

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.07.2017	Delivered on: 16.03.2018
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CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Second Appeal No.690 of 2011
and M.P.No.1 of 2011

M/s.Sri Suseela Textiles

Rep. By its Partner G.Murugesan

S/o.Gurunatha Mudaliar

7/12, Kamarajar Street

Devanankurichi Village & Post

Tiruchengode Taluk

Salem District

... Appellant/Plaintiff.

Vs.

1.The Tamil Nadu Handloom Development
Corporation Ltd.,

Rep. By its Managing Director

No.829, Anna Salai

Mount Road

Chennai-600 002

2.The Tamil Nadu Handloom Development
Corporation, Salem and Dharmapuri

Kannagi Angadi, Upstairs

Salem-7.

.. Respondents/defendants

Prayer : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree of the Principal District Judge at Namakkal, dated 23.11.2009 in A.S.No.6 of 2008 confirming the judgment and decree of the Subordinate Judge Court at Namakkal, dated 09.10.2006 in O.S.No.1135 of 2002.

For Appellant : Mr.P.Valliappan

For Respondents: Mr.S.Parthasarathy for R1 and R2.

J U D G M E N T

The Second Appeal is directed against the judgment and decree dated 23.11.2009 made in A.S.No.6 of 2008 on the file of Principal District Court, Namakkal, confirming the judgment and decree dated 09.10.2016 made in O.S.No.1135 of 2002 on the file

of Sub Court, Namakkal.

2. For the sake of convenience, the Parties are referred to as they are arrayed before the trial court.

3. O.S.No.1135 of 2002 has been filed for declaration, Permanent injunction and mandatory injunction. The brief averments of the Plaint filed by Plaintiff are as follows:-

The Plaintiff-M/s.Sri Suseela Textiles is the registered Partnership firm. The Plaintiff executed Promissory Note on 25.04.1986 for a sum of Rs.1,00,000/- in favour of the 1st defendant and handed over the documents mentioned in Schedule 2 of the Plaint on the same date. Thereafter, on 14.07.1986, the 1st defendant disbursed sum of Rs.1,00,000/- in Loan Account No.166/23, and obtained signatures of the Plaintiff's Partner in Blank Papers and some printed forms. Even though, the plaintiff repaid the loan amount, the defendants failed to maintain proper accounts and filed O.S.No.5/91 against the plaintiff and some others for recovery of the amount. The Plaintiff contested the said suit and the same was dismissed on 14.11.1995. The Plaintiff produced copy of the Plaint in O.S.No.5 of 1991, copy of the Judgment and copy of the Decree in the said suit as Ex.A.1 to Ex.A.3. The disposal of the said suit in O.S.No.5 of 1991 categorically proves that the borrower of the amount under Loan Account No.166/23 has settled their claim. Thereafter, on 01.11.1996, the Plaintiff and others demanded return of documents handed over by them to the defendants at the time of availing the loan. The defendants have not come forward to return the documents, but are giving evasive reply. Now, the defendants are making attempts to recover the said loan amount from the Plaintiff forcibly. As the issue relating to the loan transaction in account No.166/23 has finally been settled as per the conclusion of O.S.No.5/1991 as evidenced by Ex.A.2 and Ex.A.3, copy of the judgment and decree produced by the Plaintiff and others, the defendants have no right to initiate any proceedings against the Plaintiff. The said judgment and decree passed in O.S.No.5 of 1991 is conclusive and binding on the defendants and they are not entitled to demand payment of any amount towards alleged dues under the said loan account No.166/23. As the loan has already been settled, the defendants are bound to return the documents mentioned in Schedule 2 of the Plaint, but they are refusing to do so. Hence, the Plaintiff has come forward with the suit seeking declaration that the judgment and decree passed in O.S.No.5 of 1991 is binding on the defendants and consequently restrain the defendants from initiating recovery proceedings against the Plaintiff in respect of Loan Account No.166/23 and for mandatory injunction directing the defendants to return the documents to the Plaintiff.

