IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.11.2019

PRONOUNCED ON : 03.01.2020

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.276 of 2012
and
M.P.No.1 of 2012

D.Jayaraman ... Appellant

Vs.

Mouttouvelou

Represented by his Power of Attorney
T.S.Chandrasekaran ... Respondent

Prayer: First Appeal filed under Order IV Rule 14 of the Appellate Side Rules r/w Section 96 of C.P.C.,1908, against the judgment and Decree dated 21.10.2011 passed by the II Additional District Judge, Puducherry in O.S.No.91 of 2006.

For Appellant : Mr.R.Mukundan

For Respondent : No appearance
Set exparte
vide order dated 05.11.2019.

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J U D G M E N T

Aggrieved over the judgment and decree dated 21.10.2011 passed in O.S.No.91 of 2006 on the file of the II Additional District Court, Pondicherry, the first defendant has preferred this First Appeal.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for recovery of money.

4. The case of the plaintiff in brief is that the first defendant is his father-in-law and the plaintiff is having French citizenship and on 12.09.1999, the first defendant solemnized his daughter's marriage with the plaintiff and subsequent to the marriage, the plaintiff settled at France along with his wife and taking advantage of the plaintiff's French citizenship, the first defendant used to borrow money from the plaintiff during the past three years on several occasions for the purpose of meeting out his family expenses by promising to repay the same on demand to the plaintiff. Whenever the first defendant

demanded the amount for his family expenses, the plaintiff used to send the same to the first defendant 's Indian Overseas bank account, at Pondicherry and accordingly the plaintiff has sent various amounts on various dates ranging from 25.03.2003 to 16.04.2004 in all, totally Rs.6,72,464/- and the first defendant agreed to repay the same with interest at the rate of 12% per annum, from the date of receipt till repayment. In spite of repeated demands made and also put forth through the plaintiff's agent, the defendant had failed to repay the amount to the plaintiff and the plaintiff issued a lawyer's notice on 10.02.2006 and the notice had been duly received by the defendant and approached the plaintiff and his agent and requested one month time to settle the amount with interest. The same had been accepted by the plaintiff since the defendant being his father-in-law and even after the said request, the defendant had not come forward to repay the said amount with interest and hence according to the plaintiff, he has been necessitated to lay the suit against the defendant for the recovery of the amount due to him with interest and costs.

5. The defendant resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts. The suit is barred by limitation. The plaintiff has not properly instituted the suit

through his power of attorney agent. The plaintiff's suit is bad for misjoinder of parties. The relationship between the plaintiff and the defendant has been admitted and the defendant has also admitted that the marriage between the plaintiff and his daughter was solemnized on 12.09.1999. However, the defendant has denied that taking advantage of the French citizenship, he borrowed various amounts from the plaintiff for the past three years as set out in the plaint and promised to repay the amount with interest at the rate of 12% per annum as claimed in the plaint. The defendant is a lecturer working in the Government of Pondicherry and earning sufficient money for his livelihood and therefore, there is no need on his part to borrow any amount from the plaintiff for meeting his family expenses. At the time of the marriage of the plaintiff with the defendant's daughter, the plaintiff was working in a private company at Pondicherry and only thereafter he had taken the initiatives to settle at France and at at that point of time, he was lacking in money and therefore the plaintiff made a request to the defendant to arrange and give him Rs.3,00,000/- and promised to repay the said amount, after settling at France and the defendant arranged for the said amount in favour of the plaintiff in the month of February 2000 and even prior to the same, the defendant had given Rs.1,00,000/- to the plaintiff's parents at the time of the marriage as dowry, apart from gold and silver ornaments. Thereafter the plaintiff and his wife settled at France and started sending the amount in piecemeal which had been borrowed from the defendant as above stated. Meanwhile the plaintiff's son died in a road accident at France and with reference to the same, the defendant and his wife were also granted compensation by the French Insurance Company and as the defendant and his wife were residing at India, the plaintiff had got the authorization from them to get the compensation and had taken the same from their accounts and not returned the said amount to the defendant and his wife. Due to the demise of the son, the plaintiff's wife i.e, the defendant's daughter was physically affected and her kidneys got damaged. The defendant sent her to India and it is only the defendant who had spent several amounts for her treatment by way of replacing the Kindney etc., and the defendant made repeated requests to the plaintiff to send money for his wife kidney's transplantation and the plaintiff also sent money in piecemeal to the account of the defendant to meet out the medical expenses of his wife and the Kidney transplantation done on the defendant's daughter had subsequently failed and therefore the defendant was constrained to search for another kidney donar and in the abovesaid situation, the defendant had spent a huge amount for the treatment of his daughter ie., the plaintiff's wife and atlast sent her back to France in the month of September 2005 in a normal condition. However the plaintiff started torturing his wife and sought for divorce from her and the defendant's daughter got conceived and gave birth to another child and she had been advised not to have sexual relation for a certain period and however the plaintiff again started to give torture to his wife and also abused, threatened and scolded with filthy language. The defendant has borne all the same on account of the plaintiff being his son-in-law. Only due to abovesaid reasons, the defendant had not replied to the legal notice sent by the plaintiff. The plaintiff therefore in the abovesaid background had laid a false suit against the defendant as if he had borrowed money from him for meeting the family expenses. The plaintiff has no cause of action to lay the suit and hence, the suit is liable to be dismissed.

