaintiff has also deposited a sum of Rs.3,000/- vide account No.96306 and further, deposited a sum of Rs.1,000/- in the same account and a sum of Rs.4,000/- is to the credit of the plaintiff in the said account. The plaintiff's request to withdraw the deposited amount was not favorably considered by the defendants and accordingly, her request for withdrawal of Rs.18,000/- from the fourth defendant, according to the plaintiff, the fourth defendant had received the said amount and deposited in R.D. No.4294821 and the said amount in the R.D account is also due to the plaintiff. The plaintiff, believing the fourth defendant's bona fides left the custody of pass books with him and on the other hand, the plaintiff learnt that the fourth defendant had committed a huge fraud in respect of withdrawal of amount lying in her account and necessary departmental proceedings had been initiated against him. In this connection the amount due to the plaintiff in various accounts, civil action had been laid before the Consumer Disputes Redressal Forum, however, the same came to be dismissed as the

issues involved could be determined only a in a civil Court and accordingly, the plaintiff has laid the suit for recover of money.

8. The case of the defendants 1 to 3 is that it is false to state that the plaintiff had deposited the various amounts in various account numbers as put forth in the plaint and the plaintiff had opened the account vide account No.96331 only for Rs.100/- and also opened the account vide account No.96399 only by depositing a sum of Rs.100/- and further, it is false to state that the plaintiff is due to be paid the suit amount by the defendants and the plaintiff and the fourth defendant are close friends and they have joined together and manipulated the records to make wrongful gain and the defendants 1 to 3 are not liable to pay any amount to the plaintiff and necessary departmental proceedings had been initiated against the fourth defendant and the plaintiff has no cause of action to institute the suit and hence, the suit is liable to be dismissed.

9. The case of the fourth defendant, in brief, is that disputing the claim of the plaintiff as having deposit various amounts in various accounts as put forth in the plaint, the defendant has also disputed the custody of the pass books with him by the plaintiff and denied that he had committed fraud on the plaintiff in not returning the amount due to the plaintiff and accordingly, contended that the plaintiff's suit without any cause of action is liable to be dismissed.

10. The above said two suits were jointly tried and accordingly, it is found that in support of the case of the plaintiffs, PWs 1 to 4 were examined and Exs.A1 to 21 were marked. On the side of the defendants, DWs 1 and 2 were examined and Exs.B1 to 21 were marked.

11. On a consideration of the oral and documentary evidence adduced by the respective parties, the Courts below were pleased to accept the plaintiffs' case and accordingly, granted the reliefs in favour of the plaintiffs respectively. Aggrieved over the same, the second appeals have come to be laid by the defendants.

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

in S.A.Nos.1691 & 1692 of 2001

> "(i) Whether the findings of the lower appellate court not vitiated in law by failing to consider the entire evidence on record and fails to apply the correct principles of law?
>
> (ii) Whether the Courts below are correct in decreeing the suit when the plaintiff did not prove her case by producing

necessary documents?

(iii) Whether the courts below are correct in shifting the burden of proof on the appellant?

(iv) Whether the courts below are correct in decreeing the suit when the suit itself is barred by limitation?”

In S.A.Nos.421 & 422 of 2003

“ (i) Whether the Courts below are right in decreeing the suit when they are barred in limitation?

(ii) Whether the courts below are right in decreeing the suit when there is no proof of the deposits for the amounts when the registers of D-1 to D-3 do not contain such entries, especially with regard to the closed account which could not be renewed with further deposits?

(iii) Whether courts below are right in decreeing the suit on the ground of sympathy, when deposits have not been proved for handing over the money to the 4th defendant?

(iv) Whether Courts below are right that only on the ground that the disciplinary action was taken against the 4th defendant by the defendants 1 to 3?

(v) Whether the courts below are right in decreeing the suit on the ground of vexatious liability?

(vi) Whether the courts below erred in awarding interest at 18% per annum for the suit claim?”

13. According to the plaintiff in O.S.No.291 of 1995, she had deposited a total sum of Rs.38,000/- in the post office account of the defendants and further, a sum of Rs.20,000/- has been deposited in the post office RD account and thus, it is contended that the suit amount is liable to be paid to the plaintiff and the plaintiff, believing the bona fides of the fourth defendant, had entrusted the custody of passbook with him. However, the fourth defendant committed fraud on her and swindled the amount and in this connection, departmental action has been initiated against the fourth defendant and hence, inasmuch as the defendants had failed to return the amount due to her lying in her accounts, she has come forward with the suit for recovery of the same.