4. On the other hand, the defendants contend that they

disbursed the loan amount to the Plaintiff under loan account No.166/23 and duly obtained Promissory Note on 25.04.1986 and documents of title from the Plaintiff as stated in the Plaint Schedule II. However, the defendants did not obtain the signature of the Plaintiff in any blank papers or printed forms as alleged in the Plaint. As the Plaintiff forced to repay any amount towards the loan availed by them, the suit in O.S.No.5 of 1991 was filed by the 1st defendant for recovery of the loan amount, but the same was dismissed for default. The claim of the Plaintiff that no amount is recoverable in respect of loan account No.166/23 is unsustainable. The plea of the Plaintiff that in view of the dismissal of O.S.No.5 of 1991, the defendants have no remedy against the Plaintiff is not correct. The allegation that the defendants are trying to recover the loan amount forcibly from the Plaintiff is not correct. The demand notice dated 16.10.1996 was issued by Deputy Tahsildar under Revenue Recovery Act and on receipt of the same, the Plaintiff represented that he is not bound to pay any amount in view of the dismissal of O.S.No.5 of 1991 and the same is not correct. The contention of the Plaintiff that the defendants have no right to proceed further in respect of loan account No.166/23 is not proper. As the loan amount is still due and the documents were deposited by the Plaintiff for creating equitable mortgage, the same cannot be returned. There is no cause of action for the suit. Hence, the suit is liable to be dismissed.

5. Before the Trial court, the plaintiff to prove the case, examined P.W.1 and produced documents Ex.A.1 to Ex.A.6. On the side of the defendants, neither oral nor documentary evidence was let in.

6. The trial court, on consideration of the oral and documentary evidence adduced before it, dismissed the suit holding that no cause of action existed for the suit to be filed against the defendants. Aggrieved over the said finding of the trial court, A.S.No.6 of 2008 was preferred by the Plaintiff and the same was also dismissed confirming the conclusion arrived at by the trial court. Aggrieved over the same, the Plaintiff has preferred the present Second Appeal.

7. The following substantial questions of law was raised by the appellant herein:-

"(a) When the cause of action alleged by the appellant is admitted by the respondents in paragraph 6 of their written statement, whether the Courts below are correct in law in concluding that there is no cause of action for the present suit?

(b) Whether the courts below are correct in law in not considering the fact that the appellant had claimed the relief of mandatory injunction ?

(c) When the respondents are bound by the judgment and decree under Exhibits A2 to A4, in and by which their claim for money was rejected, whether the respondents were entitled to retain the property documents ?

(d) When the respondents are not entitled to retain the property documents after the dismissal of their suit for recovery of money, which had become final, whether the Courts below are correct in law in non-suiting the appellant?

(e) Whether the courts below are correct in law in placing under reliance upon a passage in the commentaries of a book on the law of limitation to negative the claim made by the appellant ?

(f) Whether the courts below are correct in law in holding that the respondents have every right to retain title deeds till the due is paid, especially when the suit seeking recovery of the claim has been dismissed."

8. The learned counsel appearing for the Plaintiff contended that the cause of action alleged by them has been admitted by the defendants in paragraph 6 of the written statement and as such, the courts were not justified in dismissing the suit. It is further contended that the suit filed by the defendants for recovery of money in O.S.No.5 of 1991 has been dismissed and the conclusion has become final as evidenced by Ex.A.1 to Ex.A.4. It is further contended that the relief for mandatory injunction is sought for since the right to recovery of the Plaintiff through Ex.A.2 to Ex.A.4 was rejected. The defendants are not entitled to retain the documents deposited by the Plaintiff and the courts below erred in confirming that the defendants' right is not extinguished and as such, the Plaintiff is not entitled to seek return of documents. Thus the learned counsel for the Plaintiff contended that the relief of mandatory injunction prayed for by them should have been entertained by the courts below. It is further contended that as the defendants are restricted from proceeding further, in view of the dismissal of the suit in O.S.No.5 of 1991 filed by them, then are bound to return the property documents and the finding of the courts below contrary to the same is unsustainable. The courts below erred in applying the principle under Section 95 of Civil Procedure Code to the facts of the present case. The courts below wrongly relied upon the commentaries to section 27 of the Limitation Act as not applicable to the facts of the case on hand. As the claim of the defendants for recovery of the amount was not entertained, the defendants have no right to retain the title deeds and as such the courts below ought to have entertained the suit filed by the Plaintiff, but they failed to do so. Thus, the Plaintiff seeks to entertain the Second Appeal and to decree the suit as

prayed for.