6.On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial court for consideration:

i. Whether the suit is not properly filed as Power of Attorney is nt an authorized person of plaintiff as stated by the defendant?

ii. Whether the suit is time barred?

iii. Whether the suit is bad for non-joinder of necessary parties?

iv. Whether the alleged borrowings by the defendant from the plaintiff are not debts and only dues payable to the defendant by the plaintiff for the earlier commitments?

v. Whether the plaintiff is entitled for suit claim amount?

vi. To what other reliefs the parties are entitled?

Additional Issues:

i. Whether the suit is barred by sub section 2 of Section 26 of C.P.C?

ii. Whether the suit is barred by Order VII Rule 11 and Order 1 Rule 9 of C.P.C?

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A14 were marked. On the side of the defendant, D.W.1 was examined. Exs.B1 to B75 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit in favour of the plaintiff by directing the defendant to pay the suit amount with subsequent interest at the rate of 6% per annum from the date of the plaint till the

realization. Impugning the same, the first appeal has been preferred by the defendant.

9. The following points arise for determination of the First Appeal:

i. Whether the plaintiff is entitled to recover the suit amount from the defendant as claimed in the plaint?

ii. Whether the suit is barred by limitation?

iii. Whether the suit has been properly laid by the plaintiff through his power of attorney agent and whether the power agent is competent to speak about the case on behalf of the plaintiff?

iv. To what relief, the plaintiff is entitled to?

v. To what relief, the defendant/appellant is entitled to?

Point Nos.1 to 3:

10. The plaintiff is the son-in-law of the defendant. It is seen that the plaintiff had married the defendant's daughter on 12.09.1999 and thereafter settled at France along with his wife. According to the plaintiff for meeting the family expenses, the defendant used to borrow amounts from him on various dates as set out in the plaint and the plaintiff had been sending the said amounts through the Bank account

of the defendant at Pondicherry and accordingly it is putforth by the plaintiff that the defendant had borrowed a sum of Rs.6,72,464/- and it is the further case of the plaintiff is that the defendant had promised to repay the sum with interest at the rate of 12% per annum from the date of receipt till the repayment and as the defendant had failed to discharge the debt, despite several demands as well as the issuance of the notices, according to the plaintiff he has been necessitated to lay the suit against the defendant for the recovery of the amount due to him as prayed for.

11. The defendant has admitted the relationship between the parties and according to the defendant, the plaintiff had borrowed a sum of Rs.3,00,000/- from him for meeting the family expenses and to settle at France after the marriage and accordingly after settling down at France, he had been sending the said amount in piecemeal to the defendant's account and therefore according to the defendant only to discharge the abovesaid debt, the defendant had been sending various amounts through his bank account. Further according to the defendant, the plaintiff's wife suffered from kidney problems and came to India for treatment and only the defendant had been looking after her and spending huge amount for kidney transplantation and after

repeated requests, the defendant had sent some amount towards the medical expenses of his wife and therefore in *toto* according to the defendant, he had not borrowed any amount from the plaintiff as putforth in the plaint and accordingly sought for the dismissal of the plaintiff's suit.

