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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

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THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.598 of 2011

and

M.P. No.1 of 2011

Jayachandran

...Appellant/Appellant/Defendant

Vs.

Karuppa Padayachi

...Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 02.06.2010 passed in A.S. No.63 of 2007, on the file of the Subordinate Court, Kallakurichi, upholding the decree and judgment dated 25.01.2007 passed in O.S. No.261 of 2004, on the file of the Principal District Munsif, Kallakurichi.

For Appellant : Ms. R. Raji
for M/s.S. Saravanakumar
For Respondent : Mr. G. Ranganathan

JUDGMENT

The appellant is the defendant in O.S. No.261/2004 on the file of the Principal District Munsif, Kallakuruchi. The respondent/plaintiff filed the suit for recovery of a sum of Rs.51,000/- together with interest from the defendant.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiff in brief is as follows:

The defendant is engaged in the business of buying and selling paddy. The defendant requested the plaintiff to purchase 104 bags of paddy from one Krishnamoorthy of Thiyyagadurugam village and also promised to pay the amount within a week. Believing the words of the defendant, the plaintiff purchased



104 bags of paddy worth Rs.53,600/- on 07.01.1998 from Krishnamoorthy and delivered the same to the defendant at Chinna Salem through a lorry . The lorry rent and the expenses for loading and unloading of paddy amounting to Rs.2,570/- was paid by the defendant. The balance of Rs.51,030/- should be paid by the defendant. Though the plaintiff demanded the defendant to pay the amount, the defendant did not pay any amount to him. On 07.01.1998, the defendant handed over a receipt to the plaintiff promising to pay the balance amount of Rs.51,000/-. Since the defendant did not keep up his promise, the plaintiff issued a legal notice dated 31.05.1999 (Ex.A1) to the defendant calling upon him to make the payments due to him. Though the defendant received the said notice as evidenced by the postal acknowledgment card (Ex.A2), he did not send any reply. He did not also come forward to make good the payment. Hence the suit.

4. The suit was resisted by the defendant on the ground that he is an agriculturist and that at no point of time he was engaged in the business of buying and selling paddy. It is his further contention that one Krishnamoorthy purchased 100 bags of paddy from the defendant 4 years prior to the filing of the suit and the amount was also paid in instalments by him. According to him, he did not hand over any receipt to the plaintiff and that the suit filed by the plaintiff is liable to be dismissed.

5. On the basis of the above pleadings, the trial court framed the following issues.

- 1) Is it true that the plaintiff has sold 104 bags of paddy to the defendant?
- 2) Whether the defendant is liable to pay the value of 104 bags of paddy to the plaintiff?
- 3) Whether the plaintiff is entitled for the decree as prayed for?
- 4) To what relief the plaintiff is entitled?

6. In the trial court, the plaintiff examined himself and three other witnesses and marked Ex.A1 and Ex.A2 and the defendant examined himself. However, no documentary evidence was adduced on his side.

7. After full contest, the learned Principal District Munsif, Kallakuruchi decreed the suit in favour of the plaintiff directing the defendant to pay a sum of Rs.51,000/- together with interest @ 9% per annum from the date of plaint till the date of decree and thereafter @ 6% per annum till the date of realisation with costs vide his decree and judgment dated 25.01.2007.



8. Aggrieved over the same, the defendant filed an appeal in A.S. No. 63 of 2007 before the Subordinate Court, Kallakuruchi. The learned Subordinate Judge, Kallakuruchi, after analysing the oral and documentary evidence adduced on both sides upheld the findings of the trial court vide his decree and judgment dated 02.06.2010.

9. Now the present appeal is filed by the defendant. Notice of motion was ordered to the respondent and after several adjournments, the case was posted today for hearing. In the Memorandum of grounds, the appellant has raised the following substantial questions of law.

- 1) Whether the courts below are right in holding that non issuance of reply to Ex.A1 would amount to admission of the claim of respondent.
- 2) Whether the finding of the courts below in appraising the evidence of P.W.1 to P.W.4 is correct?
- 3) Whether the courts below are right in accepting the evidence of P.W.4 who is an interested witness as per Section 72 of the Indian Evidence Act?

