

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2019

PRONOUNCED ON : 27.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1549 of 1997

Abdul Hameed .. Appellant/1st respondent/ Plaintiff

.. Vs ..

1.E.M.A.Vadhuth
2.K.M.Tajuddin
3.The Executive Committee,
represented by its President,
Vijayapuram Muslim Uravinmural Jamath,
Vijayapuram, Tiruvarur,
Nagai Quid - e - Milleth District.

..Respondents/Respondents 2 & 3
& Appellant Defendants

PRAYER: This appeal is filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree passed in A.S.No.201 of 1996, dated 10.01.1997, on the file of the Additional Subordinate Court, Nagapattinam, in reversing the judgment and decree passed in O.S.No. 684 of 1994 on the file of the District Munsif Court, Tiruvarur, dated 14.02.1996.

For Appellant : Mr.S.Venkateswaran

For R1 & R2 : Died

For R3 : No appearance

JUDGMENT

The plaintiff is the appellant herein. Challenging the Judgment and Decree made in A.S.No.201 of 1996, dated 10.01.1997, on the file of the Additional Subordinate Court, Nagapattinam, the appellant/plaintiff has come up with the present appeal.

2. For the sake of convenience the parties are referred to as per the ranking before the Trial Court.

3. The appellant/plaintiff filed O.S.No. 684 of 1994, before the District Munsif Court, Tiruvarur, seeking the relief of recovery of money due of Rs.14,000/- with interest and cost based upon Ex.A1/Letter of Acknowledgment of Borrowal of money from the first defendant. The plaint proceeds on the

basis that land in Survey No.574/A on the Vijayapuram - Thanjavur Road was in possession of one Antony and Santhamary belongs to the third defendant and intended to vacate them for such purpose. The first defendant had obtained Rs.14,000/- as a hand loan and had executed Letter of Liability under Ex.A1 and as he failed to return the amount, legal notices were exchanged under Exs.A2, A3, A4 and A5. The first defendant remained ex-parte before the Trial Court. The Second defendant Tajuddin and the President of Muslim Uravinmurai Jamath/the third defendant herein had filed a written statement alleging that borrowal of the amount by the first defendant is not true and it is not borrowed by the first defendant and the same is not binding upon the third defendant Jamath.

4. Before the Trial Court, on behalf of the plaintiff, the plaintiff, examined himself as PW1 and marked Exs.A1 to A5 and on behalf of the defendants Mohammed Noordin was examined as DW1 and Exs.B1 to B8 were marked.

5. On consideration of both oral and documentary evidence, the learned District Munsif has found that merely because there was no entry in the account books maintained by the Jamath reflecting the alleged borrowal of Rs.14,000/-, it will not be presumed that the amount was not borrowed from the plaintiff and also relied upon the evidence of PW2/Attester of the Letter and decreed the suit as prayed for.

6. Aggrieved against the judgment and decree, passed in the above said O.S.No.684 of 1994, the third defendant Jamath has preferred the appeal in A.S.No. 201 of 1996 and on re-appreciation of evidence, the learned Subordinate Judge has held that Exs.D3 and D4 are the Daily Receipts and Expenditure Books, Books of Accounts maintained for the Financial Year 1992-93 and in the absence of any entry to the said borrowal and furthermore, on the date of the alleged borrowal, viz., 04.05.1992, there was sufficient fund available in the accounts of the Jamath, as could be seen from the Ex.B5, has held that the amount is not borrowed on behalf of the Jamath and accordingly, allowed the appeal and hence, Second Appeal by the plaintiff.

7. The Second Appeal has been admitted under the following substantial questions of law:

"1.Whether the Lower Appellate Court is right in reversing the Judgment and Decree of the Trial Court without meeting and reversing the findings of the Trial Court on each issue framed and tried.

2.Whether the Lower Appellate Court is right in ignoring the evidence of PW2 a witness to Ex.A.1., on the basis of which the suit has been filed.

3.Whether the Lower Appellate Court is in error

in presuming that the 3rd respondent would not have borrowed through its then president, the money under Ex.A.1 from the plaintiff on the basis of the self serving documents Ex.B.3 and B.4 particularly when the existence of Ex.A1 is not denied and also the event for which the said money was required (i.e. eviction of tenants of the 3rd respondent) was not denied."

