



WEB COPY

S.A.(MD)No.427 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 09.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD)No.427 of 2008

and

M.P(MD) .No.2 of 2008

G.Ashokan

.. Defendant/Appellant/Appellant

Vs.

Soundarrajan

.. Plaintiff/Respondent/Respondent

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree, dated 06.12.2006 made in A.S.No.16 of 2006, on the file of the learned Subordinate Judge, Padmanabhapuram, confirming the judgment and decree, dated 31.01.2005, made in O.S.No.107 of 2000, on the file of the learned Principal District Munsif cum Judicial Magistrate, Eraniel.

For Appellant : Mr.K.Jeyapalam

For Respondent : Ms.L.Victoria Gowri

JUDGMENT

This Second appeal is filed aggrieved over the concurrent findings of the Courts below.

2. The suit has been filed for recovery of money based on the document, dated 04.02.1999 called as 'Rekha' in Malayalam. Primarily, the document has been executed for supply of coconut husk on or before 03.08.1999. The defendant has also agreed in the said 'Rekha' that if he failed to supply the coconut husk, the amount will be recovered with interest. Despite several steps taken to settle the dispute, the defendant did not make any arrangements to repay the debt. Hence the suit.

3. Statements filed by the defendant indicated that it could be a contract between the parties for supply of coconut husk. Further, the Courts below decided that the plaintiff cannot seek a decree of recovery of money, since the said contract is neither the promissory note nor the 'Rekha'. Instead the plaintiff could seek specific performance of the said contract. The contention of the defendant that he has supplied the coconut husk is also denied by the plaintiff and the same was not proved with enforceable documents. Hence, he prayed for dismissal of the suit.



4. Based on the above pleadings, the trial Court framed the following issues:

1. Whether the 'Rekha', dated 04.02.1999 was fully accomplished by both the plaintiff and the defendant?

2. Whether the plaintiff is entitled to ask the relief if any the plaintiff is entitled to?

The above said issues through framed and settled it was recasted on 19.09.2002 as follows:

1. Whether this Court is having competency to entertain the same?

2. Whether the 'Rekha' dated 04.02.1999 was fully performed by the defendant in favour of the plaintiff?

3. To what relief if any the plaintiff is entitled to and the order as to cost?

5. The trial Court decreed the suit in favour of the plaintiff and the first Appellate Court has also confirmed the findings of the trial Court, as against which the present Second Appeal has been filed.

6. The second appeal has been admitted on the following Substantial Question of Law.

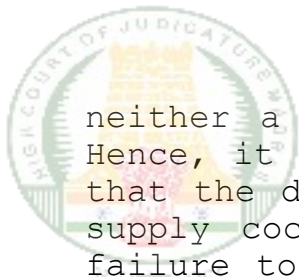
"Whether the judgment and decree of the Courts below is perverse on account of its misconstruction of documents in Ex.A1 and Exs.B1 to B6?"

7. The learned counsel for the appellant submitted that Ex.A1 is unenforceable and it is only the contract which could not be enforced. Whereas Ex.B1-diary and amounts maintained by the defendant established the fact that the defendant has supplied the coconut husk as per the contract. Thus, he has performed the contract. The trial Court and the first Appellate Court has not considered this document and the first Appellate Court has not discussed this document and simply confirmed the judgment of the trial Court. Hence, it is the contention of the appellant that both the Courts below has passed a judgment without considering the document produced by the defendant. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***U.Manjunath Rao v. U.Chandrashekar and another***, reported in **2017(6) MLJ (SC) 489**.

8. Whereas, the learned counsel for the respondent contended that Ex.A1 was admitted by the defendant himself during trial, and now it cannot be canvassed that the document is unenforceable. Hence, prayed for dismissal of this appeal.

9. I have heard both side counsel and perused the documents.

10. The document Ex.A1 is the main dispute in this second appeal. The main contention of the appellant is that Ex.A1 is

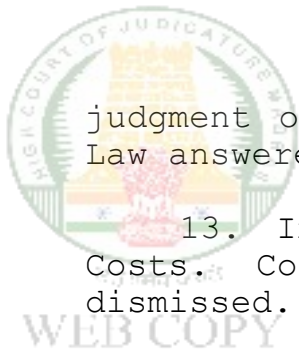


neither a pro-note nor any acknowledgment ('Rekha' in Malayalam). Hence, it is unenforceable. On perusal of Ex.A1 makes it very clear that the defendant has received a sum of Rs.25,000/- and agreed to supply coconut husk on or before 03.08.1999 and in the event of failure to supply the coconut husk, the defendant will return the amount with interest at the rate of 3 % for Rs.100/- p.m. On careful perusal of Ex.A1, it is clear that the agreement infact creates obligation on the part of the defendant to pay back the money in the event of non-performance, ie., supply of coconut husk. When a party is entered into a contract, though the document has worded in different style and nomenclature is different, when the party bounds himself and obliges himself to pay back the money in case of non-performance, such document certainly falls within the ambit of 'bond'.

11. Admittedly, the defendant himself obliged to pay the amount and there is an obligation on his part and the document creates such obligation certainly falls under the category of 'bond'. In this regard, it is also useful to refer the definition of the bond under Section 5 of the Stamp Act, which reads as follows:

- " (5) "bond" includes;
- (a) *any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;*
 - (b) *any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and*
 - (c) *any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another;*

12. Considering the above provision, this Court is of the view that when the document is properly stamped as per law, it is certainly admissible. Even the execution of the document is not in dispute in the written statement. Such being the position, the contention that the document is inadmissible and unenforceable has no legs to stand. As far as Exs.B1 to B6 is concerned, the defendant claimed the supply of husk based only on the entries made in the ledger said to have been maintained by the defendant in the usual course of business. It is to be noted that though entries in the accounts book maintained in the course of usual business is relevant, that itself is not sufficient to clothe the liability. Each entries is to be proved in the manner known to law. Therefore, merely on the basis of self serving entries, it cannot be said that coconut husk has been supplied by the defendant. The trial court and the First Appellate Court has found that those documents are not reliable and supply of coconut husk has not been established. Therefore, the contention of the defendant cannot be countenanced for any reason and I do not find any illegality or perversity in the



judgment of the Courts below. Accordingly, Substantial Question of Law answered as against the appellant.

13. In the result, this Second Appeal stands dismissed. No Costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)

PJL

To

1.The Subordinate Judge,
Padmanabhapuram.

2.The Principal District Munsif cum Judicial Magistrate,
Eraniel.

3.The Section Officer, (2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.L.VICTORIA GOWRI, Advocate (SR-104118[F] dated
10/12/2019)

+1 CC to Mr.K.PRABHU, Advocate (SR-104228[F] dated 10/12/2019)

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VB(24.01.2020) 4P 7C