



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.03.2021

Pronounced on : 15.03.2021

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Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

A.S.No.806 of 2020
& C.M.P.No.9696 of 2020

Pachiappan,

... Appellant/Defendant

/versus/

Subramaniyan,

... Respondent/Plaintiff

Prayer: First Appeal is filed under Section 96 C.P.C., against the judgment and decree made in O.S.No.31 of 2017, dated 21.07.2020 on the file of the Additional District Court, Dharmapuri.

For Appellant : Mr.R.Bharanidharan

For Respondent : Mr.Arun Anbumani

J U D G M E N T

The Appeal is directed against the decree passed by the Trial Court in the money suit. The unsuccessful defendant is the appellant before this Court. The parties are described as per the ranking found in the plaint.

2. Plaint in brief :-

The plaintiff Subramaniyan is a retired Postal Department staff. His son-in-law Arunachalam is working as Police Constable in the Tamil Nadu Police Department along with the defendant Pachiappan. Thus, the plaintiff through his son-in-law know the defendant. From the plaintiff, for purchase of tractor and to met out the expenses for his brick kiln business the defendant borrowed a sum of Rs.5,00,000/- on 10.10.2013 and Rs.3,00,000/- on 25.10.2013. Thus, totally, the defendant owe Rs.8,00,000/- to the plaintiff. Since, the defendant promised to repay the money within 10 days, out of trust believing him, the plaintiff did not insist for any written document. The defendant did not repay the money within 10 days as he promised. On several occasion the plaintiff demanded the money in person and



over phone. But the defendant gave evasive reply and delaying the payment. During the month of August-2015, the plaintiff along with his daughter, son-in-law Arunachalam and a Police Constable Subramaniyan met the defendant in his brick kiln at Krishnagiri and demanded the money. The conversation held between them was recorded by the plaintiff's daughter in her cell phone. The defendant admitted his debt and promised to pay. Then again he failed to repay the money as promised. Therefore, on 02.12.2015, the plaintiff gave a complaint to the District Superintendent of Police, Krishnagiri. Enquiry was conducted on 13.12.2015 by the Deputy Superintendent of Police, Armed Reserve Force. Initially, the defendant denied the borrowing and his debt. Later when video recorded by the daughter of the plaintiff was displayed to the Deputy Superintendent of Police, the defendant accepted his debt and gave an undertaking that he will repay the debt in four instalments. (i) a sum of Rs.1,00,000/- in the month of February-2016; (ii). Rs.2,00,000/- in the month of June; (iii) Rs.2,50,000/- in the month of December and (iv). Rs.2,50,000/- in the month of March. The defendant did not repay the loan amount, as per the time schedule agreed in his written undertaking, He paid only Rs.1,00,000/- as under (i). On 05.03.2016, he paid Rs.50,000/-. (ii). On 29.03.2016 he paid Rs.24,500/-. (iii). On 19.06.2016 he paid Rs.15,000/-, (iv). On 28.06.2016 he paid Rs.10,500/-. Thereafter, the defendant did pay any further amount. When demanded further payment he agreed to sell his land and gave the encumbrance certificate of his land, but did not execute the sale deed. Again on 07.03.2017, the plaintiff gave a complaint to Deputy Superintendent of Police, Salem. The defendant was enquired by the Inspector of Police, Denkanikottai, on 27.03.2017. Admitting his liability, the defendant gave an undertaking letter that he will clear the debt in 14 annual instalment of Rs.50,000/-. Since, the defendant had no inclination to repay the loan amount, the suit for recovery of money with 12% interest laid before the Principal District Judge, Dharmapuri, the said suit was taken on file as O.S.No.31 of 2017.

3. Written Statement in brief:-

The facts averred in the plaint denied. The defendant had not borrowed any money from the plaintiff. The defendant had no direct contact with the plaintiff at any point of time. Arunachalam the son-in-law of the plaintiff was known to the defendant. To met out the medical expenses of his son, the defendant borrowed Rs.50,000/- from Arunchalam, for 48% interest p.a. He was regularly paying the interest to Arunachalam. Since his income was very meager, he was not able to pay the principle but was forced to borrow more and more from Arunchalam, to met out the family expenses. Arunachalam had a habit of charging exorbitant interest and taking advantage of his position as



Policeman, used to flee gullible borrowers. He had been warned by his higher officials for his illegal act. When the matter was taken up to the Higher Officials by Arunachalam, the authorities to give quietus to the dispute between the two Policemen, pressurised the defendant to give an undertaking. The said undertaking were not given out of freewill. The plaintiff and the defendant have no privity of contract. Whatever money borrowed by the defendant is only from Arunachalam, the son-in-law of the plaintiff and not from the plaintiff. Therefore, the suit has to be dismissed as false.