14. According to the plaintiff in O.S.No.292 of 1995, she had deposited the various amounts in various account numbers as detailed in the plaint and accordingly, it is her case that in

toto, the suit amount quantified at Rs.53,000/- is liable to be paid and she had also believing the bona fides of the 4th defendant, left the custody of her passbook with him. However, the 4th defendant committed fraud on her and swindled the amount and necessary departmental action has been initiated against him and as the defendants has failed to pay the said amount to her lying in her deposits as put forth in the plaint, according to her, she had been necessitated to institute the suit for recovery of the same.

15. The defendants have taken a plea that the plaintiffs, in both cases, have not deposited the amounts as claimed by them respectively in the post office accounts and on the other hand, they have deposited a very megre amount in the accounts of the defendants as detailed in the written statement and nothing more than that and accordingly, it is contended that the amount had been paid to both and as no amount is lying in the accounts opened by the plaintiff in the accounts of the defendants, the suits laid by the plaintiffs are liable to be dismissed.

16. The 4th defendant has also taken a plea that he has not been committed any fraud on the plaintiffs and did not swindle the amounts from their accounts as put forth and hence, the plaintiffs cannot maintain the suit against him.

17. In all these second appeals, the main point that has been urged is that the suits laid by the plaintiffs are hit by the law of limitation. Further, it is also contended that the plaintiffs are not liable to get the suit amount from the defendants, as such amount had not been deposited by them in the various accounts as claimed by them. However, as regards the deposit of various amounts by the plaintiffs in the post office accounts of the defendants, it is found that the pass books and other documents pertaining to the same had been placed by the plaintiffs in original and on a perusal of the same, as rightly found by the Courts below, it is found that various entries in the passbook, particularly, as regards the quantum of amount reflected therein had been altered either in figures or in words and the Courts below have detailed about the same in their judgments and when it is the specific case of the plaintiffs that they are illiterate persons and does not know to read and write in English and accordingly, it could be seen that the plaintiffs would have only solicited the assistance of the fourth defendant, who was then working as Post master in the post offices concerned and accordingly, it is seen that the corrections found in the pass books could not have been made by the plaintiffs and only made by the 4th defendant, who was responsible for handling the accounts at the relevant point of time. That apart, when the amounts reflected in the pass book are found to be entered in the passbook and the seal of the post office having been affixed therein, as particularly found by the

Courts below and as pleaded by the plaintiffs examined as PWs1 and 2, it is seen that inasmuch as they had deposited the amount in the post office under various account numbers, entries with regard to the same, are reflected in the passbooks and however, some corrections are found to be made in the same and when the defendants have not pleaded that the said amendments or corrections had been made by the plaintiffs and when it is found that the plaintiffs are illiterate persons and therefore, there is no chance of the plaintiffs having made the same and it is only the fourth defendant, for some ulterior purpose, had made the corrections with reference to the entries found in the pass books and accordingly, it is found that necessary departmental action has also been initiated against the 4th defendant and he had been placed under suspension, which has been clearly found by the Courts below. Therefore, one way or the other, as rightly found by the Courts below, fraud has been committed on the plaintiffs and they had been deceived from getting the amount deposited by them in various accounts and in such view of the matter, the findings of the Courts below, as to the institution of the suits by the plaintiffs, for the recovery of money, being centering around only questions of fact and when the findings of the Courts below, with reference to the same, are based upon the evidence and materials placed on record and when the said findings are not found to be perverse and without any support, no interference called for with reference to the said findings and hence, this Court also concurs with the findings of the Courts below that the defendants are liable to pay the deposited amount to the plaintiffs.

18. The main question that has been urged in the second appeals is that the suit laid by the plaintiffs is barred by limitation. However, according to the plaintiffs' counsel, as far as the amount lying in the account of the defendants post office, the plaintiffs being the customers and it is found that the plaintiffs would get the cause of action to institute the suit only on demanding the amount from the banker and it is further found that as per Article 22 of the Limitation Act, the plaintiffs have to lay the suit within 3 years from the date of demand. Accordingly, it is noted that the plaintiffs have instituted the present suits immediately within the time allowed by law, after the demand has been made by them to return the amount. Further, it is seen that the plaintiffs had earlier moved the Consumer Disputes Redressal Forum for recovery of the amount, however, their action before the said Forum did not fructify as they had been directed to approach the civil Court as the issues are involved in the matter are complicated, accordingly, it is the case of the plaintiffs that they had laid the civil suit for recovery of the amount. As rightly argued by the plaintiffs' counsel, the action of the plaintiffs in moving the Consumer Redressal Forum for recovery of the amount has to

be excluded as per Section 14 of the Limitation Act and so calculated in entirety, it is found that the suits had been laid by the plaintiffs within the time prescribed by law and hence, there is no question of the suits being barred by limitation.