10. Ms. R. Raji, learned counsel for the appellant contended that though in the plaint the plaintiff has specifically stated that the defendant handed over a receipt dated 07.01.1998 to the plaintiff, he did not file the said document and that the burden of proof that the defendant is liable to pay a sum of Rs.51,000/- towards the sale of paddy in favour of the defendant lies on him as per Section 106 of the Indian Evidence Act. She would further contend that both the courts below had not properly appreciated the evidence and that mere non issuance of reply by the defendant cannot be a ground to decree the suit in favour of the plaintiff.

11. Per contra, learned counsel for the respondent contended that both the courts below, after analysing the oral/documentary evidence adduced on both sides concurrently held that the defendant is liable to pay a sum of Rs.51,000/- with interest and no substantial question of law is involved in the present appeal.

12. In order to prove that 104 bags of paddy was sold to the defendant by the plaintiff, the plaintiff relies on his oral evidence as well as the evidence of P.W.2 to P.W.4. It is the contention of the plaintiff that he purchased 104 bags of paddy from one Krishnamoorthy (since deceased) and delivered the same



to the defendant at Chinna Salem through a lorry. Govindarajulu (P.W.2) is one of the relatives of the deceased Krishnamoorthy and he, in his evidence, had deposed that he purchased paddy from Krishnamoorthy and handed over the same to the plaintiff. P.W.3 is a daily wager who assisted the plaintiff in loading 104 bags of paddy in the lorry. Tamilselvi (P.W.4) is the daughter-in-law of the plaintiff and is also the sister of the defendant. It is seen from her evidence that there is a dispute between the family of the plaintiff and the defendant. P.W.4 had clearly stated that 104 bags of paddy was purchased by the defendant and that he also promised that he would be repaying the amount to the plaintiff. However, according to her, the defendant did not keep up his promise. A perusal of the record shows that the defendant did not issue any reply to the notice dated 31.05.1999 (Ex.A1) issued by the plaintiff. Both the courts below after analysing the evidence of P.W.1 to P.W.4 had come to a conclusion that the defendant should pay a sum of Rs.51,000/- to the plaintiff. The first appellate court in Paragraph Nos. 8 and 9 has observed thus:

"8.The case of the plaintiff is that the defendant procures paddy in villages and sells the same that he requested the plaintiff to arrange for the purchase of 104 bags of paddy from one Krishnamoorthy of Thiyagadurugam that believing the words of the defendant, he arranged for the transaction and that from the said Krishnamoorthy, the plaintiff arranged for the purchase of 104 bags of paddy which the defendant took delivery on 07.01.1998. It is the further case of the plaintiff that the defendant agreed to pay the value of 104 bags of paddy within a weeks time, that the defendant himself paid the freight charges and the loading and unloading charges amounting to Rs.2,570/- and after deducting the said amount from Rs.53,600/- being the total value of paddy, the defendant had to pay Rs.51,030/-, that a sum of Rs.30/- was waived from Rs.51,030/- and it was agreed that the defendant would pay Rs.51,000/- to the plaintiff within a week. Further the plaintiff has also stated that a hand receipt was given by the defendant in this regard. According to the plaintiff, the defendant has not paid the sum of Rs.51,000/- as agreed. The case of the defendant is that one of total denial of the transaction of purchase of 104 bags of paddy as alleged by the plaintiff. The defendant has come out with a case that one Krishnamoorthy of Thiyagadurugam purchased 100 bags of paddy from him four years prior to the suit, that the said



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Krishnamoorthy did not make the payment promptly and he dodged the payment and delayed and paid the value of the paddy on different occasions in instalments, that in that regard, there was a misunderstanding between the defendant and the said Krishnamoorthy, that the defendant scolded him and that being enraged over that issue, the said Krishnamoorthy has instigated the plaintiff and has filed the present suit on false grounds.

