



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2017

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

A.S.(MD)No.603 of 2011

and

C.M.P.(MD)No.881 of 2017

P.VR.AL.Alagappan

.. Appellant/Plaintiff

Vs.

1. SP.Meenakshi Sundaram

2. SP. Lakshmanan

.. Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of Code of Civil Procedure, to set aside the Decree and Judgment, dated 18.09.2009 passed in O.S.No.127 of 2007 by the learned Additional District and Sessions Judge, Fast Track Court No.III, Madurai and to pass a decree in O.S.No.127 of 2007 for Rs.1,42,000/- with interest at 12% from 21.08.1998 to 18.09.2009 with cost.

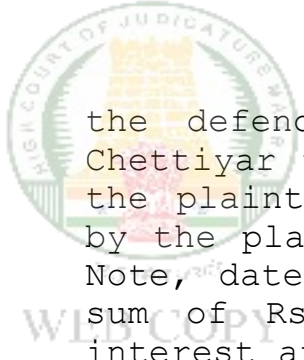
For Appellant : Mr.Pala.Ramasamy

For Respondents : Mr.S.Ramesh

JUDGMENT

This Appeal Suit is filed to set aside the Decree and Judgment, dated 18.09.2009 passed in O.S.No.127 of 2007 by the learned Additional District and Sessions Judge, Fast Track Court No.III, Madurai and to pass a decree in O.S.No.127 of 2007 for recovery of a sum of Rs.1,42,000/- with interest at 12% from 21.08.1998 to 18.09.2009 with cost.

2. The plaintiff in the suit in O.S.No.127 of 2007 on the file of the learned Additional District and Sessions Judge/Fast Track Court No.3, Madurai, is the appellant. The plaintiff is the daughter of one VR.Lakshmi Achi. The suit filed by the plaintiff was on the basis that she was the daughter of the said VR.Lakshmi Achi. Further case of the plaintiff in the plaint is that the defendants' father Mr.Ku.Subbaiah Chettiar borrowed a sum of Rs.95,000/- and executed a demand Pro-Note in favour of the plaintiff's mother. It was the further case of the plaintiff that the said Subbaiya Chettiyar died intestate on 30.10.1997 and that



the defendants who are the legal heirs of the said Subbaiah Chettiyar undertook to discharge the liability of their father to the plaintiff's mother V.R.Lakshmi Achi. It was further alleged by the plaintiff that the defendants executed a demand Promissory Note, dated 21.08.1998 in favour of the plaintiff's mother for a sum of Rs.1,50,000/-, and promised to re-pay the amount with interest at the rate of 24% per annum. Though the suit Promissory Note and transaction are not in dispute, the plaintiff had made the claim to recover the interest at the rate of 24% per annum, namely, a sum of Rs.11,63,903.80/-. The suit was contested by the defendants on various grounds. They also questioned the entitlement of plaintiff to maintain the suit without getting a declaration as to the plaintiff's right to succeed to the estate of her mother VR.Lakshmi Achi and to recover the money.

3. The trial Court though found that the defendants are liable to pay a sum of Rs.1,42,000/- with interest at the rate of 12% per annum from 21.08.1998, the suit was dismissed only on the ground that the plaintiff is not entitled to get a decree in view of non-compliance of Section 214 of Indian Succession Act. Aggrieved by the dismissal of the suit by the trial Court, the plaintiff has preferred the above appeal.

4. The plaintiff filed Succession Original petition in S.O.P.No.23 of 2009 before the Principal Subordinate Court, Madurai, for issuance of a Succession Certificate under Section 372 of the Indian Succession Act, so as to receive to the amount that is found due under the suit Promissory Note alleged to have been executed by the defendants in favour of the said VR.Lakshmi Achi. Though the Succession Original petition was pending, at that time, when the suit was finally disposed of, subsequent to the disposal of the suit, the Succession Original petition filed by the plaintiff was allowed declaring the rights of the plaintiff to succeed to the amount that is found due under the Pro-Note which is the subject matter of the present proceedings. In view of the Succession Certificate that is granted in favour of the plaintiff, the plaintiff is entitled to succeed in the suit. Though the findings of the trial Court is in favour of the plaintiff, the plaintiff's claim was rejected solely on the technical ground that the plaintiff has not obtained the Succession Certificate. In this appeal, the plaintiff has produced the Succession Certificate granted by the Principal Subordinate Court, Madurai in favour of the plaintiff, by way of additional evidence along with the petition filed in C.M.P.No.881 of 2017 in this appeal. In the affidavit filed in support of this petition, the plaintiff has stated that the Succession Certificate itself was obtained only after the disposal of the suit by the trial Court.

<https://hcservices.ecourts.gov.in/hcservices/>

5. I find that this is a fit case in which the appellant/plaintiff can be permitted to file additional evidence.



Though it is open to the respondents/defendants to challenge the findings of the trial Court as regards the liability of the defendants and the suit Promissory Note, the learned counsel for the respondents fairly conceded that he is not able to convince the Court by giving sufficient reasons that the findings of the trial Court on the execution of the Promissory Note and the liability of the defendants under the Promissory Note are erroneous or not supported by reasons.

6. In that view of the matter, this Appeal Suit is allowed and the Judgment and Decree in the suit in O.S.No.127 of 2007, dated 18.09.2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.III, Madurai, is set aside and the suit in O.S.No.127 of 2007 on the file of the Additional District and Sessions Court, Fast Track Court No.III, Madurai, stand decreed by directing the respondents/defendants to pay a sum of Rs.1,42,000/- with interest at the rate of 12% per annum from 21.08.1998 and thereafter interest at the rate of 6% from the date of Judgment till the date of realization. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court No.III, Madurai.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.V.RAGHAVACHARI ADVOCATE IN SR No. 11123

PMU

TE/PM : 17/03/2017 : 3P/4C

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