



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

A.S. (MD)No.68 of 2016

WEB COPY

V.Saraswathi

... Appellant/Plaintiff

Vs.

Kumaresan (died)

1. Mohandhas
2. Ponnammal
3. Sathish

... Respondents/Defendants

Prayer: Appeal Suit filed under Section Order 41 Rule 1 & 2 of C.P.C. r/w. Section 96 of C.P.C., to call for the records from the Court below and set aside the Decree and Judgment of the learned IV Additional District Judge, Tirunelveli, dated 28.10.2015 made in O.S.No.42 of 2011 by allowing this appeal and decree the above suit.

For Appellant : Mr.G.Prabhu Rajadurai for R.Maheswaran

For R-1 & R-2 : No appearance.

R3 : Disd Vide Court Order Dated 04/07/2018

* * *

J U D G M E N T

This appeal is directed against the Judgment and Decree dated 28.10.2015 made in O.S.No.42 of 2011 on the file of the IV Additional District Judge, Tirunelveli.

2. The plaintiff in the said suit is the appellant before this Court. The case of the plaintiff is as follows:-

The first defendant Kumaresan is the father of the plaintiff. The second defendant Mohandhas and the fourth defendant Satheesh are her brothers. The third defendant Ponnammal is the mother of the plaintiff. The suit was originally filed only against the father and the elder brother Mohandhas. Following the demise of the father, defendants 3 and 4 were brought on record as his legal heirs. According to the plaintiff, the first defendant and the second defendant conducted business in the name and style of "Shree.K.Raja Embroidering Works" at Chennai. They requested the plaintiff to lend financial assistance for running the business. The plaintiff's husband Thiru.Venkatesaraja was then employed in Dubai. The defendants wanted the plaintiff to give a sum of Rs.10,00,000/-.



Since the plaintiff was having a sum of Rs.5,00,000/- in cash, she handed over the said amount to defendants 1 and 2. She also gave 99 sovereigns of gold to enable defendants 1 and 2 to pledge the same and raise funds. This handing over of cash and jewels is said to have taken place in March 1996. According to the plaintiff, the said defendants executed Ex.A.1 letter of undertaking dated 03.07.1996 undertaking to return the sum of Rs.5,00,000/- and the jewellery within a period of twelve years. The business is said to have run into loss and considering the relationship, the plaintiff did not pressurise them to return the borrowed amount and jewellery.

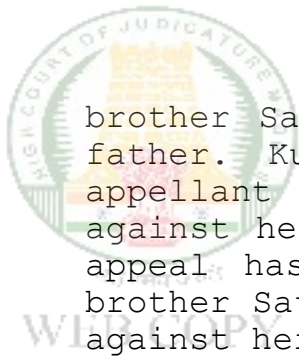
3. The admitted case of the defendants is that after the business suffered a loss, the parents returned to the native village and were staying with the plaintiff for several years. The contesting defendants would state that the relationship broke down some time in the year 2010. When the plaintiff declined to maintain the parents. Be that as it may, the plaintiff caused to issue Ex.A.2 notice dated 08.02.2011 calling upon defendants 1 and 2 to return what was borrowed from her in March 1996. Ex.A.4 is the reply notice dated 22.02.2011 controverting the stand of the plaintiff. Left with no other option, the plaintiff filed the aforesaid suit seeking recovery of a sum of Rs.9,47,915/- with interest and also for recovering the gold jewellery which was valued at Rs.12,87,000/-.

4. The contesting defendants filed their written statement denying the suit claim. Based on the divergent pleadings, the trial Court framed the following four issues:-

- " (1) Whether the document dated 03.07.1996 is valid under law?
(2) Whether the suit is in time?
(3) Whether the plaintiff is entitled to Judgment and Decree for Rs.9,47,915/- with interest and cost and 99 sovereign jewels or equivalent to money of Rs.12,87,000/-?
(4) To what further relief the parties are entitled to? "

5. On the side of the plaintiff, the plaintiff examined herself as P.W.1 and one of the brothers, namely, Satheesh as P.W.2. One Raveendran who is said to have attested Ex.A.1 was examined as P.W.3. P.W.2 had also attested the said document. Ex.A.1 to Ex.A.10 were marked. On the side of the defendants, the elder brother of the plaintiff Mohandhas was examined as D.W.1. Ex.B.1 to Ex.B.4 were marked on the side of the defendants. The trial Court by Judgment and Decree dated 28.10.2015 dismissed the suit. Challenging the same, this appeal came to be filed.

6. The appeal has been dismissed as regards the third issue, namely, as to whether the plaintiff could have sued her mother and brother Satheesh. The plaintiff could have sued her mother and brother Satheesh.



