



AS.No.222 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2021

PRONOUNCED ON : 16.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.222 of 2011

(Through Video Conferencing)

1. S.Gunasekaran
2. G.Kalaivani
3. Vijay Anandakumar

Appellants

Vs

1. S.Sivapalani (Died)
2. Punitha
3. M/s.Sri Thirumal Real Estates, represented
by its Managing partner, Pondicherry - 7
4. Senthamarai
5. Sivagamasundari
6. Shanmugapriya
7. S.Sivaraman

Respondents

Prayer:- This Appeal Suit has been filed, under Section 96 of CPC, against the judgement and decree, dated 16.07.2010, made in OS.No.2 of 2006, by the Additional District Court cum Fast Track Court No.2, Cuddalore.

For Appellant : Mr.S.Sathish Rajan

For Respondents : No appearance

JUDGEMENT

1. This Appeal Suit has been filed, against the judgement and decree, dated



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16.07.2010, made in OS.No.2 of 2006, by the Additional District Court cum Fast Track Court No.2, Cuddalore.

2. The suit had been filed, seeking to pass a preliminary decree for Rs.12,05,000/- against the Defendants, with interest at the rate of 12% p.a. and to pass a final decree, against the the Defendants on their failure to pay the decreetal amount, to bring the suit properties for sale, relating to the equitable mortgage and for costs.
3. The case of the Plaintiff is that the Defendants 1 and 2 are the husband and wife and the 3rd Defendant is their son. The Defendants 4 and 5 are the father and mother of the 1st Defendant. The suit properties belonged to the joint family. The 3rd Defendant was studying at Russia. On 15.07.1999, the Defendants 1 to 3 had borrowed a sum of Rs.10,00,000/- from the Plaintiff, agreeing to repay the same with interest at the rate of 12% per annum and executed a promissory note to that effect. The Defendants had also handed over four original title deeds relating to the suit properties on 17.07.99 to the Plaintiff, as security, by creating an equitable mortgage, by a memorandum of deposit of original title deeds, dated 18.07.1999. In spite of several demands, the Defendants did not pay any amount. The Plaintiff came to know that the Defendants had entered into a sale agreement with the 6th Defendant, in respect of the suit properties, suppressing the equitable mortgage. Hence, the Plaintiff had issued a notice, dated 20.12.2001 and then, the Defendants met the Plaintiff on 12.02.2002 and acknowledged the debt due and paid a sum of Rs.3,20,000/- and got the receipt for the same.



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Since the Defendants did not come forward to discharge the debt, the suit had been filed, seeking the reliefs as stated above.

4. The case of the Defendants, as set out in the written statement, filed by the 1st Defendant and adopted by the 2nd Defendant is that the Defendants denied the borrowal of a sum of Rs.10,00,000/- and also the execution of the promissory note and Memorandum of Deposit of title deeds, as false. But, in 1999, the Defendants had borrowed a sum of Rs.4 lakhs on various dates and at the time of obtaining a loan of Rs.25,000/-, as advance from the Plaintiff, the Defendants had obtained the signatures of the defendants 1 to 3 in a blank typed promissory note form and a blank stamp paper, for security purpose and at that time, the title deeds were handed over to the Plaintiff. The Defendants never paid Rs.3,20,000/- on 12.02.2002 and the Plaintiff got the said sum from the 6th Defendant under threat. In such circumstances, the suit is liable to be dismissed.
5. On the pleadings of the parties, issues were framed. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A15 were marked and PW.1 and PW.2 3 were examined. On the side of the Defendants, Ex.B1 and Ex.B2 were marked and DW.1 to DW.3 were examined. The Trial Court had granted a preliminary decree as prayed for, with costs. Aggrieved against the same, this Appeal Suit has been filed by the Defendants 1 to 3.
6. This Court heard the submissions of the learned counsel on either side.
7. The learned counsel for the Appellants has submitted that the suit is barred by limitation and that the alleged payment of Rs.3,20,000/- on 12.02.2002 is



