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A.S.(MD)NO.157 OF 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

A.S.(MD)No.157 of 2017
and
C.M.P.(MD)No.9030 of 2017

1. M.Dinesh

2. Monikanta Prasad ... Appellants / Defendants

Vs.

Dr.B.Prasanna Bai ... Respondent / Plaintiff

Prayer: Appeal suit filed under Section 96 of C.P.C., to set aside the Judgment and Decree passed in O.S.No.36 of 2004 on the file of the District Court, Kanyakumari at Nagercoil, dated 28.02.2017 by allowing this appeal and with cost throughout.

For Appellants : Mr.S.Meenakshi Sundaram,
Senior counsel,
for Mr.T.Selvan.

For Respondent : Mr.T.Arul,
for Mr.R.Nandakumar.

* * *

**J U D G M E N T**

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The defendants in O.S.No.36 of 2004 on the file of the District Judge, Kanyakumari District at Nagercoil are the appellants in this appeal. The suit was filed by the respondent herein for recovering a sum of Rs.15,01,800/- together with interest at 12% p.a. on the principal sum of Rs.12,00,000/- from the date of suit till the date of realization.

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

The first defendant is the son of the second defendant. The second defendant was the plaintiff's husband's friend. The plaintiff's son P.V.Girish Kumar wanted to join MBBS course. The defendants induced the plaintiff to believe that if a sum of Rs.12,00,000/- was paid towards capitation fee, admission could be secured for the plaintiff's son for the academic year 2000-2001. Believing the words, the plaintiff entrusted a sum of Rs.11,00,000/- on 28.05.2000. The first defendant kept a sum of Rs.10,00,000/- out of the said amount intact by depositing the same in Bangalore City Branch of South Indian Bank on 31.05.2000. On 04.06.2000, the plaintiff handed over the balance amount of Rs.5,00,000/- to the first



defendant. Rs.4,00,000/- was paid towards tuition fee to the college by way of two demand drafts. The plaintiff and her son were told by the first defendant that the capitation fee had been remitted to the college through one Srinivasa Rao. However, the promised medical seat never materialised. On 25.04.2001, the college returned the tuition fee paid by the plaintiff. The plaintiff realised that her son was denied medical seat only because the capitation fee was not paid to the management. In spite of demands, the defendants did not return the balance amount of Rs.12,00,000/-. The plaintiff issued legal notice. The first defendant as a counterblast initiated criminal prosecution against the plaintiff and her family members before the Judicial Magistrate Court at Bangalore. The said case eventually ended in acquittal. The plaintiff also gave a police complaint against the defendants and the said Srinivasa Rao before the Superintendent of Police, Kanyakumari District on 18.08.2001. Since the defendants did not settle the claim, the suit came to be instituted.



3. The defendants filed written statement. The defendants denied the case of the plaintiff in *toto*. It was contended that the first defendant never made any promise of securing medical seat for the plaintiff's son. There was a family partition and the first defendant got a sum of Rs.10,00,000/- towards his share and that the said amount was deposited in South Indian Bank, Bangalore City Branch. The plaintiff and her son were in need of Rs.4,00,000/- for paying tuition fees and financial assistance was extended by the first defendant. The plaintiff failed to repay the said amount of Rs.4,00,000/- borrowed from the first defendant. That is why, the first defendant initiated criminal prosecution against the plaintiff and other family members before the VII Additional Chief Metropolitan Magistrate Court, Bangalore. The suit was vexatious and it was liable to be dismissed. An additional written statement was also filed.

4. It was contended therein that a sum of Rs.16,00,000/- was borrowed from the first defendant and that this amount was frittered away by the plaintiff's son in gambling. Only tuition fee was paid and capitation fee was not



paid. The college did not admit the petitioner's son. W.P.No. 9153 of 2001 was filed before the High Court of Karnataka at Bangalore against the college. In the affidavit filed in support of the writ petition, no allegation has been made against the petitioner. Questioning the judgment of acquittal, the first defendant has filed appeal before the High Court. The case of the defendants is that in order to escape from their liability, the present suit has been instituted.