8. The learned counsel for the appellant/plaintiff has made submissions in connection with the substantial questions of law as framed above. After hearing Mr.S.Venkateswaram, learned counsel appearing for the appellant and on a perusal of document evidence before the Court, it is seen that the suit has been filed against the borrower viz., E.M.A.Vadhuth who is said to have received Rs.14,000/- from the plaintiff, in order to evict the tenants from the lands belonging to the Jamath on 04.05.1992 and alleged to have executed the Ex.A1 in the letter head of the third respondent/Jamath. PW2 viz., Dawood is the Attester of the document. On a perusal of the Ex.A1, it is seen that the said E.M.A.Vadhuth has executed the letter in his personal capacity but not on behalf of the Jamath. It is also to be noted that he has been described as the President of the Jamath on the relevant point of time and the recital therein does not indicate any borrowal on behalf of the Jamath and alleged borrowal is not on behalf of the Jamath but the same could be construed as in the personal capacity of first defendant. It remains to be stated that the evidence of the present President of the Jamath, who examined himself as DW1 and marked Exs.B3 and B4 would go to show that as per the daily Account Books of Receipt and Expenditure for the Financial Year 1992-93, which has been maintained in the regular course of business by the Jamath and on the alleged date of borrowal viz., 04.05.1992 there is no entry to that effect, also assumes significance. It remains to be stated that as per Ex.B3/Bank Pass Book issued by the Punjab National Bank and Ex.B4/Bank Pass Book issued by the Indian Overseas Bank on the date viz., 04.05.1992 for the account of Jamath, a sum of Rs.84,343/- is available and when such being the case, the evidence of the PW2/Attestor that on the relevant point of time viz., 04.05.1992, there was an urgency for the Jamath to pay quit-amount to the tenants to vacate land belong to the Jamath and that has necessitated for the borrowal of the amount does not appear to be probable.

9. It remains to be stated that Exs.B3 and B4 relating to daily Accounts Books of Receipts and Expenditure for the Financial Year 1992-93, which are being maintained by the third defendant/Jamath in the regular course of his business and the same is subjected to audit and hence, as per the Section 45 of the Bankers Book Evidence Act, the same is admissible in evidence and in absence of any contra evidence, the Lower Appellate Court has rightly held that Exs.B3 and B4 are admissible in evidence and the same does not suffer from

in the legal infirmity.

10. Furthermore, on the factual aspects of availability of necessary money and amount in the account of the Jamath on the relevant date viz., 04.05.1992 has been duly reflected and spoken to from the Exs.B5 and B6 Bank Pass Books of the Jamath in the accounts maintained by them in the Punjab National Bank and Indian Overseas Bank to the extent that on 04.05.1992, a sum of Rs.84,343/- was available and hence, there is no necessity for the Jamath to borrow the amount privately as alleged by the plaintiff and also goes against the appellant/plaintiff. It appears to be stated that on factual background, the Lower Appellate Court has rightly held that the third defendant/Jamath has not borrowed any amount from the plaintiff and the alleged amount said to have been borrowed is not for the Jamath and therefore, the third defendant/Jamath is not liable to pay the any amount to the appellant herein/plaintiff and the said finding is well merited and well considered and does not warrant any interference at the appellate stage.

11. In view of the discussions in preceding paragraphs, this Court finds that the Trial Court has rightly relied upon Ex.B3 and B4 and in view of the necessary amount found in Ex.B5/Pass Book issued by the Punjab National Bank, the Trial Court has rightly come to the conclusion as stated supra and the evidence of the PW2 has been eschewed from considering in view of the admissible documentary evidence Exs.B3, B4 and B5 and as such, the clause contended in Ex.A1 does not indicate the amount so borrowed is on behalf of the Jamath.

12. Accordingly, all the substantial questions of law does not arise for consideration and the same is held against the appellant herein/plaintiff and hence, the Second Appeal is devoid of merits.

13. In the result, the Second Appeal is dismissed and confirming the judgment passed by the Additional Subordinate Court, Nagapattinam in A.S.No.201 of 1996 and reversing the judgment passed by the District Munsif Court, Tiruvarur in O.S.No. 684 of 1994. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Subordinate Court,
<https://hcservices.ecourts.gov.in/hcservices/>
Nagapattinam.

2.The District Munsif Court,
Tiruvarur.

3.The Section Officer,
VR Section, High Court,
Chennai 104.

+1cc to Mrs.S.Umapathy, Advocate, S.R.No. 73383

S.A.No.1549 of 1997

PVS (CO)
GN(06/02/2020)



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