

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.09.2018
Pronounced on	29.10.2018

Coram

The Honourable Ms.Justice P.T.ASHA

S.A.No.1099 of 2003

M.Somasundaram

...Appellant/Defendant/Defendant

Versus

Jayaram Saw Mill
Rep. by its Partners
1.Palanivel Chettiar
2.Sekar
3.Muthukumar
4.Mythili
5.Avaiyambal

...Respondents/Appellants/Plaintiffs

This Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 05.09.2002 made in A.S.No.14 of 2002 on the file of the Additional Sub Court, Mayiladuthurai, in partly reversing the judgment and decree dated 21.12.2001 made in O.S.No.603 of 1997 on the file of the Principal District Munsif Court, Mayilduthurai.

For Appellant : Mr.R.Siddharth
for Mr.T.R.Rajaraman

For Respondents : Mr.S.Soundhar

O R D E R

This Second Appeal arises against the judgment and decree passed by the learned Additional Sub Judge, Mayiladuthurai in A.S.No.14 of 2002 dated 05.09.2002, in and by which the judgment and decree of the learned Principal District Munsif, Mayiladuthurai made in O.S.No.603 of 1997 dated 21.12.2001 had been reversed.

2. The defendant in the suit is the appellant before this Court. While admitting the above Second Appeal, the following substantial questions of law have been framed by this Court:

“(i) Whether the learned Additional Subordinate Judge was right in reversing the findings of the learned Principal District Munsif, when the same had become final between the parties in view of the judgment in S.C.No.55 of 1997 District Munsif Court, Mayiladuthurai against which the appeal was filed by the plaintiffs?

(ii) Whether the learned Additional Subordinate Judge was right in granting a decree in favour of the plaintiff who had not maintained proper accounts to evade tax payment and had not recorded the transactions with the defendant/appellant as required under the Partnership Act, being one against public policy?

(iii) Whether the learned Additional Subordinate Judge was right in ignoring Ex.B2 to conclude the non-payment by defendant of the sum of Rs.20,000/- when the said document improbabilities the case pleaded by the plaintiff?”

3.1. The brief facts essential for the disposal of this Second Appeal are as follows:

The respondents herein had filed the Suit in O.S.No.603 of 1997 on the file of the Principal District Munsif Court, Mayiladuthurai for recovery of a sum of Rs.11,858/- i.e., a sum of Rs.8,845/- towards principal and Rs.3,013/- towards interest from the date of purchase to the date of the suit. According to the plaintiffs, the above sum was due towards the purchase of Iron Rods from the respondents firm by the appellant herein for over a period of five months. The respondents would contend that they had issued a legal notice on 12.08.1996 to which the appellant had sent a reply dated 28.08.1996 denying the claim. Hence, the Suit.

3.2. The appellant had filed a written statement inter alia denying the claim and stating that apart from the respondents firm, there was another firm viz., Mayiladuthurai Timber Depot in which the partners of the respondents firm were also partners. Both the firms were operating from the same place and the supplies were also being made by the two firms. In fact, the Notice, Ex.A7 dated 12.08.1996 was also issued on behalf of both the firms in which they had claimed total due of Rs.11,160/-.

3.2. The appellant herein had sent a Reply Notice dated 28.08.1996 wherein he has contended that the entire amount due has been cleared and that no amounts were due to the respondents herein. The appellant would further contend that although the respondent had issued a common notice for both the firms, viz., Jayaram Saw Mill and Mayiladuthurai Timber Depot and Mayiladuthurai Timber Depot had instituted a Small Causes Suit in S.C.No.55 of 1997. The appellant had further contended that as on 15.11.1994, a sum of Rs.26,960/- was due towards both the firms and towards this, an outstanding cash of Rs.20,000/- was paid by him to Palanivel Chettiar, the main partner in both the firms and Rs.7,000/- was paid to Narayana Ayyar, another partner by way of a cheque. Both of which are not accounted by the respondent firm.

4. One Mr.Narayanaswamy, Manager of the firm was examined as P.W.1 and Exs.A.1 to 17 were marked on the side of the respondents/plaintiffs. The appellant examined himself as D.W.1 and marked three documents as Exs.A1 to A3. The Trial Court had framed four issues and one additional issue. With reference to issues Nos.1 & 2, the trial Court had returned a finding in favour of the appellant herein. The additional issue as to whether the non-joinder of certain partners had effected the suit was also answered in favour of the appellant. The third issue with reference to limitation was answered in favour of the respondents herein. The trial Court had proceeded to dismiss the suit on the following grounds:

(a) That from the evidence of D.W.1, it was clear that the respondents were not in the habit of maintaining proper accounts and the amounts paid were not given credit to.