4. Based on this pleadings, the Trial Court framed the following two issues:-

(i). Whether the plaintiff is entitled for Rs.10,26,322/- as mentioned in the plaint?

(ii). What other relief to the plaintiff?

5. On behalf of the plaintiff, two witnesses were examined and four exhibits were marked. On behalf of the defendant, two witnesses were examined and five exhibits were marked. The photograph of the parties were marked as Court Exhibits Ex.X.1 to Ex.X.3.

6. The Trial Court allowed the suit as prayed. In the appeal, the Learned Counsel for the appellant submitted that there is no cause of action for the plaintiff to file the present suit and there was no privity of contract between the plaintiff and the defendant. The Court below erred in relying upon the documents obtained from the defendant under duress by the Police Officials, who are also happen to be the Senior Officers.

7. The Trial Court failed to note that Ex.B.1, the lawyer notice sent to the appellant dated 24.04.2015 in which the plaintiff had stated that the defendant borrowed Rs.9,00,000/- on 05.05.2014 and executed a pro-note for the said sum. Quite contrary to this notice, the suit has been filed stating that the defendant borrowed Rs.8,00,000/- on two different dates i.e., on 10.10.2013 a sum of Rs.5,00,000/- and on 25.10.2013 a sum of Rs.3,00,000/- to buy tractor and to meet out his business expenses. The said money was lend out of trust and no written document obtained from the defendant. The Trial Court erred in not taking note of this contradictions in the pre-suit notice and the plaint. Further, the attendance Register and general diary extracts marked as Ex.B2 to Ex.B5 belies the case of the plaintiff that the money was given to the defendant on 10.10.2013 and 25.10.2013 at 7.00 a.m.



8. Ex.A.1 is not a valid document. However, the Trial has taken it has an acknowledgement of the debt for the purpose of decreeing the suit. Even according to Ex.A.1, the recital indicates that the defendant is liable to pay money only to Arunchalam and not to the plaintiff, in spite of specific plea regarding limitation, the trial Court erred in not framing any issue regarding limitation.

9. In the written statement, the defendant has specifically averred that Ex.A.1 was obtained under duress. The Trial Court failed to frame issue regarding the genuineness of Ex.A.1. Ex.A.1 which was obtained under duress in a suspicious circumstances witnessed by the plaintiff, his daughter and son-in-law clearly established that it was not executed under freewill. The trial Court erred in accepting the evidence of P.W.2, who is working as the Inspector of Police in Armed Reserve Force. He has deposed not in his official capacity but had spoken about the enquiry conducted by the Superior Officers. The averments in the plaint that the defendant paid part payment as per the recital in Ex.A.1 is an after thought to save limitation.

10. The Learned Counsel appearing for the appellant would submit that the entire suit is misconceived and filed based on the document obtained under duress. Admittedly, it was obtained by the Superior Officers were the defendant as well as the son-in-law of the plaintiff were working. In Ex.A.1, the defendant had admitted his borrowing from Arunachalam and given an undertaking to repay the debt in four instalments. Even assuming it to be valid and given under freewill, only Arunachalam can enforce the same and not his father-in-law Subramaniam, who is the plaintiff.

11. Per contra, the Learned Counsel appearing for the respondent/plaintiff would submitted that Ex.A.1 and Ex.A.3 were never obtained under duress. The defendant, after borrowing the money had failed to repay the money to the plaintiff. Hence, the fact was brought to the notice of his Higher Officials for taking departmental action. In the course of enquiry, initially, the defendant denied the alleged borrowing but later admitted after video clipping was displayed to him. Thereafter, the defendant, in fact paid part of the loan amount on four different dates and made endorsement on the back of the Ex.A.1. Therefore, it is incorrect to plead that Ex.A.1 and endorsement on the back of Ex.A.1 were obtained under duress. Ex.B.3 is a letter sent by the defendant to the Inspector of Police, Denkanikottai. In this, he has admitted that, he borrowed Rs.9,00,000/- jointly from Subramaniam, the plaintiff as well as from Arunachalam. Therefore, the defendant cannot take a stand that, he is not liable to pay Subramaniam the suit claim.