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false, since there is no document on record to prove the same and that the 3rd Defendant had signed in Ex.A1, promissory note and Ex.A2, Memorandum of Deposit of Original Title Deeds, at a later point of time and therefore, there were material alterations in the said documents, which cannot be accepted and that since Ex.A2 is an unregistered document, it cannot be accepted and hence, the court below erred in granting a preliminary decree as prayed for. He would rely on the decisions reported in CDJ 1958 MHC 187 (K.M.Srinivasan Pillai Vs. R.Kanniappa Pillai), CDJ 1957 MHC 095 (Rangaswami Reddi Vs. K.Doraiswami Reddi), judgement, dated 07.02.2018, made in SA.No.1177 of 2003 (Pachaiappa Chettiar Vs. Muthukrishna Naidu), CDJ 2012 MHC 932 (Thangarasu Vs. Arumugam) and, CDJ 2011 MHC 3381 (S.K.Rajendran Vs. K.Sakthivel and Another).

8. There is no representation for the Respondents.
9. This Court considered the submissions of the learned counsel for the Appellants and also perused the materials available on record. For the sake of convenience, the parties herein after are referred to as they were arrayed in the suit.
10. The case of the Plaintiff is that the Defendants 1 to 3 had approached the Plaintiff on 15.07.1999 and borrowed a sum of Rs.10,00,000/- from him and jointly executed Ex.A1, promissory note. On 17.07.1999, the Defendants had handed over the title deeds relating to the suit properties and jointly executed Ex.A2, Memorandum of Deposit of Title Deeds, on 18.07.1999. On 12.02.2002, the Defendants had paid a sum of Rs.3,20,000/- and



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acknowledged the debt and now they are trying to sell the suit property to third parties. To prove the said contentions, the Plaintiff had examined himself as PW.1 and examined the scribe as PW.2.

11.PW.1 and PW.2 had stated that the Defendants 1 to 3 had signed in Ex.A1 and Ex.A2 and Ex.A1 was executed to meet the educational and marriage expenses for his and daughter. On a perusal of Ex.A1 and Ex.A2, it is seen that the said documents were signed by the Defendants 1 to 3. In the cross examination of the Defendants 1 to 3 as DW.1 to DW.3, they have clearly admitted that the signatures found in the said documents are their signatures.

12.PW.2, in his cross examination, had admitted that the 3rd Defendant was not there at the time of executing Ex.A1 and Ex.A2 and his signatures were obtained at a later point of time.

13.In Ex.A1 and Ex.A2, the signatures were affixed by DW.3 at a later point of time. It was not altered by the Plaintiff. Therefore, the contention raised by Appellants that the suit promissory note was materially altered is not acceptable.

14.Ex.A2 was executed in 1999 and it is an unregistered document. Only in the year 2012, it was enacted that such documents require compulsory registration. Therefore, the contention that Ex.A2 cannot be accepted for want of registration is also not acceptable.

15.Regarding the alleged payment of Rs.3,20,000/-, PW.2 in his cross examination, had stated that the said sum was paid by the 1st Defendant. In



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the written statement, it is stated that “the Defendants had entered into an agreement with “Thirumal Real Estates” at Pondicherry and it seems that the Plaintiff has threatened them and received Rs.3,20,000/- from them. No receipt was issued to this Defendant as falsely alleged. This Defendant and other Defendants did not acknowledged the liability nor made any part payment.”

16.PW.1 in the plaint has stated that the Defendants met the Plaintiff on 12.02.2002 and paid Rs.3,20,000/-. To disprove the same, he has not examined any witnesses and thus, it stands disproved. Hence, the suit is not barred by limitation.

17.To sum and substance, in Ex.A1 and Ex.A2, the signatures of the Defendants 1 to 3 were admitted, but, the signature of the 3rd Defendant was obtained at a later point of time. The payment of Rs.3,20,000/- as stated by PW.1 is not disproved by the Defendants. Therefore, the court below had rightly granted a preliminary decree, as prayed for, in favour of the Plaintiff, by the impugned judgement and decree and it need not be interfered with. However, except the 3rd Defendant, the impugned judgement is confirmed against all the other Defendants.

18.In fine, this Appeal Suit is dismissed, with the above modification. No costs.

16.02.2022

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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A.A.NAKKIRAN, J.

Srcm

To

1. The Additional District Court cum Fast Track Court No.2, Cuddalore
2. The Record Keeper, VR Section, Madras High Court

Pre-Delivery Judgement in
AS.No.222 of 2011

16.02.2022