

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.10.2018

Delivered on : 20.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1090 of 2003

G.Ravikumar ... Appellant/Plaintiff

Vs

T.A.S.Vetri ... Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the decree and judgment passed in A.S.No.94 of 2002 dated 26.03.2003 on the file of the Principal District Judge, Thiruvannamalai reversing the Judgment and decree passed in O.S.No.315 of 2000 dated 11.06.2002 on the file of the District Munsif Court, Thiruvannamalai.

For Appellant : Mr.Rajarajan

For Respondent : Ms.K.Aswini Devi
for Mr.T.R.Rajaraman

O R D E R

The plaintiff in O.S.No.315 of 2000 on the file of the District Munsif, Thiruvannamalai is the appellant. The second appeal is directed against the Judgment and Decree in A.S.No.94 of 2002 of the Principal District Judge, Thiruvannamalai, reversing the Judgment and Decree in O.S.No.315 of 2000. The parties are referred to in the same array as in the suit.

Plaintiff's Case:

2.The suit is filed for recovery of sum of Rs.14,015/- due from the defendant to the plaintiff for the supply of paddy by the plaintiff to the defendant. It is the case of the plaintiff that on 26.07.1999 the defendant had purchased the following items from the plaintiff:

- a) 42 bags of IR 50 paddy at the rate of Rs.420/- per bag.
- b) 37 bags of CO.43 paddy at the rate of Rs.525/- per bag.
- c) 11 bags of CR paddy at the rate of Rs.400/- per bag.
- d) 41 bags of white ponny paddy at the rate of Rs.730/- per bag.

and

e) 22 bags of ragi at the rate of Rs.500/- per bag.

3. On 31.07.1999, the defendant had purchased 16 bags of IR 50 at the rate of Rs.420/- per bag. The total supplies was to the tune of Rs.89,015/-. The plaintiff would submit that on 26.07.1999 the defendant had paid sum of Rs.35,000/- and on 31.07.1999 had paid a further sum of Rs.15,000/-, thereby leaving a balance of Rs.39,015/-. On 23.09.1999 the defendant paid a sum of Rs.10,000/- and Rs.5,000/-. Thereafter, on 10.11.1999, he had issued a Cheque for Rs.10,000/- and on 25.11.1999, a further Cheque for Rs.10,000/-. However, only the cheque dated 10.11.1999 was honoured and the other cheque was not paid. Therefore the sum of Rs.14,015/- remained unpaid it is the case of the plaintiff that the transaction was endorsed on a slip of paper and the paper contained the hand writing of both plaintiff and defendant (This document is marked as Ex.A.1).

4. Since the defendant did not come forward to honour his commitment the plaintiff was constrained to issue legal notice dated 12.02.2000. However, thereafter, there was no response from the defendant and therefore the plaintiff was left with no other alternative except to file the suit.

Defendant's Case:

5. The defendant flatly denied the purchase of the various quantities of paddy as described in the plaint but would simply contend that he had purchased agricultural produce, for which a sum of Rs.20,000/- was due, towards which he had issued two cheques. The defendant would admit that only one was honoured but he would however contend that he was not aware of the presentation of the two cheques and that he had sufficient funds to pay the sum of Rs.10,000/-. He would further contend that after receipt of the summons in the suit he had proceeded to Thiruvannamalai and had paid a sum of Rs.10,000/- to the plaintiff in the presence of one Pandiyan. He and the plaintiff had prepared an agreement and the plaintiff had admitted to withdraw the suit as the entire money has been paid. Therefore, the defendant had contended that he did not owe any money to the plaintiff. Therefore, he sought for dismissal of the suit.

Trial Court:

6. During the trial the plaintiff had examined himself and two others as P.W.1 to P.W.3 and marked EX.A.1 to EX.A.2. On the side of the defendant D.W.1 and D.W.2 was also examined and marked EX.B.1 and EX.B.2.

The trial Court had framed the following issues:

a) Whether it is true that the cheque dated 25.11.1999 for

Rs.10,000/- issued by the defendant had been dishonoured?

b)Whether the defendant had paid the sum of Rs.10,000/- in cash and on 12.09.2000, the plaintiff had signed an agreement agreeing to withdraw the suit?

c)Whether the receipt of EX.A.1 is inadmissible in evidence?

7.From the records it is seen that originally the suit was decreed on 11.06.2002 against which defendant had preferred an appeal before the Principal District Court, Thiruvannamalai in A.S.No.94 of 2002 and the appeal was allowed and remanded back for framing issues regarding E.X.A1 and to collect Stamp duty and penalty if required. It was after the remand that the additional issue had been framed.

8.The learned District Munsif, Thiruvannamalai after considering the evidence both oral and documentary came to the conclusion that defendant was due and owing to the plaintiff the sum of Rs.14,015/-. The learned Judge had returned a finding in favour of the plaintiff on all issues. The learned Judge has held that the defendant had failed to prove EX.B.2 agreement since the plaintiff had denied the signature therein. The suit was ultimately decreed.

