



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD) No.495 of 2012 and
M.P. (MD) No.1 of 2012

Sathasivam

... Appellant/Respondent/
Defendant

Vs.

M/s.Balaji Thiruppathy Fertilizers,
Kamayakoundanpatti Village,
Uthamapalayam Taluk,
Theni District,
Rep. by its Partner Gajendran

... Respondent/Appellant/
Plaintiff

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 10.01.2007 passed in A.S.No.24 of 2006 on the file of the Subordinate Court, Uthamapalayam, reversing the Judgment and Decree dated 30.06.2006 passed in O.S.No.299 of 2005 on the file of the District Munsif Court, Uthamapalayam and to allow this second appeal.

For Appellant	: Mr.Vinoth, for Mr.R.Subramanian.
For Respondent	: Mr.Nires, h, for Mr.V.S.Balamurugan.

J U D G M E N T

The defendant in O.S.No.299 of 2005 on the file of the District Munsif Court, Uthamapalayam, is the appellant in this second appeal.

2. The case of the plaintiff is as follows:-

The plaintiff is a seller of fertilizers and pesticides. The defendant is an agriculturist. He purchased pesticides and fertilizers from the plaintiff through himself and also through his son Dhanasekaran and employee Kannan. The plaintiff has been maintaining a running account in this regard. According to the plaintiff, as on 30.04.2003 the defendant was liable to pay a sum of Rs.48,986/- in all. The plaintiff had earlier filed O.S. No.379 of 2004 for recovering the said amount. The defendant after entering appearance took a plea that since the plaintiff firm was not registered, the suit was not maintainable. Therefore, the earlier suit was withdrawn with liberty to file a fresh suit on the same



cause of action. Liberty was granted. Thereafter, the plaintiff firm was registered on 01.03.2005. Since the liability of the defendant remained uncleared, the suit came to be filed.

3. The defendant in his written statement denied the suit claim in *toto*. According to the defendant, he is not liable to make any payment to the plaintiff. The suit documents relied on by the plaintiff were characterised as fabricated documents. The learned trial Judge framed the necessary issues. Gajendran, partner of the plaintiff firm examined himself as P.W.1 and Ex.A.1 to Ex.A.42 were marked through him. The defendant examined himself as D.W.1 and Ex.B.1 was marked through him. Ex.B.1 is the plaint filed in O.S.No.379 of 2004. The learned trial Judge after a consideration of the evidence on record dismissed the suit vide Judgment and Decree dated 30.06.2006. Aggrieved by the same, the plaintiff filed A.S.No.24 of 2006 before the Sub Court, Uthamapalayam. The first appellate Court by Judgment and Decree dated 10.01.2007 set aside the Judgment and Decree passed by the trial Court and partly allowed the appeal. Aggrieved by the same, this second appeal came to be filed.

4. This second appeal was admitted on 04.09.2012 on the following substantial questions of law:

"a) Whether in law the lower appellate Court is right in accepting Ex.A.5 to A8 and A13 to A32 receipts after having held that the receipts are hit by Section 32 of the Indian Stamps Act?

b) Whether the lower Appellate Court overlooked the fact that the claim of interest is hit by Order 2 Rule 2 of C.P.C.?

c) Whether the lower appellate Court was right in invoking Section 73 of the Indian Evidence Act and comparing the signatures with naked eyes? "

5. Heard the learned counsel on either side.

6. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds. He took me through the evidence on record and also the Judgments passed by the Courts below. He submitted that the appellate Court went wrong in holding that Gajendran had the *locus standi* to file the present suit. He also submitted that in the earlier suit, the plaintiff had sought to recover only the principal amount from the defendant. The plaintiff did not make any claim for interest. Therefore, the suit was dismissed as withdrawn with liberty to file a fresh suit on the same cause of action. It was not open to the plaintiff to include the claim for interest also. He also stated that the defendant denied the signatures attributed to him in the suit documents. Therefore, the burden lay entirely on the plaintiff to prove their documents. The plaintiff could have taken steps to refer the matter for comparison by hand writing expert. The plaintiff had not done



so. According to the plaintiff, the first appellate Court erred in doing comparison on its own. He would also state that the present suit was hit by Order 2 Rule 2 of C.P.C. as far as "interest" is concerned. He also submitted that none of the receipts relied on by the plaintiff have been stamped. Therefore, they are clearly inadmissible in evidence. He called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the judgment of the first appellate Court and restore the judgment passed by the trial Court.

7. Per contra the learned counsel appearing for the respondent submitted that the impugned Judgment does not call for any interference and he prayed for dismissal of the second appeal.