12. As rightly held by the trial court, to evidence that the defendant had received the various amounts from the plaintiff through his bank account, the receipts had been marked as Exs.A1 to A10 and the statement of accounts has been marked as Ex.A11. On a perusal of the abovesaid documents, it is found that the amounts mentioned therein had been credited into the bank account of the defendant. Further to buttress that the abovesaid amounts had been credited to the bank account of the defendant, the plaintiff has examined P.Ws.2 and 3 who had clearly deposed about the credit of the abovesaid amounts in the bank account of the defendant maintained with them. It is thus found that as held rightly by the trial court, through Exs.A1 to A11 and the evidence of P.Ws.2 and 3, the plaintiff has clearly established the sanction of the various amounts to the defendant through his bank account by way of Exs.A1 to A11 in all amounting to Rs.6,72,464/-.

13. At this juncture, it has to be noted that the defendant has not challenged the receipt of the abovesaid documents projected by the plaintiff marked as Exs.A1 to A11. The defendant has not repudiated the receipt of the amounts mentioned therein through his bank account. According to the defendant the abovesaid amount had not been borrowed by him from the plaintiff. On the other hand, he would only putforth the case that the it is only the plaintiff who had borrowed a sum of Rs.3,00,000/- from him for meeting the expenses for settling at France after the marriage and the defendant had arranged the said amount and paid to the plaintiff, subsequently the plaintiff had been repaying the said amount in piecemeal through the bank account. Therefore according to the defendant, the amounts mentioned in Exs.A1 to A11 represent only the amount borrowed by the plaintiff from the defendant as putforth by the defendant.

14. In the light of the abovesaid factors, when the defendant had received the various amounts mentioned in Exs.A1 to A11 through his bank account and also not disputed that the said amount had been sent only by the plaintiff from France and the plaintiff has also established the sanction of the abovesaid amounts to the defendant

through his bank account by the evidence of P.Ws.2 and 3 and on the other hand, the defendant would only contend that the amounts mentioned in Exs.A1 to A11 represent only the repayments of the loan borrowed by the plaintiff from the defendant of a sum of Rs.3,00,000/- before settling at France and when the abovesaid case of the defendant is not admitted by the plaintiff and repudiated by the plaintiff, as held by the trial court, to sustain his defence version, the defendant has to place acceptable and reliable materials. However with reference to the case of the defendant that he had paid Rs.3,00,000/- to the plaintiff for meeting his expenses for settling down at France, other than the *ipsi dixit* testimony of the defendant, there is no other proof placed on his part. In this connection, during the course of cross examination, the defendant examined as D.W.1, has admitted that the abovesaid amount of Rs.3,00,000/- had been given by him to the plaintiff in the presence of his brothers and sisters. The defendant has not come forward as to when he had paid the said sum of Rs.3,00,000/- to the plaintiff. He would state that the he had arranged to give him Rs.3,00,000/- in the month of February 2000. When according to the defendant he had paid the abovesaid sum in the presence of his brothers and sisters and with their consent, atleast to sustain his case, the defendant should have endeavored to examine his brothers and sisters and when there is no material or proof on the part of the defendant for lending the sum of Rs.3,00,000/- to the plaintiff as putforth by him and when the witnesses in whose presence the said amount had been claimed to have been disbursed to the plaintiff by the defendant having also not been examined by the defendant, for the reasons best known to him, the abovesaid facts would only go to expose that inasmuch as the plaintiff has not borrowed Rs.3,00,000/- from the defendant as claimed by the defendant accordingly it is found that the defendant is unable to substantiate the defence version by placing acceptable and reliable materials.