9. On the other hand, opposing the contention of the Plaintiff, the learned counsel for the defendants contends that there is no infirmity in the conclusion arrived at by the Trial court as well as Appellate Court. The contention of the Plaintiff that after the suit filed by the defendants for recovery of amount was dismissed they have no locus standi to retain the documents deposited to create equitable mortgage is not correct. The learned counsel contended that even assuming no steps was taken by the defendants after the suit filed by them in O.S.No.5 of 1991 dismissed for default, the remedy would have been lost, but the defence right is still subsisting. As such, the defendants are entitled to retain the documents deposited by the Plaintiff till the amounts due was settled. It is also pointed out that no substantial question of law is involved and the plaintiff has not put forth any valid point to reverse the concurrent finding of the courts below. Hence, the defendants sought for dismissal of the Second appeal.

10. Heard both sides and perused the records carefully.

11. The fact that the Plaintiff deposited title deeds and availed loan amount from the defendants under loan account No.166/23 is admitted. The only contention of the Plaintiff is that after the Suit in O.S.No.5 of 1991 filed by the defendants for recovery of amount was dismissed, they have no locus standi to retain the documents deposited by them. In spite of repeated demands, the defendants have failed to produce the documents and are contending that the judgment and decree passed in O.S.No.5 of 1991 will not bind them. Thus the Plaintiff has come forward with the present suit seeking declaration that the judgment and decree passed in O.S.No.5 of 1991 is conclusive and binding on the defendants and also for the relief of mandatory injunction, directing the defendants to return the documents deposited with them.

12. It is clear from Ex.A.2 and Ex.A.3 judgement and decree passed in O.S.No.5 of 1991 that the defendants herein filed O.S.No.5 of 1991 on the file of Sub Court, Sankagiri, seeking decree for recovery of a sum of Rs.1,27,247/- and for a direction to the defendants therein who are the Plaintiff herein to deposit the decree amount within the time to be specified by the court and in the event of default for direction to sell the property and realise the amount due under the said loan availed by the Plaintiff herein. The said suit was dismissed for default on 14.11.1995. Admittedly, no steps was taken to restore the suit. Pointing it out, the learned counsel for the Appellant/Plaintiff herein contends that the decree passed in O.S.No.5 of 1991 has become final and conclusive and as such, the defendants are barred from putting forth any claim by way of

fresh legal action. In such circumstances, as the plea of the Plaintiff for return of documents was not entertained by the defendants, they have come forward with the present suit in O.S.No.1135 of 2002 before Sub Court, Namakkal. Admittedly, the parties in the present suit were also parties before the earlier suit in O.S.No.5 of 1991. Earlier suit was filed on the basis of equitable mortgage and the same was dismissed for default. It is also pointed out that the petition filed under Section 5 of the Limitation Act in I.A.No.726 of 1997 to condone delay in taking steps to set aside the order of dismissal in O.S.No.5 of 1991 was also dismissed as evidenced by Ex.A.6. It is therefore clear that the decree in O.S.No.5 of 1991 has become final. As the Plaintiff and defendants herein are parties to the earlier suit in O.S.No.5 of 1991, it is clear that the result of the same will be binding on both the parties. As such, there is no need for any declaration, that the judgment passed in O.S.No.5 of 1991 is binding on the defendants herein who has filed the earlier suit. Hence, the conclusion arrived at by the courts below in that regard is perfectly in order and as such, it needs no interference.