8. I carefully considered the rival contentions and went through the evidence on record.

9. The first contention as regards the *locus standi* of Thiru.Gajendran to file the present suit cannot be considered. The second appeal was admitted on 04.09.2012 only on the aforesaid substantial questions of law. Lack of competence of Gajendran to file the suit or the maintainability of the suit was not framed as one of the substantial questions of law. Of course, as contended by the appellant, this Court has jurisdiction to frame additional substantial question of law. But taking into account the overall facts and circumstances, I decline to do so. In as much as the competence of Gajendran to file suit is not one of the substantial questions of law formulated, this contention cannot be gone into or considered. There is again no merit in the contention that the claim of the plaintiff is hit by Order 2 Rule 2 of C.P.C. as regards interest. The learned counsel appearing for the appellant is under the impression that when the earlier suit was filed by the plaintiff, there was no claim regarding interest. The earlier plaint in O.S.No.379 of 2004 has been marked by the defendant as Ex.B.1. I perused the original plaint. It is obvious that the plaintiff had also included the claim of interest on the principal amount. Therefore, the second substantial question of law is answered against the appellant.

10. Again there is no merit in the contention that this is not the case in which Section 73 of the Indian Evidence Act could have been invoked. This is because the learned first appellate Judge after a perusal of the materials on record came to the conclusion that the defendant is not in the habit of putting uniform signatures. Therefore, the signature could not be compared with any admitted signature. The first appellate Court has given a specific finding that it is not possible to invoke the task of comparison. I hold that the aforesaid substantial question of law has been incorrectly framed.



11. That leaves us with the first substantial question of law. The contention of the learned counsel appearing for the appellant is that unstamped receipts could not have been admitted in evidence. On a careful perusal of the impugned Judgment passed by the first appellate Court, it can be seen that the documents in question admitted in evidence are account books maintained in regular course of business and they cannot be considered as receipts. The first appellate Court after a careful examination of the documentary evidence as well as the oral evidence adduced by the parties noted that even according to the defendant, there was no strained relationship between the parties. If as suggested by the defendant, the plaintiff wanted to grab money from the defendant by making false claim, he could have fabricated the documents. But that is not the case. There are several entries evidencing payment by the defendant. For instance, in Ex.A.37, it has been mentioned that out of the liability of Rs.47,914/-, a sum of Rs.12,896/- was paid by the defendant and the balance amount is Rs.34,015/-. The entry made vide Ex.A.3 on 01.04.2002 mentions that the defendant has to pay a sum of Rs.41,698/-. Vide Ex.A.39 dated 24.09.2002, the first appellate Court came to the conclusion that a sum of Rs.21,136/- is to be paid by the defendant. Thus, after a careful examination of the entire documentary evidence, the Court below chose to go by the entry made in Ex.A.3. Though the plaintiff had made a claim for payment of Rs.48,986/- and filed proof of documents in support of the claim, the first appellate Court chose to reject the said documents such as Ex.A.10, Ex.A.11 etc. After carefully adding the sums covered vide Ex.A.12 to Ex.A.32 and Ex.A.6 to Ex.A.8 and examining the same, in the light of Ex.A.3, the first appellate Court came to the conclusion that the liability of the defendant was quantified at Rs.22,122/-.

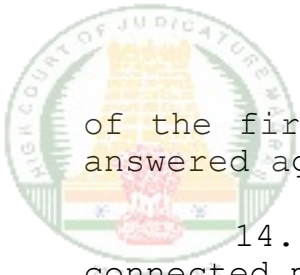
12. At this juncture, it is necessary to bear in mind the definition of the term "proved" as set out in the Indian Evidence Act, 1872 which reads as follows:-

"3. Interpretation Clause - ...

...

"Proved"- A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

13. The first appellate Court after considering the matter, held that the entry made vide Ex.A.3 can be accepted. The defendant is an agriculturist. In his cross examination, he had specifically admitted that he had purchased pesticides and fertilizers from the plaintiff firm. Therefore, the first appellate court chose to come to the conclusion that the documents projected can be accepted. I do not find any ground to interfere with the well considered decision



of the first appellate Court. The substantial questions of law are answered against the appellant.

14. This second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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To:

1. The Subordinate Judge,
Uthamapalayam.
2. The District Munsif,
Uthamapalayam.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-17985[F] dated 29/04/2021)

S.A.(MD)No.495 of 2012
28.04.2021

NSM(CO)
TR(16.06.2021) 5P 6C