5. Based on the divergent pleadings, the trial Court framed the issue as to whether the plaintiff is entitled to the suit claim from the defendants. On the side of the plaintiffs, as many as four witnesses were examined. The plaintiff examined herself as P.W.1. Her son was examined as P.W.4. Ex.A.1 to Ex.A.23 were marked. On the side of the defendants four witnesses were examined. The first defendant examined himself as D.W.1, while his father was examined as D.W.3. Ex.B.1 to Ex.B.9 were marked. X.1 to X.8 were marked as third party documents. After considering the evidence on record, the trial Court decreed the suit as prayed for vide judgment and decree dated 28.02.2017. Questioning the same, this



appeal came to be filed.

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6. The learned Senior counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds. He contended that there is absolutely no evidence to fasten liability on the second appellant. The transaction at best involved only the first appellant and the plaintiff's son. There is nothing on record to show that any amount was paid to the first appellant by the plaintiff. He wanted this Court to take note of the conduct of the plaintiff. The plaintiff was then working as a senior civil surgeon and her husband is a retired Executive Engineer . But the suit was filed as an indigent person. The learned Senior counsel posed a rhetorical question as to whether any reliance can be placed on the testimony of such a person. He also pointed out that the plaintiff has a daughter and an attempt was made to secure medical seat for her also. That attempt ended in vain and a criminal case was instituted against a relative in that regard. The version projected in the present suit is only an echo of what was alleged against that relative. The case eventually ended in compromise between the parties.



The learned Senior counsel also faulted the trial Court for not having framed the issues properly. He emphatically asserted that if the plaintiff's case is true, then it would have definitely found mention in the affidavit filed in W.P.No.9153 of 2001 before the Karnataka High Court. The writ petition was filed by the plaintiff's son seeking medical admission in the college in question. The plaintiff's son had asserted that the entire amount was paid directly to the college management. As regards the amount of Rs.10,00,000/- deposited in the bank account of the first appellant, a clear and convincing explanation had been furnished. The argument of the appellants is that these aspects have not at all been taken note of by the learned trial Judge. He called upon this Court to set aside the impugned judgment and decree and allow the appeal as prayed for.

7. Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not call for any interference.



8. The following points arise for determination:-

i) Whether the plaintiff had established her claim that a sum of Rs.16,00,000/- was paid to the defendants for securing admission for her son in a medical college?

ii) Whether there is any evidence to fasten liability on the second defendant?

iii) What is the probative value that can be attached to Ex.A.1?

iv) Whether the case of the plaintiff can be disbelieved on account of the absence of allegations against the defendants in Ex.B.5?

v) Whether the first defendant had proved on balance of probabilities that the plaintiff had availed financial assistance from him?

9. Though as many as 23 documents have been marked on the side of the plaintiff, most of the documents relate to transaction involving the members of the plaintiff's family. Only one document that is Ex.A.1 involves the first defendant. Ex.A.1 is the counter foil of pay-in slip for Rs.10,00,000/- issued by the Bangalore City Branch of South



Indian Bank. This amount was deposited in the bank account of the first defendant. The defendants' version that this amount represented the share of the first defendant in a family partition cannot be believed. If that be so, there is absolutely no occasion for the plaintiff to have come into possession of the original counter foil. Ex.A.1 is the evidence of deposit of Rs.10,00,000/- in the bank account of the first defendant. If the plaintiff had nothing to do with the said deposit, there was no way by which she could have had access to the said document. The explanation given by the defendants is that the plaintiff's daughter P.V.Bindhu had come to Bangalore and that she managed to stealthily remove the said document from the first defendant. It appears to be a cock and bull story. I am more than satisfied that the plaintiff had deposited the aforesaid amount of Rs.10,00,000/- in the bank account of the first defendant.