15. Furthermore, it is found that the plaintiff claiming the amount due to him, had issued a legal notice on 10.02.2006 marked as Ex.A12 calling upon the defendant to repay the borrowed sum to him as set out therein with interest. The receipt of the legal notice Ex.A12 has not been repudiated by the defendant. The acknowledgment card received from the defendant has been marked as Ex.A13. If really, the defendant had not borrowed the amount from the plaintiff as set out in Ex.A12 legal notice, on the receipt of the same, the defendant would have endeavored to issue a reply notice to

the plaintiff repudiating the claim of the plaintiff made thereunder. On the other hand, it is found that the defendant has not sent any reply to Ex.A12 legal Notice. With reference to the same, it is putforth by the defendant that legal notice Ex.A12 had been not only sent to him but also to another person describing as his daughter and as the said person described as his daughter is not the daughter of the defendant, according to the defendant, he had not chosen to send any reply. Further, he has also putforth that for the sake of his daughter's better life he had not chosen to send any reply repudiating the claim of the plaintiff made under the legal notice. As regards the first reason, though the legal notice Ex.A12 had been issued to two persons, when as regards the defendant, the plaintiff has clearly set out the payments received by the defendant from the plaintiff on various dates in all amounting to Rs.6,72,464/- and thereby called upon the defendant to repay the said sum with interest and when the plaintiff has also made another claim of the payment from the other person mentioned in the notice, the defendant as a prudent person on the receipt of the same, atleast should have endeavored to repudiate the legal notice sent by the plaintiff as far as it concerns him and on the other hand to say that he had not chosen to send the reply as the plaintiff had not sent a proper legal notice, as such, cannot be countenanced in any manner.

As regards the second reason put by the defendant for not sending the reply i.e. due to the betterment of his daughter's life, however when the plaintiff has chosen to put it in black and white in the legal notice claiming that the defendant had borrowed the various amounts from him on several dates, atleast to set things right, the defendant should have sent a reply challenging the same and should have explained his position with reference to his defence as regards the receipt of the amounts from the plaintiff through his account. Therefore, as held by the trial court, the failure of the defendant in not responding to the legal notice would also only support the plaintiff's case that the defendant had borrowed the various sums from the plaintiff and resultantly the defendant unable to repudiate the said claim of the plaintiff, has not chosen to send any reply to the legal notice.

16.The defendant has also taken the plea that for meeting the medical expenses of his daughter ie., the plaintiff's wife with reference to her kidney transplantation, the plaintiff had been sending amount through his bank account. However, considering the documents putforth by the defendant with reference to the medical treatment offered to his daughter, when it is seen that she had taken treatment with reference to the same only from October 2004 whereas the accounts representing the suit amount range from March 2003 to April 2004 and when there is no material to link the suit amount when the alleged amounts said to have been sent by the plaintiff for meeting his wife's expenses, in such view of the matter, the case of the defendant that the suit amount only represents the amounts sent by the plaintiff towards the medical expenses of his wife ie., the defendant's daughter as such cannot be countenanced and the abovesaid defence version had been rightly disbelieved by the trial court.

17. The defendant has also taken the plea that he had been provided with compensation due to the demise of his grandson ie., the plaintiff's son and according to the defendant, the abovesaid amount had been withdrawn from his account by the plaintiff on the basis of the authorization given to him. In other words, it is stated the plaintiff has not sent the amount to the defendant. The defendant has also putforth the case that the compensation amount due to his wife had also been taken by the plaintiff. However with reference to the abovesaid case of the defendant, the defendant has not placed any acceptable and reliable material, particularly the account in which the abovesaid compensation amount had been credited to and the authorization said to have been given by him to the plaintiff with reference to the same and when with reference to the abovesaid case

of the defendant, other than the *ipsi dixit* testimony of the defendant, we have no material on record and when the abovesaid amount has not been shown to be having nexus with the suit claim, in such view of the matter, the abovesaid defence version has no nexus whatsoever for repudiating the claim of the plaintiff on the part of the defendant. By way of the abovesaid defence, the defendant seems to have pleaded a set off. However when as above pointed out, the defendant has failed to substantiate the said claim as well as not set out any set off with reference to the said amount, in all, it is seen that the abovesaid defence version has no legs to stand and rightly unaccepted by the trial court.