Appellate Court:

9.The aggrieved defendant had challenged the Judgment and Decree in O.S.No.315 of 2000 before the Principal District Judge, Thiruvannamalai in A.S.No.94 of 2002. The learned Judge framed the following points for consideration:

a)Whether the transaction between the plaintiff and the defendant and the alleged receipt EX.A.1 are true?

b)Whether the dishonoured cheque dated 25.11.1999 issued by the defendant is true?

10.With reference to the point No.1 the learned District Judge has held that the plaintiff had not filed Account Books, Bills and Receipt to prove the transaction between the plaintiff and the defendant and that the plaintiff is only relying upon EX.A.1. The learned Judge also found discrepancy in the evidence of the plaintiff witnesses. The learned Judge has held that the plaintiff has not proved that the cheque for Rs.10,000/- dated 25.11.1999 had been presented by him and was dishonoured. Though, the learned Judge has held that the EX.B.2 cannot be relied upon he however proceeded to allow the receipt only on the ground that from the evidence of the defendant it was clear that only a sum of Rs.10,000/- was due. However, considering the fact that EX.A.3 cheque was still with the plaintiff. No amount was payable by the defendant.

Second Appeal:

11. Challenging this Judgment and Decree the plaintiff is before this Court.

Substantial Questions of law framed in the Second Appeal:

a) Whether the lower Appellate Court was justified in dismissing the suit by allowing the first appeal when the defendant admitted his liability under suit transaction?

b) Whether the finding of the Lower Appellate Court is based on legal evidence?

12. Heard, Mr. Rajarajan, learned counsel for the appellant and Ms. K. Aswini Devi for Mr. T. R. Rajaraman, the learned counsel for the respondent.

13. The learned counsel for the appellant/plaintiff would argue that the Appellate Court having disbelieved EX.B.2 ought to have dismissed the appeal and the Lower Appellate Court has proceeded to deny even the sum of Rs.10,000/- on the ground that the appellant/plaintiff was in possession of EX.A.3 cheque. The counsel would therefore argue that this finding is totally perverse since the cheque had long since become stale and there is no possibility of the petitioner encashing the same. Further, even as per EX.B.1, the balance available was only sum of Rs.241/- and therefore there was no question of there being sufficient funds on the date of EX.A.3.

14. Ms. Aswini Devi, learned counsel for the respondent would argue that the cheque for Rs.10,000/- was never presented by the plaintiff since it is the original cheque that has been filed into Court as EX.A.3 and further there is no endorsement therein to show that it has been dishonoured. She would therefore contend that the defendant had discharged his liability. She would also rely on the finding of the Lower Appellate Court that the appellant has not substantiated the supply as well as the payments.

15. Heard both parties and perused the records. It is seen that the plaintiff has come forward with the specific case that he had made supply to the defendant. The defendant after making payments had kept back a balance of Rs.14,015/-. EX.A.1, which is the receipt would show each of these payments and supplies. EX.A.1 appears to have been written on various dates as evident from a perusal of the same. The recitals in EX.A.1 would confirm the pleadings in the plaint with reference to the supply of paddy. The defendant does not deny purchasing paddy from the plaintiff, he only denies the purchase of the quantities as

mentioned in the pleading but would proceed to contend that he has due owing only a sum of Rs.20,000/- towards purchase of "Agricultural Produce".

16.The written statement does not give any details about the quantity purchased by the defendant as also the price of this quantities. On the contrary the defendant would only submit that he had issued two cheques for Rs.10,000/- towards the amounts due without giving any details of the quantity purchased, price of the paddy, amount paid etc. From perusal of EX.B.1, it is further seen that on the date of 25.11.1999 the balance that was available in the defendant's account was only a sum of Rs.241/- and therefore the defendant cannot contend that he has discharged his liability with reference to the sum of Rs.10,000/- as he had insufficient funds to his credit. It is the specific case that the balance Rs.10,000/- was paid by cash and the same is evidenced by EX.B.2. Both the Courts below had refused to believe EX.B.2 agreement which was denied by the plaintiff.

17.In these circumstances, the Lower Appellate Court has gravely erred in contending that the appellant/plaintiff is not entitled to any due. Having accepted the fact that he owed money to the plaintiff and considering the fact that the defendant had given no details about the quantity purchased by him and the price due from the defendant, it can only be presumed that the supplies was as per EX.A.1. Therefore, the defendant is liable to pay the suit claim.

18.This Court answers both the questions of Law in favour of the plaintiff.

19.The Lower Appellate Court has substantially erred in law allowing the first appeal despite the defendant admitting his liability and basing its finding on mere presumptions.

In the result, this Second Appeal is allowed the Judgment and Decree in A.S.No.94 of 2002 is set aside and the Decree in O.S.No.315 of 2000 is confirmed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The District Munsif Court,
Thiruvannamalai.

2.The Principal District Judge,
Thiruvannamalai.

3.The Section Officer,
V.R.Section, High Court, Madras 600 104.

+1 cc to Mr.r.Rajarajan, Advocate SR.No.79505

Order in
S.A.No.1090 of 2003

EV(CO)
CSL/17.12.2018



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