19. In this connection, the plaintiffs' counsel contended that the relevant Article that would be applicable to the facts at hand is only Article 22 of the limitation Act plus Section 14 of the said Act. In this connection, he placed reliance upon the decisions reported in AIR 1972 MADRAS 238 (Vinaitheethal Achi Vs. Chidambaram Chettiar and others) and AIR 1971 MADHYA PRADESH 243 (Brij Mohandas Gokulchand Vs. Narsinghdas Manoharilal and other). A perusal of the above said decisions would go to show that the plaintiffs' suit for recovery of amount from the banker, they being customers as regards the defendants, it is found that the suits laid within the period of limitation i.e. within 3 years from and when the demand is made, is perfectly within the time and therefore, the contentions of the defendants that the suits are barred by limitation as such cannot be countenanced. The decisions relied upon by the plaintiffs' counsel clearly apply to the facts at hand and accordingly, the same are taken into consideration.

20. As rightly determined by the Courts below, if really, the plaintiffs had not deposited the various amounts in the different accounts of the defendants department, nothing prevented the defendants from producing the necessary original ledger sheets of the said accounts to establish their version. However, it is found that the defendants placed only the xerox copies of the documents without caring to place the original ledger sheets of the various accounts and this would go to show that the defendants had suppressed the production of material records and accordingly, it is found that, as rightly found by the Courts below, adverse inference has to be drawn against the defendants for not placing the original best piece of evidence for effectively adjudicating the issues involved in this matter. It is seen that the same had been suppressed, for, if produced, they would be only pointing to the defects in the defendants case, and would expose the illegal corrections made in the entries of the passbook concerned. As above seen, when the plaintiffs are found to be illiterate ladies and accordingly, when it is found that the pass book entries would not have been handled by them and only made by the officials of the defendants concerned, particularly, the fourth defendant, it is seen that the Courts below have, accordingly, drawn adverse inference against the defendants and not shifted the burden of proof on the part of the defendants for upholding the plaintiffs' case. The defendants cannot be allowed to contend that the plaintiffs have deposited only the megre amounts in the post office accounts only on the basis of the xerox copies of the document placed by them and when the plaintiffs had produced the account

books of the various accounts and when the defendants have not disputed the seal found in the said passbooks and accordingly, the Courts below have rightly held that the defendants had one way or the other attempted to deprive the plaintiffs from receiving the amounts, to which, they are legally entitled to. It is further found that the fourth defendant being a servant of the defendants 1 to 3, for the illegal acts committed by him, the defendants 1 to 3 are also rightly held responsible for meeting the suit claim of the plaintiffs and accordingly, no flaw or mistake could be attributed to the determination of the Courts below for fixing the liability on the defendants 1 to 3 also to pay the suit claim along with the fourth defendant. If really, the plaintiffs had not deposited the amount as put forth by them and their accounts had been legally settled, there is no need on the part of the defendants 1 to 3 to initiate departmental action against the 4th defendant. On the other hand, inasmuch as the 4th defendant, being the servant under the defendants 1 to 3, had swindled the money lying in the accounts of the plaintiffs for ulterior purpose without the knowledge and consent of the plaintiffs, accordingly, it is found that the defendants, in toto, are liable to pay the suit claim and hence, it is found that the Courts below have rightly appreciated the materials placed on record in the correct perspective both factually as well as legally and accordingly, decreed the suits in favour of the plaintiffs and the judgment and decrees of the Courts below do not call for any interference at all and accordingly, they are upheld. The substantial questions of law formulated for consideration in these second appeals are accordingly answered in favour of the plaintiffs and against the defendants.

In conclusion, the second appeals fail and accordingly, are dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

sms

To

1. The II Additional District Judge, Erode.

2. The Additional Subordinate Judge, Erode.

+ 1 cc to Mr.S.Kadarkarai Advocate,SR.89832

+ 1 cc to Mr.N.K.Nithilavani,CGSC, Advocate,SR.90983

+2cc to CH.Pandian, Advocate sr.no.90139(28/02/2018)

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