IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1991 of 1999

1. T.R.Krishniah ... Appellant/plaintiff

Vs.

1.T.R.Vijaya
2.T.R.Kalavathi
3.T.R.Devaki
4.T.R.Indira
5.T.R.Chandraleka
6. The Indian Overseas Bank,
Shevapet,
Salem-2. ...Respondents/Defendants

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C., to set aside the Judgment of the Subordinate Court, Salem dated 28.07.1997 made in A.S.No.53/1997 reversing the Judgment and Decree of the Additional District Munsif, Salem dated 24.10.1994 made in O.S.No.218/1997.

For Appellant : Mr.P. Jagadeesan

For Respondents : No appearance

J U D G M E N T

The appellant/plaintiff, who lost the case before the lower appellate court has filed this present second appeal.

2. For the sake of convenience, the parties are referred to as per the rankings in the lower court.

3. The appellant/plaintiff has filed a suit for declaration declaring that the suit fixed deposit amount belonging to the plaintiff alone is entitled to the amounts covered by the Fixed Deposit Receipt Nos.241132/S Fixed Deposit/82/80, dated 21.08.1980 for Rs.10,000/- with the first defendant bank and the subsequent interest thereon from 02.12.1985 at 12% p.a., till date of payment by the first defendant Bank to the plaintiff.

4. Though the lower court has decreed the suit in favour of the appellant/plaintiff, the lower appellate court has reversed the order of the lower court. As against the order of the lower appellate court, the present Second Appeal is filed.

5. The averments contained in the plaint, in brief, are as follows:

The father of the plaintiff, T.R.Ranganayakalu Iyer had five sons and five daughters and he sold his property bearing Door No.94/120 in the eastern side of the Adivenkatachalapathi Iyer street, Shevapet, Salem, to his son T.R.Ananth Iyer and his wife on 21.08.1980 under a registered sale deed. The father of the plaintiff realised a sum of Rs.70,000/- by that sale. At that time, he had other cash savings also with him. Therefore, he decided to deposit Rs.10,000/- to each of his sons and Rs.15,000/- to each of his daughters. Accordingly, he entered into an agreement between the family members and as per the agreement, he deposited the amount in the first defendant bank on 21.08.1980. At that time of making the said deposit, one of the plaintiffs, viz., daughter Sumitra was not present. Hence, the deposits were made showing the second defendant / T.R.Rajulaiah to receive the amount on behalf of Sumitra.

6. The second defendant, being a party to the said agreement and having acted upon the terms of the said agreement had withdrawn a sum of Rs.10,000/-from the first defendant bank which was earmarked for him and interest thereon till the date of his withdrawing as a survivor under his Fixed Deposit. As a matter of fact, Sumitra has drawn from the first defendant Bank a sum of Rs.15,000/- with interest thereon. But the Fixed Deposit and other agreements were entrusted to one T.N.Sonnappa Iyer who is none other than the brother of the plaintiff's father. After collection of the said Fixed Deposit receipts, the second defendant had withdrawn a sum of Rs.10,000/- and other legal heirs had withdrawn their respective shares from the first defendant bank. Sumitra has also withdrawn her share from the Bank.

7. When the plaintiff showed his Fixed Deposit receipt having got it from T.N.Sonnappa Iyer before the date of maturity and demanded Rs.10,000/- and interest thereon, the then Manager of the first defendant bank called upon the plaintiff to open an account in his name. Accordingly, the plaintiff opened an account in his name on 04.02.1983 by depositing Rs.100/- Thereafter, the first defendant bank credited the interest due to him as per the Fixed Deposit receipt referred above. Accordingly, first defendant bank gave credit on 05.02.1983 to Rs.165.28p., being interest on Rs.10,000/- for the period from December 1982 to January 1983 and entered the same

in the passbook of plaintiff. On 02.12.1985, the first defendant bank gave credit to the sum of Rs.12,947.27/- being the amount due to plaintiff as per receipt SFD.No.82/80 deposit in his name.

8. Thereafter, the plaintiff applied for the issue of a cheque book in his name on 26.12.1985 to enable him to withdraw amount. The first defendant bank has after receipt of the said letter of plaintiff dated 26.12.1985, sent a letter by post, dated 26.12.1985 stating that they have addressed the Central Office seeking their advice and asking him to bear the inconvenience, as subsequent to the crediting of the amount in plaintiff's name, the second defendant sent a registered letter for stopping payment. Based on his stopping letter, first defendant bank again wrote a letter to plaintiff and second defendant on 07.02.1986, calling upon them to produce the court order directing them to pay the amount to the same person. The bank letter is absolutely unwarranted and illegal, as the Fixed Deposit amount under SFD.82/80 dated 21.08.1980 is only for the benefit of the plaintiff and the said amount was also credited in the account of the plaintiff. However, the second defendant cannot put forward any right to the amounts covered by the said receipt dated 21.08.1980 as against non-payment of the amount and said amount claimed by the second defendant is illegal and unsustainable. Aggrieved by the same, the plaintiff has filed a suit with the above prayer.

