IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2021

PRONOUNCED ON : 25.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.No.909 of 2012

S.Ganesan ...Appellant

Vs

The Rasipuram Benefit Fund Ltd.,
Rep. by its Managing Director
Tmt.Mangaiarkarasi
Door No.50, Pookadai Street
Rasipuram Town
Namakkal District
(residence at Opp. of LIC Office
64 C, Rotary Nagar
Rasipuram to Namakkal Road
Rasipuram Town) ...Respondent

Prayer:- This Appeal Suit has been filed, under Section 96 CPC as against the judgment and decree dated 10.02.2012 passed in O.S No.42 of 2011 by the learned Principal District Judge, Namakkal.

For Appellant : Mr. A.S.Baalaji

For Respondent : Mr.P.Valliappan

JUDGMENT

(This case has been heard through Video Conferencing)

This appeal has been filed, challenging the judgment and decree, dated 10.02.2012, passed in O.S.No.42 of 2011 by the learned Principal District Judge, Namakkal.

2. The appellant is the defendant and the respondent is the plaintiff. The suit was filed by the plaintiff for the following reliefs:

(i) to pass a preliminary decree against the mortgage properties, directing to pay a sum of Rs.11,47,972.60 with further and future interest for the principal amount of Rs.3,00,000/- at the rate of of 24% per annum from the date of filing of this suit till recovery in full and cost of the suit.

(ii) directing the defendant to pay the amount mentioned within a date fixed by this Honourable Court.

(iii) In default of payment, direct the sale of mortgage properties described hereunder in Schedule 'B' of this plaint and apply the sale proceeds to the amount due to plaintiff's company towards the suit claims.

(iv) In case, the proceeds of the sale found in sufficient to pay the entire due to the plaintiff's finance company, grant permission to the plaintiff to apply for a personal decree of the balance amount under the provisions of the Order 34 CPC.

3. <u>The case of the plaintiff is as follows:</u>

a. The defendant had borrowed a sum of Rs.3,00,000/- from the plaintiff's finance company on 19.03.1998 for his business development and executed a promissory note, on the same day, promising to repay the same with interest at the rate of 24% per annum. Subsequently, the defendant had deposited the title deeds regarding the B schedule property and executed a memorandum of deposit of title deeds, on 25.03.1998. Thereafter, on 30.03.1998, the defendant gave a confirmation letter, with an intention to create an equitable mortgage. Subsequently, the defendant had paid various sums towards interest, on various dates, viz., Rs.6000/-

on 19.03.1998, Rs.6000/- on 17.04.1998, Rs.6000/- on 18.05.1998, Rs.6000/- on 20.06.1998, Rs.6000/- on 18.07.1998 and Rs.6000/- each on 21.8.1998, 21.9.1998, 22.10.1998, 19.11.1998, 19.12.1998, 30.01.1999, 19.02.1999, respectively and also paid a sum of Rs.10,000/- on 6.5.1999 and Rs.8000/- on 7.5.1999 and Rs.6000/- on 11.6.1999 and thereby acknowledged the liabilities. After the aforesaid payments, since the defendant had failed to pay any amount, the plaintiff sent a legal notice on 28.01.2011. But, the defendant had refused to receive the same. Therefore, the suit was filed for the relief as stated above.

4. The defendant has filed his written statement denying the allegation that he had made payment of interest on 15 occasions. He also denied the allegation that the notice dated 28.01.2011, said to be issued by the plaintiff was received by him. The defendant never paid any interest on 11.6.1999 and also denied the acknowledgment of liability. The allegations made in para 10 to 12 are denied. The suit is barred by limitation and there is no cause of action for the suit. Further, the plaintiff cannot claim interest more than 9% and hence, he prays for dismissal of the suit.

5. On the pleadings of the parties, the following issues were framed by the Trial Court:-

" *(i) Whether the plaintiff is entitled to recover a sum of Rs.11,47,972.60 on the basis of mortgage?*

(ii) Whether the suit is barred by limitation?

(iii) Whether the defendant acknowledged the payment of debts, by paying interest?

(iv) To what relief , if any, the plaintiff is entitled ?

6. Before the Trial Court, on the side of the Plaintiff, PW.1 to PW.5 were examined and Ex.A1 to Ex.A25 were marked. On the side of the Defendant, D.W.1 was examined. However, no document was marked on his side. The Trial Court decreed the suit. Aggrieved over the same, the defendant has preferred this appeal suit.

7. This Court heard the learned counsel for the appellant/defendant as well as the learned counsel for the respondent/plaintiff.

8. The learned counsel for the appellant/defendant would submit that the defendant had specifically denied the payment of interest and also

he did not sign any receipt. The suit is clearly barred by limitation. The signature of the defendant found in the receipt dated 11.06.1999 is a forged one. Therefore, the burden of proof lies on the respondent/plaintiff to prove the signature in the said receipt. He would further submit that the Court cannot compare the signature under Section 73 of the Indian Evidence Act and the same ought to have been sent to the Forensic Laboratory for obtaining an expert opinion. The learned counsel would rely on the decision reported in **2016 SCC OnLine Mad 7977 [Kannagi, Rep. by her General Power of Attorney Agent, Goverindharaj vs. K.Kandasamy and another].** He prays to set aside the judgment and decree of the court below and consequently allow this appeal.

9. The learned counsel for the respondent/plaintiff would submit that the liability was admitted by the defendant and further, the contention of the defendant that he has not paid any interest is not correct. In fact, it is seen from Ex.A24 and Ex.A25 that the payment towards interest was made through cheque and as such the suit is well within the time from the date of last payment made by the defendant. The suit was filed well within the period of limitation. The court below after analysing the oral and

documentary evidence has rightly decreed the suit in favour of the plaintiff and hence, he prays for the dismissal of the appeal.

10. This Court considered the submissions made on either side and also perused the materials placed on record. For the sake of convenience, the parties herein after are referred to as they were arrayed in the suit.

11. *The point for consideration is, as to whether the impugned judgement and decree of the lower court is sustainable or not?*

12. In this case, the defendant admitted the fact that he had borrowed a sum of Rs.3,00,000/- on 19.03.1998 by depositing the title deeds on 25.03.1998 and thereby, created an equitable mortgage. But, the defendant has only disputed that he had never acknowledged the liability on 11.06.1999 and the suit is barred by limitation. His main contention is that the signature of the defendant found in the receipt dated 11.06.1999 (Ex.A5) was a forged one and it was fraudulently created by the plaintiff for limitation purpose. Therefore, the burden is lying on the shoulder of the defendant to disprove the alleged receipt and he ought to have taken

steps to send the said receipt to the Forensic Lab to compare the signature and obtained an expert opinion. But, he has failed to do so. Therefore, this Court is of the view that the Court below, after perusing the entire records had rightly decreed the suit in favour of the plaintiff and there is no need to interfere with the judgment and decree passed by the Court below and consequently, the appeal is liable to be dismissed.

13. In fine, this first appeal stands dismissed. No costs.. Consequently, the connected miscellaneous petition is closed.

25.03.2022

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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1. The Principal District Judge, Namakkal.

2. The Record Keeper, VR Section,
   Madras High Court.

A.A.NAKKIRAN, J.

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Pre-Delivery Judgment made in

A.S.No.909 of 2012

25.03.2022