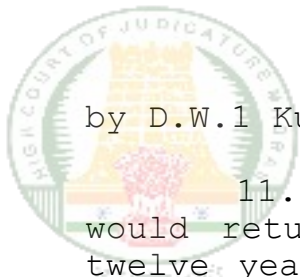
brother Satheesh only to the extent of their inheritance from the father. Kumaresan had not left anything behind. Therefore, the appellant has no claim against Satheesh. Her case is directed against her mother and elder brother Mohandhas and that is why the appeal has been allowed to be dismissed as regards the younger brother Satheesh. The plaintiff is content to pursue the appeal only against her mother and the elder brother Mohandhas.

7. Even though the first respondent Mohandhas has been served and his name is also printed in the cause list, there is no appearance on his behalf.

8. The learned trial Judge has given three reasons for non-suiting the plaintiff. The first reason is that the suit is barred by limitation. It is not in dispute that the Court below had stated that in Ex.A.1 letter of undertaking, it has not been mentioned as to when the borrowal had taken place. It is also not in dispute that Ex.A.1 was not executed on the date when the cash along with jewels were handed over. The Court below chose to treat Ex.A.1 only as an acknowledgement and hold that the period of limitation of three years would start running from the date of Ex.A.1, that is, from 03.07.1996. Therefore, the first point for my consideration is whether the Court below was right in holding that the suit was hit by limitation.

9. Before answering this question, I have to necessarily give a finding as to whether the plaintiff had established that Ex.A.1 letter of undertaking was executed by the first defendant Kumaresan and the second defendant Mohandhas. The Court below had noted that when the contesting defendants took out an application for referring Ex.A.1 for the opinion of the handwriting expert, the plaintiff had opposed the same and I.A.No.87 of 2013 filed by the contesting defendants came to be dismissed. The Court below took the view that having prevented the defendants from establishing that they did not execute Ex.A.1, the plaintiff ought to have taken steps to have the signatures in Ex.A.1 compared with the admitted signatures of defendants 1 and 2. She did not do so. The plaintiff thus failed to prove that Ex.A.1 was actually executed by defendants 1 and 2.

10. As rightly pointed out by the learned counsel appearing for the appellant, the suit itself was laid on the strength of Ex.A.1. In the written statement, the defendants had only taken the stand that Ex.A.1 is a fabricated document. The signatures appearing in Ex.A.1 have not been specifically denied in the written statement. In any event, when the trial Court had chosen to dismiss I.A.No.87 of 2013 filed by them, the same cannot be put against the plaintiff while disposing the suit on merits. The plaintiff had examined the attestors of Ex.A.1. One of the attestors is none other than Satheesh who is the son of Kumaresan and younger brother of the plaintiff and Mohandhas. I therefore have no hesitation to come to the conclusion that the plaintiff had proved the execution of Ex.A.1



by D.W.1 Kumaresan and D.W.2 Mohandhas.

11. In Ex.A.1, it has been mentioned that the defendants would return the borrowed cash and jewellery within a period of twelve years. In that event, the period of three years limitation would start running only from the expiry of the period of twelve years from the date of execution of Ex.A.1. Ex.A.1 was executed on 03.07.1996. The twelve years' period expired on 02.07.2008. The suit ought to have been filed on or before 01.07.2011. In the case on hand, the suit was filed on 10.06.2011. Therefore, the Court below erred in holding that the suit was barred by limitation.

12. Though I have held that Ex.A.1 has been established by the appellant, I am of the view that the plaintiff will be entitled only for monetary portion covered under Ex.A.1. Though Ex.A.1 also talks about handing over of 99 sovereigns of gold, it is completely bereft of details. When the plaintiff could give a list of 22 items in the suit schedule, nothing prevented the plaintiff to annex the same along with Ex.A.1. It is also quite possible that the jewellery handed over by the plaintiff was, what was given by the father at the time of her marriage. When Ex.A.1 is completely silent about the details of the jewellery handed over by the plaintiff, it would be most unsafe to pass a decree based on Ex.A.1. Therefore, even while reversing the decision of the trial Court, I decree the suit only as regards the cash portion covered in Ex.A.1.

13. The Judgment and Decree passed by the trial Court is partly set aside. This appeal suit is partly allowed. The first respondent Mohandhas is directed to pay a sum of Rs.9,47,915/- with interest at the rate of 6% from the date of the plaint till the date of realisation. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1. The IV Additional District Judge,
Tirunelveli.

2. Mr. Mohandhas,
S/O (Late) Sri. Kumaresan,
Drama Street,
Vadakkankulam,
Radhapuram Taluk,
Tirunelveli District.

3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.MAHESWARAN, Advocate (SR-19388[F] dated 16/06/2021)

A.S.(MD)No.68 of 2016
15.06.2021

RK (23.07.2021) 5P 6C