(b) Palanivel Chettiar, the partner to whom the amounts were paid and who was managing both the firms was not examined and hence, adverse inference had to be drawn.

5. Towards the outstanding sum of Rs.26,960/-, the appellant had cleared the same by paid a cash of Rs.20,000/- to Palanivel Chettiar and Rs.7,000/- by cheque to Narayana Ayyar towards a sum of Rs.6,960/- which is the balance shown in Ex.B2.

6. The trial Court returned the finding that the non-joinder of the subsequent partners effected the Suit.

7. The judgment and decree of the trial Court was taken up on Appeal in A.S.No.14 of 2002 to the Appellate Court and the learned Additional Sub Judge, Mayiladuthurai by his judgment and decree dated 05.09.2002, reversed the judgment and decree passed by the learned Principal District Munsif, Mayiladuthurai made in

O.S.No.603 of 1997 dated 21.12.2001. Challenging the same, the appellant is before this Court.

8. Heard Mr.R.Siddharth, learned counsel for the appellant and Mr.S.Soundhar, learned counsel for the respondents.

9.1. A perusal of the judgment of trial Court shows that the learned Principal District Munsif, Mayiladuthurai considering the evidence of D.W.1 and Ex.B2 had come to the conclusion that the defendant had repaid the entire outstanding as on 15.11.1994, the sum under Ex.B2 which is outstanding was Rs.26,960/-. The appellant had adduced evidence to the effect that a sum of Rs.20,000/- had been paid by cash to Palanivel Chettiar, one of the main partner which was not accounted for and a cheque of Rs.7,000/- was paid to the other partner Narayana Ayyar which was also not been accounted for in the accounts of the respondents firm. That apart even under Ex.A7 legal notice, the amounts outstanding was a sum of Rs.11,160/-. This amount was due to both the firms.

9.2. The Trial Court has in great detail considered the admissions of P.W.1 to the effect that the partners were not in the habit of bringing in the amounts into the firms' account and also to the effect that both the firms were operating from the same premises and amounts received were accounted for as per the instructions of the partners. The Trial Court has drawn an adverse inference for the non examination of the partner, Palanivel Chettiar since even according to P.W.1, he is the person who is managing both the firms and it is also the case of the appellant that the sum of Rs.20,000/- in cash had been paid by him to Palanivel Chettiar. The non-examination of the said Palanivel Chettiar had greatly prejudiced the appellant.

9.3. The Trial Court had clearly returned the finding that the respondents firm had failed to substantiate their case. The lower Appellate Court has failed to appreciate that both the suits in O.S.No.603 of 1996 and S.C.No.55 of 1997 were tried together and a common evidence was let in in respect of the two suits. Although the judgments were rendered separately against the dismissal of the S.C.No.55 of 1997, the respondents herein had not preferred any Appeal thereby acknowledging the common evidence that had been let in in the two cases. The respondent is therefore bound by the judgment and decree in S.C.No.55 of 1997.

10. The learned Judge has erred in casting the onus upon the defendant to prove the case of the plaintiffs totally overlooking the axiomatic principle of law that the plaintiff has to win or lose on the strength of his case and not the weakness of the defense. The appellant had come forward with a

specific defence that no amounts were due by him to the respondent firm and therefore, it was for the respondents/plaintiffs to prove their case. The admission of P.W.1 regarding the manner in which the accounts were maintained and how the payments were accounted for probablizes the case of the appellant that he has repaid the entire amounts to the respondents firm. Particularly, when a sum of Rs.7,000/- has been paid by way of cheque which also has not been accounted for.

11. In the result, the substantial questions of law framed by this Court are answered in favour of appellant. The Second Appeal is therefore allowed and the judgment and decree passed by the learned Additional Sub Judge, Mayiladuthurai in A.S.No.14 of 2002 dated 05.09.2002 is set aside and judgment and decree of the learned Principal District Munsif, Mayiladuthurai made in O.S.No.603 of 1997 dated 21.12.2001 is confirmed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Principal District Munsif Court,
Mayiladuthurai.
2. The Additional Sub Court,
Mayiladuthurai.

+1 cc to M/s.S.sounthar, Advocate Sr.No.73817

Order in
S.A.No.1099 of 2003

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