IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED and:09.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.889 of 2000

1.Palani Gounder (died)
2.Palaniammal
3.Palaniammal
4.Sankarayi
5.Deivanai Appellants 1 to 5/Plaintiffs 1 to 5

6.Palaniammal
7.Minor Maheswari Appellants 6 & 7

Minor R7 Rep. By mother and natural guardian/Palaniammal (Appellants 6 & 7 are brought on record as LRs of the 1st appellant and 6th Appellant is appointed as the guardian of the 7th appellant vide order of the court dated 05.08.2005 made in CMP.Nos.966 & 967/2004)

Vs.

Kuppanna Gounder ...Respondent/Defendant

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C.,1908 to set aside the Judgment and Decree dated 17.02.1999 made in A.S.No.104/1998 (on the file of the Sub Court, Bhavani) confirming the Judgment and Decree dated 28.01.1998 made in O.S.No.609/1996 (on the file of the Principal District Munsif Court, Bhavani).

For Appellants : M/s. P.Saritha for Mr. D.Sivakumar

For Respondents :Mr. P.Parthi Kannan for Mr. S.Kaithamalai Kumaran

J U D G M E N T

The unsuccessful appellants/plaintiffs, who lost the case before the courts below has filed the present second appeal before this court.

2. The suit is filed for recovery of money based on the promissory notes. Both the courts have concurrently held against the appellants/plaintiffs.

3. The sum and substance of the plaint averments are as follows:

The first plaintiff is the son and plaintiffs 2 to 5 are the daughters of one Ammasai Gounder. The said Ammasai Gounder died on 17.11.1975 and the plaintiffs are the legal heirs of the said Ammasai Gounder. The defendant borrowed a sum of Rs.1,650/- from the deceased Ammasai Gounder on 24.03.1974 and executed a suit 'A' promissory note. The promissory note is to pay the amount due with interest on 12% p.a. Again on 07.12.1974, the defendant borrowed another amount of Rs.4000/- from the deceased Ammasai Gounder and executed a suit-B promissory note promising to repay the amount with interest. Subsequently, he borrowed Rs.550/- on 11.12.1975 from the deceased Ammasai Gounder. All the three promissory notes were executed. Subsequently, the said Ammasai Gounder died leaving behind the plaintiffs as his Legal heirs. Therefore, the plaintiffs have become entitled to file a suit. But the plaintiffs could not file a suit against the defendants from 15.01.1975 to 14.2.1975. On account of the Debt Relief Act, the said period has to be excludes in calculating the debt recovery period for filing the suit of recovery based on the promissory notes. Hence, the suit is not barred by limitation.

4. Defendant has filed the written statement and the sum and substance filed by the defendant is as follows:

The defendant denied the promissory notes executed on the dates mentioned in the plaint. In fact, the said Ammasai Gounder is the sister's husband of the defendant. For the purpose of agricultural activities, the defendant used to borrow hand loan from one Ammasai Gounder for which he issues an unsigned receipts to his brother-in-law/Ammasai Gounder. During the life time of Ammasai Gounder, the entire amount was settled to Ammasai Gounder and there is no due to Ammasai Gounder. The said Ammasai Gounder died in the year, 1975 and for consideration, the plaintiffs have filed a vexatious suit against the defendant. Accordingly, the lower appellate court has concurrently held against the plaintiffs since the plaintiffs filed a suit after 23 years to recover the money against the close relatives of the defendant.

5. At the time of entertaining this second appeal, this Court has framed the following substantial questions of law:

> “When the defendant had admitted the receipt of consideration under the suit pronote and pleaded the discharge, whether the Courts below are correct

in placing the burden of proof on the plaintiff?”

6. Learned counsel appearing for the appellants submitted that though the promissory notes were executed by the defendant in favour of the plaintiffs and father in the years 1974 and 1975, the plaintiffs not able to file suit in view of the Debt Relief Act. Thereafter in the year 1980, the suit was filed by the plaintiffs. However, it is numbered in the year 1989 only. Accordingly, the suit was barred by limitation. The suit is not filed within the stipulated time.

7. Without considering all these aspects, the lower court as well as the lower appellate court dismissed the suit. Apart from that, DW1 in his cross examination has denied the execution of promissory notes. However, he used to borrow hand loan from the plaintiffs' father, Ammasai Gounder.

8. In view of the categorical statement, it is admitted that the plaintiffs/appellants are entitled to recover the amount from the defendant.

9. Learned counsel for the respondent/defendant would submit that the act of the plaintiffs filing a suit after 23 years is not maintainable. The limitation period for filing a suit for recovery on the promissory note is only for three years. Even then, the plaintiffs did not prove that the promissory notes were executed by the defendant with appropriate evidence. In the present case, the plaintiffs have examined two witnesses on the side of the plaintiffs. However, no witnesses were spoken to the attesting of the documents. In a vague, he replied that there was a money transaction in between the plaintiffs and Ammasai Gounder. Except this document, there is no other document available for consideration. The appellants also not establish their case either in the pleadings or in the depositions of the PW.s. In the absence of any proof that the defendant borrowed money from the plaintiffs' father, the plaintiffs are not entitled to any claim against the defendant. Accordingly, he prayed for dismissal of the appeal.

10. Admittedly, the plaintiffs and defendant are the close relatives. The defendant is none other than the brother-in-law of the deceased Ammasai Gounder/father of the plaintiffs and it is also admitted fact that the promissory notes were not executed in favour of Ammasai Gounder in 1974-1975. However, the suit was filed in the year 1980 and numbered in the year 1989 and in my considered view, the suit is barred by limitation.

11. Plaintiffs did not file the suit within a period of three years. Apart from the above, even on perusal of the

statements of PWs.1 and 2, they have not clearly deposed that the defendant borrowed money from the plaintiffs' father-Ammasai Gounder. Moreover, the defendant borrowing the hand loan and signing on the blank papers of unfilled promissory notes as security and after several years, filing the case based on the promissory notes, is not sustainable, unless it is proved in the manner known to law.

12. In view of the above, I do not find any error in the findings of the lower court as well as the lower appellate court. Accordingly, the substantial questions of law are answered against the appellants.

In the result, the second appeal is dismissed and the Judgment and Decree dated 17.02.1999 made in A.S.No.104/1998 (on the file of the Sub Court, Bhavani) confirming the Judgment and Decree dated 28.01.1998 made in O.S.No.609/1996 (on the file of the Principal District Munsif Court, Bhavani), is confirmed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

gv

To

1. The Subordinate Judge,
Bhavani.

2. The Principal District Munsif,
Bhavani.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.D.Siva Kumar, Advocate SR.No. 10395

S.A.No.889 of 2000

VD(CO)
GN(04/04/2018)