



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.7.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

SECOND APPEAL NO.1044 OF 2007 & MP.NO.2 OF 2007

S.Subramanian

...Appellant/Defendant

Vs

Dharmalingam

...Respondent/Plaintiff

APPEAL under Section 100 of the Civil Procedure Code against the judgment and decree dated 26.10.2006 made in A.S.No.10 of 2006 on the file of the District Court, Nilgiris at Udhagamandalam confirming the judgment and decree dated 29.12.2004 made in O.S. No.268 of 2002 on the file of the Sub-Court, Udhagamandalam.

For Appellant : Mr.S.Vijayaraghavan
Respondent : served and no appearance

JUDGMENT

This second appeal has been filed by the appellant challenging the concurrent findings of both the Courts below.

2. The appellant herein is the second defendant in O.S.No.268 of 2002 on the file of the Sub-Court, Udhagamandalam. The said suit was filed by the respondent herein - plaintiff against the appellant herein and also one Mr.Premarajan seeking recovery of a sum of Rs.1,05,310/- together with interest and costs.

3. The said suit was filed on the basis that the appellant herein namely the second defendant borrowed a sum of Rs.40,000/- from the respondent - plaintiff. The plaintiff, in paragraph 3 of the plaint, stated that since the appellant herein - second defendant was unable to repay the loan amount to the respondent herein - plaintiff, the said Mr.Premarajan, who was the first defendant in the said suit, agreed to pay the said sum and executed a letter of undertaking to the respondent herein - plaintiff stating that he would pay a sum of Rs.40,000/- on or before 01.11.1994.



4. According to the respondent herein - plaintiff, the loan was not repaid by the defendants and therefore, he was constrained to file the said suit against the defendants seeking recovery of the said sum with interest and costs. In paragraph 6 of the plaint, the respondent herein - plaintiff pleaded that on 24.9.1997 and 10.9.1999, the first defendant namely the said Mr.Premarajan made part payments and after adjustment of the same, the suit claim had been made against both the defendants.

5. A written statement was filed by the first defendant - the said Mr.Premarajan and it was adopted by the second defendant namely the appellant herein. They denied the allegations contained in the plaint and also raised the issue of limitation. According to them, they were not entitled to pay the suit claim.

6. After trial, the Trial Court passed the judgment and decree dated 29.12.2004 decreeing the said suit in favour of the respondent herein - plaintiff for a sum of Rs.40,000/- together with interest and costs. Aggrieved by the said judgment and decree dated 29.12.2004 in O.S.No.268 of 2002 passed by the Sub-Court, Nilgiris at Udthagamandalam, the second defendant in the said suit - appellant herein preferred the first appeal before the District Court, Nilgiris at Udthagamandalam by filing A.S.No.10 of 2006. The Lower Appellate Court confirmed the findings of the Trial Court and dismissed the appeal by judgment and decree dated 26.10.2006. Aggrieved by that, the second defendant in the said suit preferred this second appeal.

7. At the time of admission of the second appeal on 08.10.2007, this Court formulated the following substantial questions of law :

"1. Whether the payment by the first defendant, even assuming him to be a surety, will keep alive the debt against the principal debtor viz., the second defendant in the light of the facts and circumstances established in this case? And

2. Whether Ex.A1 can be construed to be an agreement of surety executed by the first defendant?"

8. It is the contention of the learned counsel for the appellant herein that the said suit is hopelessly barred by the law of limitation, that since the letter of undertaking to repay the debt has already been issued by the said Mr.Premarajan namely the first defendant in the said suit with the knowledge of the respondent herein - plaintiff and since the said document has been marked as Ex.A1 before the Trial Court, his liability ceases and that therefore, he is not liable to pay the decretal amount.



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9. The learned counsel appearing for the appellant drew the attention of this Court to Sections 19 and 20 of the Limitation Act, which read as follows :

"19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation.—For the purposes of this section,—

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) "debt" does not include money payable under a decree or order of a court.

20. Effect of acknowledgement or payment by another person.—

(1) The expression "agent duly authorised in this behalf" in sections 18 and 19 shall, in the case of a person under disability, include his lawful guardian, committee or manager or an agent duly authorised by such guardian, committee or manager to sign the acknowledgement or make the payment.

(2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgement signed by, or of a payment made by, or by the agent of, any other or others of them.

(3) For the purposes of the said sections,—

(a) an acknowledgement signed or a payment made in respect of any liability by, or by the duly authorised agent of, any limited owner of property who is governed by Hindu law, shall be a valid acknowledgement



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or payment, as the case may be, against a reversioner succeeding to such liability; and

(b) where a liability has been incurred by, or on behalf of a Hindu undivided family as such, an acknowledgement or payment made by, or by the duly authorised agent of, the manager of the family for the time being shall be deemed to have been made on behalf of the whole family."

10. He also drew the attention of this Court to the following authorities :

(a) Govindaraja Mudali Vs. Samarapuri Chettiar [reported in AIR 1930 Madras 112];

(b) Vaiyapuri Pandaram Vs. V.Seetharama Chettiar [reported in 1934 Madras 639]; and

(c) Hazara Singh Gujjar Singh Vs. Bakshish Singh Mula Singh [reported in AIR 1962 P & H 495].