12. Point for consideration:-

Whether the decree of the Trial Court based on Ex.A.1 and Ex.A.3 is sustainable in view of the contra evidence placed through Ex.B1 to Ex.B5?

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13. Ex.A.1 is a statement obtained from the defendant pursuant to the complaint given by the plaintiff on 02.12.2015 to Superintendent of Police, Krishnagiri. The copy of that complaint is not marked. In this statement, the defendant has admitted his borrowing of Rs.9,00,000/- from the plaintiff Subramaniam and his son-in-law Arunachalam. He admits that, he has repaid Rs.1,00,000/- and he owe balance Rs.8,00,000/-. He had promised to repay the balance amount in four instalments, failing which, he agreed to submit himself for legal and departmental action. Relying upon the document of this nature which was admittedly obtained by a Police Officer in the course of enquiry and captioned as a statement the foundation of the suit is laid. Ex.A.2 is the complaint of the plaintiff given to the Deputy Superintendent of Police, Salem, on 15.03.2017. Ex.A.3 is the response of the defendant consequence to the complaint.

14. The specific allegations is made in the written statement that being a driver under Deputy Superintendent of Police in Armed Force, the said Arunachalam used to lend money to various persons and through his influence with the Higher Police Officials used to extract money. This allegation cannot be brushed aside as a vague or imaginary allegation, because the plaintiff was able to bring one Subramaniam S/o.Kandasamy to depose in his favour as PW.2. He is the Inspector of Police in Armed Reserve Wing. He, without any record and case diary and without permission of Superior Officer, on his own, at the request of the plaintiff, had appeared before the Court and deposed that, he enquired Pachiappan the defendant and Subramaniam the plaintiff, as per the direction given by the Superintendent of Police and he supports the case of the plaintiff that he was present when there was an enquiry on 13.12.2015 in the Office of Deputy Superintendent of Police, Krishnagiri, based on the complaint dated 02.12.2015 given by the plaintiff. It is pertinent to note, that in the plaint itself it is stated that during the month of August 2015, this Subramaniam Police Constable (PW.2) had accompanied the plaintiff to the bricklin of the defendant to demand of the money. The video, audio recording in the cellphone which alleged to have displayed not marked and nothing should be inferred without video, audio recording placed. Except the three photographs which the trial Court has meticulously admitted as evidence and marked as Ex.X.1 to Ex.X.3. No video or audio clipping mechanically recorded placed before the Court admitted into evidence as contemplated under law. The three photographs



marked are not relevant fact to prove the borrowing, which is the subject matter of the suit.

15. The other inherited defect in case of the plaintiff is that, initially the plaintiff has caused pre-suit notice to the defendant stating that the defendant has borrowed a sum of Rs.9,00,000/- and executed a pro-note on 05.05.2014. However, this notice has been totally suppressed by the plaintiff and two different date of borrowing stated in the plaint. The Lawyer, who caused notice Ex.B1 on behalf of the plaintiff was examined by the defendant as D.W.2. The Lawyer had not obtained any acknowledgement from the plaintiff in the notice. Hence, doubt has been created, whether the said notice was issued on the instruction of the plaintiff or not. Dehors of this notice marked as Ex.B1, even to accept the case of the plaintiff that he gave Rs.5,00,000/- on 10.10.2013 and Rs.3,00,000/- on 25.10.2013 to the defendant at about 7.00 a.m., in his house, disproved through Ex.B2 to Ex.B5. The attendance register and general diary maintained in the normal course that the defendant was on that time and date was on his duty.

16. One look at the complaint given by the plaintiff dated 15.03.2017 which is marked as Ex.A.2. A sum of Rs.8,00,000/- was given in two instalments within span of 15 days to buy tractor and meet business expenses on the belief and trust that the defendant will repay the money within 10 days. No evidence placed before the Court to show the defendant purchased tractor during the relevant point of time with the loan amount. In this complaint Ex.A.2, the plaintiff has stated that the money was borrowed by the defendant, on promise that, he will supply bricks from his brick kiln to the plaintiff for the house he is constructing. This averment is not found in the plaint. The next document Ex.A4 relied by the plaintiff is the encumbrance certificate in respect of the property owned by the defendant. This document is relied by the plaintiff to show that the defendant promised to sale the property to the plaintiff in discharge of the loan amount and gave the encumbrance certificate Ex.A.4 but refused to sell the property to him. The suit is not filed for specific performance based on the oral agreement. It is suit for recovery of money. In which in respect of cause of action and dates different conflicting stand taken by the plaintiff in consistent to each other.