9. (a) The averments contained in the written statement, in brief, are as follows:

The first defendant bank categorically admitted that Fixed Deposit amount was credited to the account of the plaintiff. On the basis of the representation made by the plaintiff that the second defendant has agreed to receive the interest alone and no objection to make payment to the plaintiff and subsequently, on receipt of stop payment letter from the second defendant, it has reversed the entry and kept the amount in sundry creditors. As there are counter claims in respect of Fixed Deposit amount, they have been called upon to produce the court order. The allegation that the inclusion of T.R.Rajulaiah is a fraudulent insertion by the second defendant are all false and denied 12% interest as against the claim of appellant.

(b) The averments of the second defendant are as follows:

The agreement dated 21.08.1980 must be a forged one. The very existence of agreement is being denied. The plaintiff being eldest son, married twice and took a government job. The plaintiff could not cooperate with his father in the family matters. On 1957, the plaintiff and the second defendant each are given one house and the plaintiff's father conducted the Mill with his other three sons. In 1957, the plaintiff and the second defendant severed there connections with their father. In 1978, the plaintiff's father and his three other sons divided the mill and other properties. When the plaintiff has demanded some share in the mill, the same was negatived by his father and there was a dispute with regard to allotment of shares in the Mill. Accordingly, the plaintiff refused to receive the amount unless such allotment is made. Hence, no amount was given to the plaintiff out of sale proceeds. The second defendant, being a driver and having four female children, the his father thought of giving two shares to the second defendant and hence, Rs.20,000/- was deposited under two Fixed Deposit receipts and T.R.Ranganayakulu Iyer enjoyed the interest due on the Fixed Deposit receipts and the second defendant has to receive the said amount. The Fixed Deposit receipts are kept by the T.N.Sonnappa Iyer who has leased out his property to M/s. Indian Overseas Bank, Salem Main Branch. At the time of the deposit, the signatures of all were obtained by the first defendant in several printed and blank papers. The plaintiff was estopped from claiming the amount on the basis of the alleged agreement which is not admitted by the defendant. When the amount is demanded by the second defendant, the first defendant has declined to pay and has sent a reply stating that the Fixed Deposit bears in the name of the plaintiff which, this defendant learns is cooked up by the plaintiff with the assistance of T.R.Sonnappa Iyer. The said Fixed Deposits were really intended for the benefit of second defendant and not for others.

(c) During the pendency of the appeal before the lower appellate court, the second defendant has passed away and thereby, his legal heirs were impleaded as appellants 2 to 5. Subsequently, the second defendant's wife also died pending second appeal before this court. Accordingly, the legal heirs of the second defendant are shown as respondents 1 to 5 and the bank is shown as sixth respondent in the second appeal.

10. On perusal of the entire records and documents and after framing the issues, the lower court decreed the suit and granted decree in favour of the plaintiff. Aggrieved by the same, the second defendant, father of respondents 1 to 5 has preferred appeal before the lower appellate court. The lower appellate court had reversed and dismissed the decree granted by the lower court. As against the lower appellate court Judgment, the present second appeal is filed.

11. At the time of admission, this court has framed the following substantial questions of law:

i) Whether the lower appellate court is right in holding that Ex.A11 has no evidentiary value, especially when the plaintiff is unable to bring the original of Ex.A11 in spite of his best efforts and hence the court is competent to admit the xerox copy as secondary evidence?

ii) Is not the plaintiff entitled to get the amount under the suit Fixed Deposit Receipts in view of the agreement Ex.A11 and the subsequent letter sent Ex.A12 sent by the children of Sri Ranganayakalu to the bank supporting the case of the plaintiff?

iii) Whether the lower appellate court right in not drawing an adverse inference against the first defendant for not producing the original of Ex.A11 in spite of the fact that the plaintiff filed an application to that effect?

iv) Whether the lower appellate court right in holding that the suit Fixed Deposit is not intended for the plaintiff ignoring the fact that it bears the name of the plaintiff as "For T.R.Krishniah?"

12. Learned counsel for the appellant would submit that the plaintiff and the second defendant's father sold the property in the year 1980 and the father of the plaintiff had five male and five female children. He had decided to deposit Rs.10,000/- to each of his sons and Rs.15,000/- to each of his daughters. Accordingly, he secured Rs.1,25,000/- from the sale proceeds and the cash amount were deposited in the first defendant bank and each of the Fixed Deposits stand in the name of his respective children. Prior to such deposits, the plaintiff and the second defendant's father prepared an agreement among the children and in that agreement, he categorically states that each sons is entitled to Rs.10,000/- and each daughters are entitled to Rs.15,000/-. Accordingly, the said deposits were made in the name of their respective children in the bank. However, at the time of agreement, the plaintiff is not available and hence,the father of the plaintiff deposited his amount in the name of second defendant for plaintiff and his name was shown in the fixed deposit. Thereafter, the plaintiff's father handed over the Fixed Deposits to the second defendant's uncle T.R.Sonnappa Iyer since the plaintiff's father retained his life interest in the Fixed Deposit.

