



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

A.S. (MD)No.106 of 2019

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1.V.M.Selvin

2.Benjamin Bindhu

... Appellants / Defendants

-Vs-

M.Alex (Died)

... Plaintiff

2.M.Ramola

3. Godson

4.Sharmi

5.Jismi

... Respondents

(R2 to R5 are brought on record as Lrs of sole respondent)

PRAYER: Appeal Suit filed under Order Section 96 of the Civil Procedure Code, against the judgment and decree dated 11.01.2019 in O.S.No.32 of 2009 on the file of the Principal District Court, Kanyakumari District at Nagercoil.

For Appellants

: Mr.R.Vijaya Kumar

For Respondents

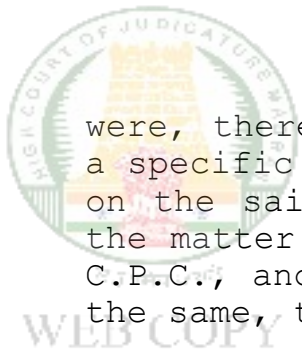
: Mr.V.Meenakshi Sundaram

JUDGMENT

The defendants in O.S.No.32 of 2009 on the file of the Principal District Court, Kanyakumari District at Nagercoil are the appellants in this appeal.

2.The said suit was instituted for recovering a sum of Rs.8,60,000/- from the appellants herein. The appellants are husband and wife. The original plaintiff Alex was none other than the brother-in-law of the first appellant.

3.The case of the plaintiff was that he deposited a sum of Rs.5,00,000/- in the finance company run by the defendants in the name and style of Bella Finance. Since the deposit amount was not repaid, the suit came to be instituted. The defence of the defendants was that in lieu of repayment of the deposit amount, the defendants had sold their scorpio car bearing registration No.TN 74 W 7713 and also 3 ½ cents of land in re-survey No.733/19B in Thiruvithancode Village. In other words, the defendants set up a plea of discharge. While framing the issue, the trial Court rightly cast the initial burden of proof on the defendants. The defendants



were, therefore, called upon to adduce evidence first. Even though a specific date was fixed for letting in evidence by the defendants, on the said date, the defendants were not ready to get along with the matter. Thereupon, the Court below invoked Order 17 Rule 3A of C.P.C., and proceeded to decree the suit as prayed for. Challenging the same, this appeal has been filed by the defendants.

4.The question that arises for my consideration is whether the procedure adopted by the Court below is correct.

5.I heard the learned counsel on either side.

6.There is no dispute that the burden was rightly cast on the defendants because they had only set up the plea of discharge. Deposit of Rs.5,00,000/- in the financial establishment run by the defendants was admitted.

7.But on the day fixed for adducing evidence, the defendants did not get along with the matter. Therefore, the court below must follow the procedure set out in Order 17 Rule 3 of C.P.C.

"Order 17 Rule 3 of C.P.C., reads as follows:-

3.Court may proceed notwithstanding either party fails to produce evidence etc-- Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed the Court may, notwithstanding such default,

(a) if the parties are present, proceed to decide the suit forthwith; or

(b) if the parties are, or any of them is, absent, proceed under rule 2."

8.In the case on hand, the parties were very much present. Though the defendants were obliged to adduce the evidence, they did not do so. Therefore, the Court below was entitled to decide the suit forthwith. Even though the trial Court ought to have invoked Order 12 Rule 6 of C.P.C., it had referred to Order 17 Rule 3A which is clearly not applicable to the case on hand.

9.Even though Order 12 Rule 6 of C.P.C., was not specifically referred to, a reading of paragraph 8 of the impugned judgment shows that the said mandate had been kept in mind by the Court below. The Court below had stated that the only plea of the defendants was one of discharge by sale of scorio car and land. Since the defendants had not proved this plea of discharge, the Court below came to the conclusion that the plaintiff's claim stood proved and accordingly, decreed the suit.

10.I cannot fault the approach of the Court below. However, the learned counsel appearing for the appellants submits that the

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defendant has a substantial defence and he ought not to be non-suited summarily. The appellants agree to deposit a sum of Rs.1,00,000/- on or before 31.08.2021 to the credit of O.S.No.32 of 2009 on the file of the Principal District Court, Kanyakumari District, Nagercoil.

WEB COPY

11.The disbursement of the said amount will depend on the outcome of the suit proceedings. On such deposit by the defendants, the same will be kept in an interest bearing account. In view of the aforesaid concession given by the appellants through their counsel and in order to render substantial justice, the judgment and decree passed by the Court below is set aside. The matter is remanded to the file of the trial Court. Registry will return the records forthwith to the trial Court. The parties will appear before the trial Court on 06.09.2021. On the said date, the defendants will enter the witness box. The suit itself will be disposed of in accordance with law within a period of four months thereafter. This appeal is allowed on these terms. Since the matter is being remanded, Registry is directed to return the Court fees to the appellants. If the defendants fail to make the deposit, their defence will be struck off and the Court below shall invoke Order 12 Rule 6 of C.P.C. and dispose of the matter. I make it clear that Registry will not number any petition for seeking extension of time. No costs.

Sd/-

Assistant Registrar (CS-II)

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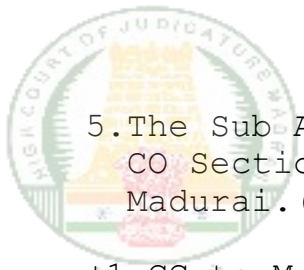
/ /2021

Sub Assistant Registrar(CS)

Rmi

To

- 1.The Principal District Court, Kanyakumari District at Nagercoil.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court, Madurai.
- 3.The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai.
- 4.The Sub Assistant Registrar,
A.E.Section, Madurai Bench of Madras High Court, Madurai.



5.The Sub Assistant Registrar(CO),
CO Section, Madurai Bench of Madras High Court,
Madurai.(For Returning the Court fees as directed)

+1 CC to M/s.R.VIJAYA KUMAR, Advocate (SR-22215[F] dated 13/07/2021)

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+1 CC to M/s.R.MURUGAN, Advocate (SR-22220[F] dated 13/07/2021)

A.S.(MD)No.106 of 2019
12.07.2021

RD(10.08.2021) 4P 9C