9.To prove the transaction of purchase of 104 bags of paddy by the defendant from Krishnamoorthy of Thiyaadurugam, the plaintiff was examined as P.W.1 and three more witnesses as P.W.2 to P.W.4. The plaintiff when examined as P.W.1 has spoken about the transaction between himself and the defendant under which the plaintiff arranged for the purchase of 104 bags of paddy from one Krishnamoorthy by the defendant on 07.01.1998. Though the plaintiff has stated that the defendant issued a hand receipt evidencing the transaction, the said hand receipt was not marked as an exhibit, since the document was inadmissible in evidence. From the available evidences, now the court has to find out as to whether the transaction of purchase of 104 bags of paddy by the defendant has been proved by the plaintiff before the trial court. As already stated, the plaintiff has spoken about the transaction in his evidence. P.W.2 is one Govindarajalu. From his evidence, it seems that he is related to Krishnamoorthy. P.W.2 also speaks in his evidence about the transaction under which the defendant purchased 104 bags of paddy of Krishnamoorthy through the plaintiff. It is also evident from the evidence of P.W.1 and P.W.2 that Krishnamoorthy of Thiyaadurugam from whom the paddy was purchased, died pending suit. Therefore, there was no occasion for the plaintiff to examine the said Krishnamoorthy to prove the transaction. P.W.3 is one Chinnathambi who happens to be a coolie and he has stated in his evidence that one day he loaded 104 bags of paddy from Krishnamoorthy's house and that as the defendant called, he loaded these paddy bags. Of course, P.W.3 has pleaded ignorance of the fact as to whom these paddy bags were being transported. The evidence of P.W.3 is not clinching to prove the plaintiff's case. P.W.4 is one Tamilselvi. She is none other than the sister of the defendant. From the



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evidence, it also transpires that P.W.4 is married to son of the plaintiff. P.W.4 has stated in her evidence that her brother namely the defendant has to pay a certain amounts to the plaintiff towards the value of paddy purchased by him. The defendant when examined as D.W.1 has stated due to family dispute that arose between the plaintiff and the defendant after the marriage of her sister with the son of the plaintiff, the plaintiff has developed enmity with the defendant and that to wreck vengeance he has concocted the document to file the present suit. Though the defendant has stated in his evidence that, there was a family dispute between the plaintiff and the defendant after the marriage of his sister with the son of the plaintiff, there is no pleading in this regard in the written statement. Hence, the evidence of D.W.1 that the plaintiff has filed this suit due to family dispute cannot be accepted. P.W.4, who is none other than the sister of the defendant had no reason to depose against her own brother. Even when P.W.4 was cross examined, nothing was elicited from the mouth of P.W.4 to probalise the fact that P.W.4 is deposing against the defendant due to family dispute or that her evidence is untrustworthy.

The above observations of the first appellate court cannot be found fault with. In fact, this is a concurrent finding based on oral/documentary evidence adduced by both the sides. The non filing of receipt dated 07.01.1998 mentioned in the plaint is not fatal to the case of the plaintiff in view of acceptable evidence adduced by him.

13. Section 100 CPC is a jurisdiction confined to substantial questions of law only. In the decision in Madamanchi Ramappa and Another Vs Muthalur Bojjappa reported in (1964) 2 SCR 673, the Apex Court observed as follows:

"12.The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated



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in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition.

.....

If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

There is no substantial question of law involved in this second appeal and this appeal deserves to be dismissed.

14. In the result,

- 1) The second appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- 2) The decree and judgment dated 02.06.2010 passed in A.S. No.63 of 2007, on the file of the Subordinate Court, Kallakurichi, and the decree and judgment dated 25.01.2007 passed in O.S. No.261 of 2004, on the file of the Principal District Munsif, Kallakurichi, are upheld.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Subordinate Judge, Kallakurichi.
2. The Principal District Munsif, Kallakurichi.



3. The Section Officer,
V.R. Section,
High Court, Madras.

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RR(CO)

SP(13/04/2022)