

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND

THE HONOURABLE MR. JUSTICE C.SARAVANAN

A.S No.709 of 2012

E.N.Ram Nivas Appellant/Plaintiff

Vs.

1.V.M. Kandasamy Gounder
2.Sellammal
3.K.Rajasekaran
4.K.Bhuvaneswari
5.K.Kumudhini

.... Respondents/Defendants

Prayer: Appeal filed under Section 96 of C.P.C against the judgment and decree dated 22.11.2011 passed in O.S.No.9247 of 2010 on the file of Fast Track Court No.III, Chennai.

For Appellant : Mr.V.Selvaraj

For Respondents: No Appearance

JUDGMENT

(Delivered by M.M.Sundresh, J.)

The plaintiff is the appellant. The suit has been filed for recovery of money. It was filed based upon the acknowledgment of debt dated 23.07.2002. In the said document, the period of repayment is mentioned as two months from the date of its execution. The respondents did not raise the plea of limitation while filing the written statement. However, the Court below dismissed the suit only on the ground of limitation, inter alia, holding that it is the duty of the Court to go into the said issue. Challenging the same, the present appeal has been filed.

2. Heard the counsel appearing on behalf of the appellant. Despite service of notice and vakalat having been filed, none appears on behalf of the respondents.

3. Learned counsel appearing on behalf of the appellant would submit the acknowledgment of debt is dated 23.07.2002. The

said statement also shows two months as period of repayment. The suit has been filed on 20.06.2005. If these factors are taken into consideration, the suit is well within the period of limitation.

4. We find considerable force in the submission made by the learned counsel appearing on behalf of the appellant. It is no doubt true that under Section 3 of the Limitation Act, the Court is bound to satisfy itself with respect to the acceptance of the period of limitation. However, the plea of limitation is mixed on the question of fact and law. If the defendant did raise the plea, it would be appropriate for the Court to take it up along with the main suit. Secondly, in the case on hand, the document dated 23.07.2002 speaks about the two months period. The plaintiff filed the suit on 20.06.2005. Therefore, even if we take that document into consideration, the suit is well within the period of limitation. Thus, we are of the view that the judgment and decree of the Court below requires interference.

5. Accordingly, the judgment and decree rendered by the Court below is set aside and the same is remitted to the Fast Track Court No.III, Chennai for fresh consideration. Inasmuch as the suit is pending for nearly more than nine years, we direct the Court below to dispose of the same after framing issues within a period of six months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssm

To:-

The Judge,
III Fast Track Court, Chennai.

+1 cc to mr.V.Selvaraj, Advocate, Sr.No. 26681

VGII(CO)
CSL/10.06.2019

A.S.No. 709 of 2012