11. Relying upon the aforesaid Sections in the Limitation Act, 1963 as well as the decisions referred to supra, the learned counsel appearing for the appellant, after drawing my attention to the pleadings contained in the plaint, would submit that the appellant herein - second defendant is not liable to pay the decretal debt, as the claim is hopelessly barred by the law of limitation and since the said Mr.Premarajan namely the first defendant in the said suit had already taken over the liability with the consent of the respondent herein - plaintiff by his letter of undertaking marked as Ex.A1 before the Trial Court.

12. In the plaint, the respondent herein - plaintiff pleaded in paragraph 3 as follows :

"The second defendant approached the plaintiff for a loan of Rs.40,000/- to enable him to purchase a jeep. The plaintiff advanced a loan of Rs.40,000/- to the second defendant and the second defendant purchased a jeep No.KL 12 1994. As the second defendant could not repay the loan to the plaintiff, the first defendant undertook to pay the said sum of Rs.40,000/- to the plaintiff and executed the letter of undertaking to the plaintiff stating that he would pay the sum of Rs.40,000/- on or before 01.11.1994. The letter of undertaking is filed herewith."



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13. Similarly, in paragraph 6 of the plaint, the plaintiff pleaded as follows :

"The cause of action for the suit arose at Ayyan Kolli on and since 11.12.1994 date of default on 24.9.1997, 10.9.1999 when the first defendant made payments and on all days when the amount remains due. This Court has jurisdiction to try the suit."

14. As seen from the above, it is clear that the payments were made subsequent to 11.12.1994 when the letter of undertaking (Ex.A1) was issued by the said Mr.Premarajan - the first defendant in the said suit and further payments were made only by the said Mr.Premarajan on 24.9.1997 and 10.9.1999. No payments were made by the appellant herein - second defendant after the letter was issued by the said Mr.Premarajan - the first defendant in the said suit, undertaking to pay the liability of the appellant herein - second defendant, in the year 1994.

15. Further, as seen from Sections 19 and 20 of the Limitation Act, which have been extracted above, for the purpose of saving limitation, payments will have to be made by the person, against whom, the claim is made. In the case on hand, admittedly, payments were made in the years 1997 and 1999 i.e. 24.9.1997 and 10.9.1999. However, the payments were made only by the said Mr.Premarajan - first defendant in the said suit and not by the appellant herein - second defendant.

16. A categorical stand has also been taken by the appellant herein - second defendant before both the Courts below that he was not liable to repay the debt since, only with the knowledge of the respondent herein - plaintiff, the said Mr.Premarajan - first defendant executed the letter of undertaking agreeing to take over the debt of the appellant herein - second defendant, in the year 1994.

17. In the decisions referred to supra by the learned counsel for the appellant herein, it has been made clear that part payments will have to be made by the party, against whom, the claim is made to save limitation. In all the decisions, Sections 19 and 20 of the Limitation have been applied for the aforesaid proposition. However, as seen from the impugned judgments of both the Courts below namely the judgment and decree dated 26.10.2006 made in A.S.No.10 of 2006 on the file of the District Court, Nilgiris at Udhagamandalam and the judgment and decree dated 29.12.2004 made in O.S.No.268 of 2002 on the file of the Sub-Court, Udhagamandalam, the Courts below, by total non application of mind to Sections 19 and 20 of the



Limitation Act as well as the settled position of law, have given an adverse finding against the appellant herein - second defendant holding the appellant herein - second defendant also liable to pay the decretal amount despite the fact that the suit claim is hopelessly barred by limitation against him since payments were made only by the said Mr.Premarajan - first defendant in the years 1997 and 1999 and the suit was filed only during the year 2002. The letter of undertaking was issued in the year 1994 and it was marked as Ex.A1 before the Trial Court and thereafter, no payments were made by the appellant herein - second defendant to the respondent herein - plaintiff.

18. For the foregoing reasons, even though this Court is not convinced with regard to the second substantial question of law formulated by this Court namely 'whether Ex.A1 can be construed to be an agreement of surety executed by the first defendant', this Court is convinced with the first substantial question of law formulated by this Court i.e. 'whether the payment by the first defendant, even assuming him to be a surety, will keep alive the debt against the principal debtor viz., the second defendant in the light of the facts and circumstances established in this case. Since the said suit as against the appellant herein - second defendant is hopelessly barred by limitation, the first substantial question of law formulated by this Court is answered in favour of the appellant herein - second defendant.

19. Accordingly, the second appeal is allowed and the judgment and decree dated 26.10.2006 made in A.S.No.10 of 2006 on the file of the District Court, Nilgiris at Udhagamandalam and the judgment and decree dated 29.12.2004 made in O.S.No.268 of 2002 on the file of the Sub-Court, Udhagamandalam are set aside. This Court, by order dated 08.10.2007 in MP.No.2 of 2007, directed the appellant herein- second defendant to deposit a sum of Rs.50,000/- to the credit of the said suit. In the light of this judgment, the Trial Court shall refund the said sum of Rs.50,000/- to the appellant herein together with accrued interest, if any. Consequently, the connected MP is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar



To

1.The District Court, Nilgiris at Udhagamandalam.

2.The Sub-Court, Udhagamandalam.

+1 CC to Mr.S.Vijayaraghavan, Advocate sr 34466.

SA.No.1044 of 2007
& MP.No.2 of 2007

RR(CO)
SP(16/11/2021)