10. Even according to the defendants, the plaintiff was working as a senior civil surgeon during the relevant point of time and her husband was a retired Executive Engineer. It is improbable that they were in financial distress



and had approached the defendants for assistance. If really, the plaintiff had borrowed loan from the first defendant and failed to repay the same, the defendants would not have kept quiet. It is true that the defendants initiated criminal prosecution against the plaintiff and her family members. But this was done only in the year 2002. Even earlier (ie.) on 18.08.2001, the plaintiff had lodged a complaint before the Superintendent of Police, Kanyakumari District, against the defendants. This complaint was marked as Ex.A.2. The initiation of criminal prosecution by the first defendant before the criminal Court at Bangalore against the plaintiff was subsequent in point of time and was an afterthought. The said case eventually ended in acquittal. Though a feeble claim was made that the first defendant had challenged the acquittal before the High Court, no material has been placed before me to show that the judgment of acquittal was interfered with. It is true that the plaintiff originally filed the case as an indigent person. From that circumstance, I cannot disbelieve her case. It is equally true that the plaintiff had earlier filed a criminal case against one Manoharan who had promised to get medical seat for P.V.Bindhu, the daughter of the plaintiff. The facts



remains that the case initiated against Manoharan ended in compromise. In any event, I had not gone by the oral testimony of the plaintiff. Ex.A.1 is a clinching record. The learned trial Judge after a careful consideration of the evidence on record as well as the oral testimony of the witnesses had come to the conclusion that Ex.A.1 is a clear proof that the plaintiff had paid a sum of Rs.10,00,000/-. I concur with the reasons assigned by the learned trial Judge in this regard. I am satisfied that the plaintiff has substantially established her claim.

11. According to the plaintiff, a sum of Rs.16,00,000/- was paid in *toto* to the defendants and that out of this amount, a sum of Rs.4,00,000/- was paid to the college towards tuition fee. It is admitted by the plaintiff that Rs.4,00,000/- was subsequently returned. That is why, the principal amount in the suit had been confined to Rs.12,00,000/-. Since there is no evidence for the remaining amount of Rs.2,00,000/-, I come to the conclusion that the plaintiff is entitled to decree only for a sum of Rs.10,00,000/- as the principal sum. If the defendants had admitted receipts of Rs.10,00,000/- from the plaintiff and



claimed that they only paid the tuition fee to the college, then I would have reduced liability to Rs.6,00,000/-. But that is not the defence. So, the refund of Rs.4,00,000/- by the college directly to the plaintiff cannot enure to the benefit of the defendants.

12. As regards the claim against the second defendant, I have to conclude that there is absolutely no material. The evidence on record points to the transaction only between the plaintiff on the one hand and the first defendant on the other. During the relevant time, the first defendant was staying in Bangalore. The assurance was that medical seat will be secured in Medical College, Kolar, at Karnataka. The remittance was made in the bank account of the first defendant only. In these circumstances, except oral testimony, there is nothing to connect the second defendant with the transactions. The trial Court ought to have passed the judgment and decree only against the first defendant alone and that too for a sum of Rs.10,00,000/-. The impugned judgment and decree are modified accordingly. The first defendant is directed to pay a sum of Rs.10,00,000/- together



with interest @ 9% p.a. with effect from the date of plaint till the date of realization. It is seen that pursuant to the interim order granted by this Court on 11.08.2018 in C.M.P.(MD) No.9030 of 2017, a sum of Rs.6,00,000/- had already been paid to the plaintiff. While computing the liability of the first appellant, the amount already paid will be duly adjusted. The impugned judgment and decree is set aside as far as the second defendant is concerned and is modified insofar as the first defendant is concerned. This appeal suit is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

22.07.2021

Index : Yes / No
Internet : Yes/ No
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To:

1. The District Judge,
Kanyakumari at Nagercoil.

Copy to:

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



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G.R.SWAMINATHAN,J.

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