18.The plea has also been taken by the defendant that the plaintiff's suit is barred by limitation. However considering the fact that the plaintiff has laid the suit for the recovery of the amount borrowed by the defendant ranging from 25.03.2003 to 06.04.2004 and accordingly when the plaintiff has levied the suit within three years from the last date of the borrowal of the amount, in such view of the matter as correctly held by the trial court, the suit laid by the plaintiff is not hit by law of limitation.

19. During the course of arguments, the defendant's counsel contended that the power of attorney agent is not competent to speak on behalf of the plaintiff and further also putforth the case that the suit has not been laid by the plaintiff properly through power of attorney agent. However considering the power of attorney deed marked as Ex.A14 issued by the plaintiff in favour of his agent and by way of the same, the agent is found to be empowered to file the suit against the defendant for the recovery of the amount on behalf of the plaintiff and the power agent following the same, having also filed the petition seeking the permission of the Court to file the suit on behalf of the plaintiff as his agent and the said petition having been allowed, in all, it is found that the plaintiff has properly laid the suit through his power agent. Considering the facts and circumstances of the case of the plaintiff's suit, based upon the bank documents and the receipt of the said amount from the plaintiff having not been controverted by the defendant and the defendant has only pleaded that the suit amount represents the amount received by the plaintiff from him or the amount sent by the plaintiff for the medical expenses of his wife and the power agent had correctly tendered evidence on behalf of the plaintiff by placing the documents relied upon the plaintiff and the documents require no special knowledge for the power agent to

depose and the abovesaid documents has also been spoken to clearly by P.Ws.2 and 3 bank officials, in all, it is found that the onus of proof is only lying upon the defendant to explain as to under what circumstances he had received the various amounts from the plaintiff and when as above pointed out, the defendant has failed to explain his case with reference to the same and further when the defendant as above noted has also not chosen to send any reply to the legal notice, in all, it is found that considering the facts and circumstances of the case, the power agent is found to be capable of adducing evidence on behalf of the plaintiff *qua* the facts of the case as well as the documents projected in support of the plaintiff's case, they not requiring any personal knowledge as such. In such view of the matter, the argument of the defendant's counsel that the power agent can only depose as regards his knowledge with reference to the facts of the case and he cannot depose for the principal in respect of the matters of which only the principal can have the personal knowledge and when as above pointed out, the receipt of the suit amount have not been controverted by the defendant and he had only justified the same by putting forth various defence version, however failed to sustain the same, in such view of the matter, considering the narrow scope of the issues, the evidence to be adduced on the part of the plaintiff, in such view of the matter, particularly the same being only on the basis of the bank documents, in such view of the matter, the power agent is found to be competent to depose about the above aspects of the plaintiff's case and therefore the contention of the defendant's counsel that the trial court had erred in upholding the plaintiff's case based on the testimony of the power agent as such cannot be countenanced. The defendant's counsel with reference to the abovesaid contention placed reliance upon the decision reported in **2005 (2) SCC 217 [Janki Vashdeo Bhojwani and another Vs. Indusind Bank Limited and others].** The abovesaid decision is also found to have been placed for consideration before the trial court. The same has been rightly considered by the trial court.

20.In the light of the said discussions, I hold that the plaintiff's suit is not barred by limitation and further hold that the plaintiff has properly laid the suit through his power agent and the power agent is held to be the competent to speak on behalf of the plaintiff as regards the facts of the case. I further hold that the plaintiff is entitled to recover the suit amount from the defendant with interest as determined by the trial court. Accordingly, the point Nos.1 to 3 are answered.

21. For the reasons aforestated, the judgment and decree dated 21.10.2011 passed in O.S.No.91 of 2006 on the file of the II Additional District Court, Pondicherry are confirmed and resultantly the First Appeal is dismissed No costs. Consequently, connected miscellaneous petition, if any, is closed.

03.01.2020

mfa
Index:yes
Internet:yes

To

The II Additional District Judge,
II Additional District Court,
Puducherry.

Copy to

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

T.RAVINDRAN, *J.*

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Pre-delivery judgment made in

A.S.No.276 of 2012
and
M.P.No.1 of 2012

03.01.2020