

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.No.734 of 2008
and M.P.No.1 of 2008

Nungambakkam Saswatha Dhana

Rakshana Nidhi Limited,

Represented by its Secretary,

No.11, Rama Naicken Street,

Nungambakkam,

Chennai - 600 034.

.. Appellant/Plaintiff

versus

1.Susheela Bai

2.Krishnakumari

3.Hemalatha Mohan

4.M.R.Murali

.. Respondents/Defendants 1 to 4

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 20.02.2006 made in A.S.No.62 of 2004 on the file of the learned Additional District Judge, Fast Track Court-V, Chennai, modifying the judgment and decree, dated 02.08.2002 made in O.S.No.9155 of 1996 on the file of the learned II Assistant Judge, City Civil Court, Chennai.

For Appellant

: Mr.P.B.Balaji

For Respondent Nos.1, 2 & 4: No Appearance

For Respondent No.3

: Mr.N.Santhosh Nagarajan

J U D G M E N T

This Second Appeal is filed against the judgment and decree, dated 20.02.2006 made in A.S.No.62 of 2004 on the file of the learned Additional District Judge, Fast Track Court-V, Chennai, modifying the judgment and decree, dated 02.08.2002 made in O.S.No.9155 of 1996 on the file of the learned II Assistant Judge, City Civil Court, Chennai.

2. While admitting the Second Appeal, the following Substantial Questions of Law were framed;

"1. Whether the Lower Appellate Court was right in awarding interest ?

2. Whether in an inter pleader suit, the plaintiff who is entitled to costs and also a charge on the thing claimed in view of Sub Rule 6 of Order XXXV CPC be called upon to pay interest from the date of plaint till the date of complying with the decree ?

3. Whether not the Lower Appellate Court erred in appreciating Order XXXV Rule 4 CPC in a right perspective before modifying the decree when the trial Court framed issues and retained the parties until final disposal of the suit ?

3. The brief facts leading to the appeal are as follows:

The appellant is the plaintiff. The plaintiff has filed the suit in O.S.No.9155 of 1996 seeking permission to deposit two fixed deposits of Rs.1,16,100/- into Court of the deceased Ramachandra Naidu and to discharge the plaintiff from its liabilities against the defendants, who are the legal representatives of the said Ramachandra Naidu.

4. The First Appellate Court having found that the trial Court has not directed the plaintiff to deposit the amount at the first hearing but the amount has been deposited only in Interlocutory Application at the direction of the trial Court at the time of final disposal of the suit. However, imposed interest at the rate of Rs.6% per annum. Challenging the interest portion alone, the present Second Appeal is filed.

5. After perusal of the Order XXXV Rule 4 CPC, on the date of first hearing itself, the trial Court ought to have declared that the plaintiff is discharged from all the liabilities to the defendants in respect of the things claimed, awarding interest and dismissing him from the suit. In this case, the trial Court has not directed the plaintiff to deposit the entire amount in order to discharge his liabilities, whereas the trial Court has retained all the parties but only at the time of final disposal of the suit, the trial Court directed the plaintiff to file an Interlocutory Application to deposit the amount and the amount has been rightly deposited by the plaintiff. In this regard, it is useful to refer the judgment of this Court in PETHU CHETTIAR vs. SPECIAL TAHSILDAR, LAND ACQUISITION, ADI DRAVIDA WELFARE, CHIDAMBARAM, CUDDALORE AND OTHERS reported in (2003) 3 M.L.J. 428, in which, it has held as follows:

"9.A reading of the provisions of Sec.88 and O.35 would clearly show that the court does not have jurisdiction to travel beyond what has been admitted by the plaintiff as due from him/her or it. The court cannot direct any further payment or investigate into any question relating to the transaction alleged between the parties."

6. As per the above judgment, it makes clear that the deposit of money by the plaintiff is not mandatory whereas it is the Court ought to have taken steps either to issue a direction to the plaintiff to deposit the amount or to pass appropriate orders to discharge the amount. However, the trial Court has failed exercising its discretion at the first instance and retained all the parties till the disposal of the suit. The plaintiff cannot be fastened with the liability beyond the scope of the suit. Had the trial Court directed the plaintiff to deposit the entire amount at the first hearing, the plaintiff would not have become liable to pay the interest. Accordingly, this Court is of the view that the First Appellate Court has travelled beyond the scope of the provisions of Order XXXV Rule 4 and awarded the interest.

7. For the aforesaid reasons, the substantial questions of law are answered in favour of the appellant and against the respondents. The Second Appeal is therefore allowed, by setting aside the judgment and decree of the First Appellate Court awarding interest alone. Consequently, the connected Miscellaneous Petition is closed. No costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

sri

To

1.The Additional District Judge,
Fast Track Court-V,
Chennai.

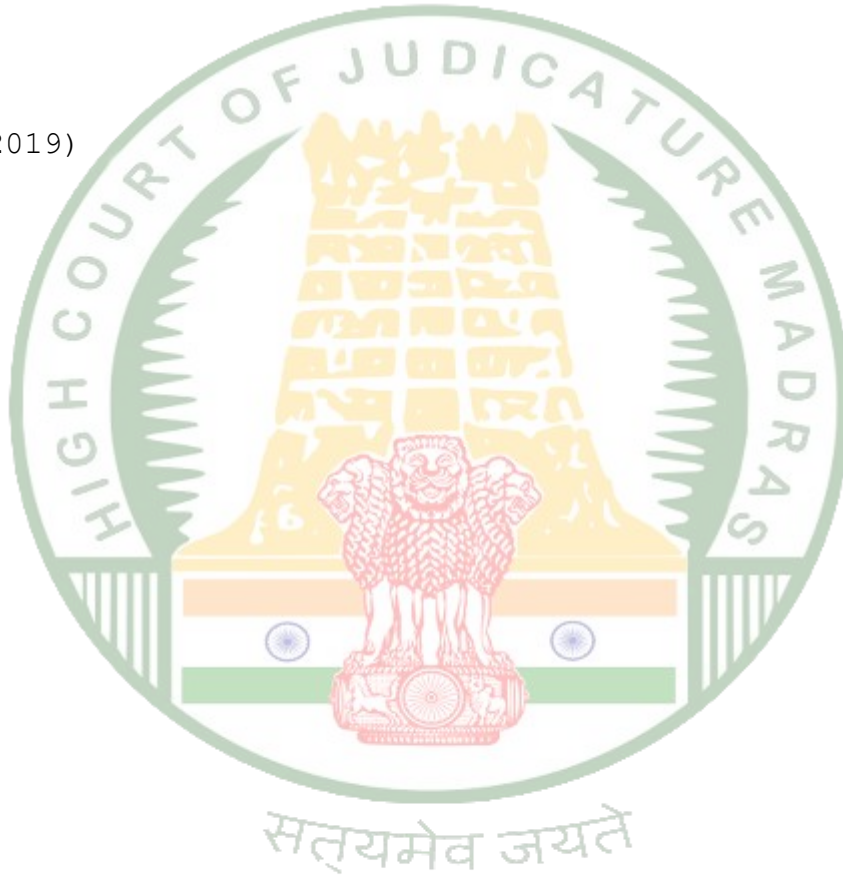
2.The II Assistant Judge,
City Civil Court,
Chennai.

3. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.P.B.Ramanujam, Advocate sr 10486.

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KK (CO)
SP (02/05/2019)



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