17. On considering the documents relied by the plaintiff, this Court finds that Ex.A.1 was obtained at Police Station in the presence of the Higher Officers of the defendant. Ex.A.2 is the second complaint given by the plaintiff to Deputy Superintendent of Police, Salem. As a consequence Ex.A.3 has been obtained from the defendant. All these three documents having obtained under suspicious circumstances with the help of



Police, even if the defendant has admitted that he own money to Arunachalam and promised to pay, these three documents lack credibility being a tainted document obtained under threat of departmental action.

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18. Even though Section 25 of the Evidence Act is restricted only to the statement given by an accused to any police not to be used against the accused. Being a relevant fact under Section 178 of Indian Evidence Act as an admission if to be used against the maker, in a civil suit, the said admission has to be tested whether given out of free will. To whom the admission made and what was the admission made.

19. The plaintiff claims that he served in Postal Department and retired from service. Without proper security, he had lent a sum of Rs.8,00,000/-. Having chosen to do so, he has used his influence with the Police through his son-in-law and obtained documents. The video clipping which is referred in the plaintiff and in P.W.2 evidence to indicate that the defendant voluntarily admitted the liability is not before this Court. Therefore, this Court need not comment anything about it. The pre-suit notice Ex.B1 suppressed and a strange defence denying instruction to the lawyer who issue notice is taken. The said defence demolished by D.W.2 the Advocate, who issued notice Ex.B.1.

20. The Trial Court had first of all erred in not framing appropriate issues. Further, it has erred in giving credence to Ex.A.1 and Ex.A.3 which are tainted documents ignoring Ex.B1 to B5. The evidence of P.W.2 is totally unreliable, for multiple reasons. In the plaint, it is stated that P.W.2 accompanied the plaintiff during August 2015 when he went to defendant's brick kiln for collection. He has spoken about the happenings during the enquiry conducted by the Police Official on 13.12.2015 but he has come to Court not as an Official witness but as an individual. He had no authorisation from his Senior Officer to give evidence or to attend the Court. He did not speak from the record maintained by the Police Station. He is a private witness in the eye of law, who is not competent to speak about the records maintained in the Police Station.

21. Thus looking from any angle, the case of the plaintiff does not indicate, the liability of the defendant to pay the plaintiff arose the manner averred in the plaint. The loose ends of the plaintiff case can be listed as below:-

a). In the plaint, it is averred that without any documentary evidence or acknowledgement for lending the money, the plaintiff gave a total sum of Rs.8,00,000/- on two different dates to the defendant for purchase of tractor and business expenses. In the complaint Ex.A.2, the plaintiff has stated the



defendant promised to supply brick that is why he gave the money.

b). Pre-suit notice Ex.B.5, he has instructed his lawyer that the defendant borrowed Rs.9,00,000/- on 05.05.2014 and had executed pro-note for the loan borrowed. In the plaint, he has totally suppressed the pre-suit notice.

c). The events of lending money to the defendnat on 10.12.2013 and 25.12.2013 at 7.00 a.m., is disproved through Exs.B2 to B5.

22. Thus, the defendant by preponderance of probability had proved that, he neither borrowed Rs.5,00,000/- on 10.12.2013 nor he borrowed Rs.3,00,000/- on 25.10.2013 from the plaintiff. Ex.A.1 and Ex.A.3 indicate he had the money transaction only with Arunachalam. Further, Ex.A.1 and Ex.A.3 were addressed to the police officials under duress and it is tainted with doubt about the free will.

23. For the said reason, this Court is of the view that the trial Court has miserably erred in allowing the suit which is laid on misconceived facts and bereft of admissible evidence. Accordingly, the Appeal Suit is Allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To,

1. The Additional District Court,
Dharmapuri.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.16650

A.S.No.806 of 2020
& C.M.P.No.9696 of 2020

MG(CO)
HS(10/08/2021)