13. After the death of the plaintiff's father, his children i.e., the brothers and sisters of the plaintiff collected the Fixed Deposit receipts and claimed amount from the first defendant bank. Accordingly, the plaintiff also made a request to the bank to credit the entire amount in the name of

plaintiff. Accordingly, bank accounts were opened and the entire amounts were credited in the name of the plaintiff. At that time, the second defendant has raised an objection with the bank that the plaintiff has no right to claim that amount and the amount is deposited for the welfare of the second defendant. Based on the objection given by the second defendant, refusal by the sixth respondent Bank to pay the amount in favour of the plaintiff, is unsustainable in law. Even on bare perusal of the Ex.A11, the contents of the letter of agreement (Ex.A11) and Fixed Deposit (Ex.A2) would show plaintiff's interest over the deposit. Though the lower court decreed the suit in favour of the plaintiff, by erroneous consideration, the lower appellate court has dismissed the suit and reversed the well considered order passed by the lower court. As against the lower appellate court findings, the second appeal is filed.

14. No representation for the respondents as well as for the bank. However, considering the age of the case, this court has decided the case based on the available materials on record.

15. On perusal of the entire records and materials, the undisputed facts are that the father of the plaintiff, T.R.Ranganayakalu Iyer had five sons and five daughters. In the year 1980, the plaintiff's father sold the property and appropriated a sum of Rs.70,000/- from the sale proceeds and received the cash. He decided to deposit the benefits to their children. Accordingly, the plaintiff and second defendant's father entered into an agreement between the sons and daughters on 21.08.1980 and that xerox copy of agreement was marked Ex.A11.

16. In support of the contention, the brother of the plaintiff's father. T.R.Sonnappa Iyer was examined as PW3 and the witness to the agreement was examined and marked as PW2. P.W.s.2 and 3 categorically admitted the contents in the agreement and Fixed Deposit in the name of the plaintiff.

17. Though the said agreement was denied by the second defendant, the agreement was marked before the lower court. After the agreement, the Fixed Deposits were made in favour of his five sons and five daughters. Each of his sons are entitled to get Rs.10,000/- and each of his daughters are entitled to get Rs.15,000/- respectively. Accordingly, each son will get Rs.10,000/- and each daughter will get Rs.15,000/-. Due to non-availability of the original deposit, the plaintiff marked such deposit as Ex.A2. The second defendant marked the original Fixed Deposit receipts as Ex.B3 through bank. On perusal of the agreement, it is seen that the plaintiff and the second defendant's father made a deposit of Rs.10,000/- to each of

his sons and Rs.15,000/- to each of his daughters.

18. Apart from the above, even on bare perusal of the Exs.B3 and A2 though the Fixed Deposit receipts disclosed that the plaintiff's father name, T.N.Ranganayakulu Iyer and second defendant T.R.Rajulaiah (for T.R.Krishnaiah), this court easily understands the intention of plaintiff's father/T.N.Ranganayakulu Iyer that such deposits were made in the name of plaintiff. However, the second defendant's name is mentioned as nominee for plaintiff and the bank filed a written statement, in which, it is admitted that the entire amount was credited in the name of the plaintiff and deposited the Fixed Deposit amount as well as maturity amount in the bank account. Since the second defendant objected the same, the amount was not disbursed in favour of the plaintiff. Though the second defendant raised the objection with regard to the agreement between the brothers and sisters, in Ex.A12, which was the letter sent by brothers and sisters of the plaintiff and the second defendant to the first respondent bank, it is clearly admitted that the agreement and the Fixed Deposits were made for the benefit of plaintiff and first defendant's brother and sisters, particularly that plaintiff deposit was made in the name of second defendant for the benefit of plaintiff and the said letter was marked as Ex.A12 and all the brothers signed in the letter and the same was marked as Ex.A12. On perusal of the Ex.A12 and the fixed deposit receipts, this court can easily arrive at a conclusion that the plaintiff and the second defendant's father made deposits for the welfare of the plaintiff and its denial by the second defendant is unsustainable. Without analysing these facts, the lower appellate court had arrived at an erroneous conclusion and rejected the plaintiff's prayer which is unsustainable. In view of the above, the said perverse order is liable to be interfered with and accordingly, the order of the lower appellate court is set aside and the decree granted by the lower court is restored.

19. In the result, the substantial questions of law are answered in favour of the appellant and the second appeal is allowed by setting aside the order of the lower appellate court and confirmed the order of the lower court. No costs. Consequently, connected miscellaneous petition, if any, is closed.

The appellant/plaintiff is entitled to get the principal amount and interest accrued thereon from the Bank.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Subordinate Court,
   Salem.

2. The Additional District Munsif,
   Salem

copy to.

The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+1cc to Mr.P.JAGADEESAN, Advocate, S.R.No.16592

S.A.No.1991 of 1999

RSY(CO)
TR(09/04/2018)