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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.654 OF 2009

Senthil Gnanavel Chit Fund,
Firm, by Managing Partner,
Mr.K.Srinivasan,
18 - 739/1A, Muthu Maistry Street,
Chittor,
Andhra Pradesh State.

...Plaintiff/Appellant/Appellant

.Vs.

1.M.Ravi

2.N.Santhabai

...Defendants/Respondents/Respondents

PRAYER:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.15 of 2007 dated 27.08.2008 on the file of the learned Subordinate Judge, Chidambaram confirming the Judgment and decree passed in O.S.No.436 of 2004 dated 01.08.2005 on the file of the learned Additional District Munsif, Chidambaram.

For Appellant : Mr.A.Muthukumar

For Respondents : R1 and R2 - Served
No appearance

JUDGMENT

The plaintiff before the learned Additional District Munsif, Chidambaram in O.S.No.436 of 2004 is the appellant before this Court.

2.The only short point for consideration in the above Second Appeal which forms the Substantial Questions of Law is as follows:

"When the Chit Fund Act, Central Act of 1982, was not at all extended to the State of Andhra Pradesh, where the suit Chit Agreement as admittedly



registered, whether the Courts below erred in Law in dismissing the suit on the ground of jurisdiction of Civil Court is ousted under Section 64 (3) of the said Act?".

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3.The plaintiff had filed a suit for recovery of a sum of Rs.18,655.25 against the defendants and had sought for Personal Decree against the 1st defendant and a Charge Decree on the property of the 2nd defendant.

4.The case of the plaintiff is that the 1st defendant had subscribed to one of the Chits and had obtained a sum of Rs.1 lakhs which was re-payable in 40 monthly installments. The 2nd defendant was the surety for the said amount. The 1st defendant was required to re-pay the said amount in monthly installments of Rs.2,500/-. After paying a few installments, the 1st defendant had failed to make the payment. Therefore, the suit.

5.The 2nd defendant alone had contested the suit in which she has admitted that there has been a default of five installments amounting to a sum of Rs.13,137/-. The 2nd defendant had also taken a plea that the application had to be moved before the Registrar of Chit Funds and hence, the suit was not maintainable. Both the Courts below have dismissed the suit on the ground of lack of jurisdiction. The Courts below held that as per Section 64(3) of the Chit Funds Act, 1982, the jurisdiction of the Civil Court has been ousted in respect of disputes relating to a Chit business. It is challenging this concurrent Judgment and Decree, the plaintiff is before this Court. Though the respondents were served they have not entered appearance through counsel or in person.

6.Mr.A.Muthukumar, learned counsel for the appellant would contend that the Judgment and Decree of both the Courts below are erroneous since the Chit in question had its registered office at Andhra Pradesh and the Act had been extended to Andhra Pradesh only on 15.09.2008, although the Chit Funds Act had been enacted in the year 1982. He would draw the attention of this Court to Section 1(3) of the Chit Funds Act, 1982 which would read as follows:

"1. Short title, extent and commencement.—
(1) This Act may be called the Chit Funds Act, 1982. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date as the Central Government



may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States."

Therefore, though the Central Act had been enacted on 19.08.1982 it was come into force on various dates as the Centre by Notification in the Official Gazette would appoint. He would therefore contend that on the date of filing of the suit, the Act had not been extended to the State of Andhra Pradesh. It was only at the time of filing of the Second Appeal that the Act had been extended to the State of Andhra Pradesh. He would rely on the Judgment of this Court in 1996 (II) CTC 170 [The Mayavaram Financial Chit Corporationn Limited, Mayiladuthurai v. R. Narayanan and two others] where this issue has been considered and the Court had held that in the light of Section 85 of the Chit Funds Act, the Act would not apply to a Chit which had been started before the commencement of the Act.

7. Heard the learned counsel for the appellant and perused the papers.

8. The entire argument rests on a very limited campus, "Whether Section 64(3) of the Chit Funds Act, would oust the jurisdiction of the Civil Court?. The Act had been extend to the State of Andhra Pradesh only in the year 2008. The Chit which is the subject matter of the above suit is dated 13.10.1999. On the date, when the Chit had been registered the Act had not been extended to the State of Andhra Pradesh. Likewise, the suit had been instituted on 19.10.2004 even on that date, the Act has not been extended to the State of Andhra Pradesh. Section 64(3) of the Act would come into play only when the Act is applicable to the transaction in dispute. Section 85 of the Act clearly provides that the Act would not apply to a Chit which has been started before the commencement of the Act. Therefore, in the light of this factual position, the Courts below have erred in dismissing the suit on the ground that the Chit Funds Act has ousted the jurisdiction of the Civil Court. The Judgment relied upon by the learned counsel for the appellant dealt with a similar issue where the learned Judge after considering the provisions of Sections 64 and 85 clearly held that since the provisions of the Act in that case had come into force on 01.01.1990 and the transactions commenced prior to that date it would squarely fall within the provisions of Sections 64(3) and 85 of the Chit Funds Act and the suit is maintainable. In the instant case, the Chit Funds Act had not been extended to Andhra Pradesh when the suit was filed.



In the above circumstances, this Second Appeal is allowed and the matter is remitted back to the trial Court for considering the suit on merits, however, there shall be no order as to costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

1. The Subordinate Judge,
Chidambaram.
2. The Additional District Munsif,
Chidambaram.
3. The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.A.Muthukumar, Advocate, S.R.No.36400

S.A.No.654 of 2009

NMI (CO)
CS/19/11/2021