13. It is true that the suit filed by the defendants herein for recovery of amount was dismissed. As rightly pointed out by the courts below, merely because O.S.No.5 of 1991 filed by the defendants herein was dismissed, it cannot be stated that the defendants' right has been extinguished. The learned counsel for the defendants pointed out that even if the remedy to recover the money was lost, the right of the defendants is still subsisting and the same has not been extinguished. It is contended by the defendants that only after the right to recovery become barred, the Plaintiff is entitled to get back the documents deposited by them.

14. Admittedly, even though the suit filed by the defendants in O.S.No.5 of 1991 is dismissed, the right of the defendants is still subsisting. As such, no material is placed before the court by the Plaintiff/appellant to reverse the concurrent finding of the courts below. The reasoning stated by the courts below arriving at the conclusion to negative the relief sought for by the plaintiff is in accordance with law.

15. In the light of the above said discussion, this court finds that no ground is made out by the Plaintiff/Appellant to interfere with the conclusion arrived at by the courts below. Accordingly, the finding rendered by the courts below are found to be correct and the same do not warrant interference. Accordingly the substantial questions of law raised in the Second Appeal are answered against the Plaintiff/appellant.

16. In fine, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition, if any, is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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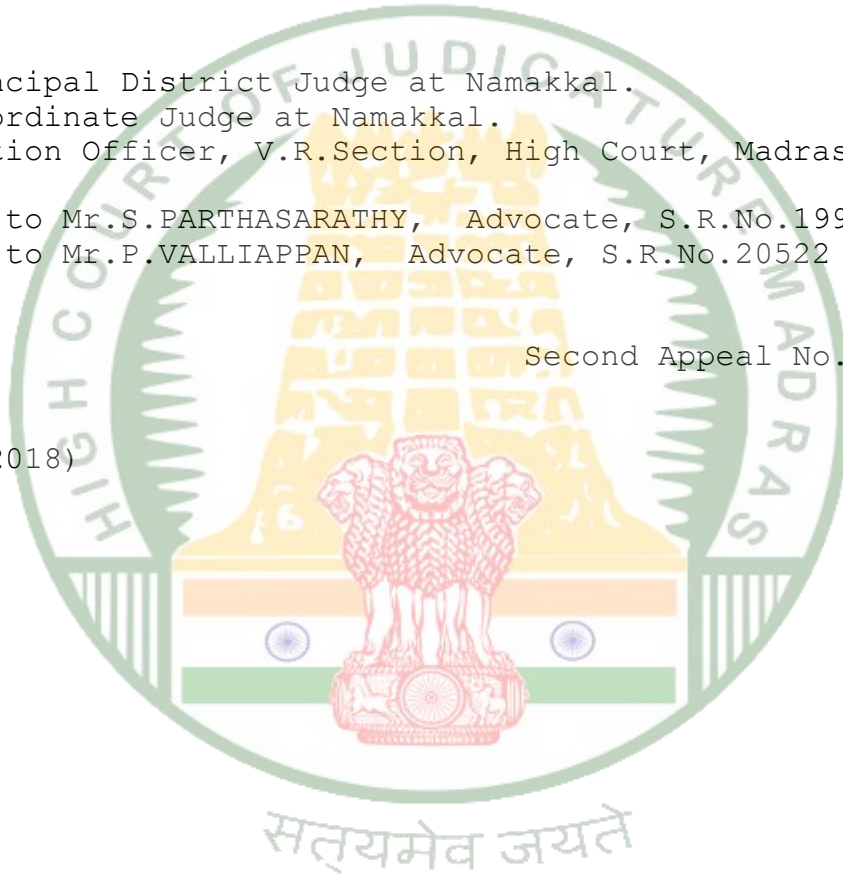
To

- 1.The Principal District Judge at Namakkal.
- 2.The Subordinate Judge at Namakkal.
- 3.The Section Officer, V.R.Section, High Court, Madras.(2 COPIES)

+1cc to Mr.S.PARTHASARATHY, Advocate, S.R.No.19938
+1cc to Mr.P.VALLIAPPAN, Advocate, S.R.No.20522

Judgment in
Second Appeal No.690 of 2011

MP (CO)
TR(31/07/2018)



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