



S.A.No.296 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

Second Appeal No.296 of 2014
and MP.No.1 of 2014

1.Dr.Prem Chandan John

2.Karunakaran John

3.Rajini Chithamali

4.Premila

5.Bharathi John

6.Dr.Rana John

..Defendants 2 to 7/Appellants/Appellants

.Vs.

R.Nathaniel

..Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 29.10.2013 made in A.S.No.18 of 2012 on the file of II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District confirming the judgment and decree dated 19.08.2011 made in O.S.No.177/1996 on the file of Sub Court, Ranipet.

For Appellants : Mr.A.Muthukumar
for Mr.P.Rajagopal

For Respondent : M/s.V.Nicholas
Mr.E.A.Dinesh



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JUDGMENT

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The defendants are the appellants in this Second Appeal.

2.The respondent/plaintiff filed a suit seeking for the relief of recovery of money with interest.

3.The case of the plaintiff is that he was a commission agent of Texmo Motor Pump set company and also an agent of Sigamani Electricals.

4.It is stated that the plaintiff was working on a commission basis and he facilitated in the supply of materials on the basis of the orders placed by customers. The further case of the plaintiff is that the defendant also placed various orders and the materials were supplied. According to the plaintiff, there were outstanding dues payable by the defendant and it remained unpaid for a long period of time. Ultimately, a compromise was arrived at and the defendant agreed to pay a sum of Rs. 5,00,000/- in full satisfaction and he gave such an undertaking in writing on 22.12.1980, marked as Ex.A1. Thereafter the defendant went back on his promise and inspite of issuance of a pre-suit notice, the defendant was not coming forward to pay the amount. Left with no other alternative, the suit for recovery of money came to be filed against the defendant.



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5.The suit was initially filed as a Pauper Suit and a petition was filed in O.P. No.98 of 1992 to institute the Pauper Suit. During that point of time, the defendant was alive and he took a specific stand that the claim made by the plaintiff is unsustainable and that the averments made by the plaintiff is false. This petition was dismissed by an Order dated 8.9.1986 and the plaintiff was directed to pay the court fees and prosecute the suit. Unfortunately, the defendant by then expired and his legal representatives were added as defendants 2 to 7.

6.The impleaded legal representatives of the defendant filed a written statement and took a stand that the claim made by the plaintiff is unsustainable. They also took a stand that they cannot be made liable for the official transactions of the defendant, even if the claim made by the plaintiff is taken to be true. They also took a stand that the concerned organisation for which the materials were procured should have been made a party and the liability should not be burdened on the legal heirs who had nothing to do with the transaction. Accordingly, they sought for the dismissal of the suit.

7.Both the Courts below on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, concurrently held in favour of the plaintiff and decreed the suit. Aggrieved by the same, the defendants have filed this Second Appeal.

8. When the Second Appeal was admitted, the following substantial questions of



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law were framed by this Court:

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1. Whether the Courts below were right in granting a decree based on Ex.A1 in the absence of any evidence to prove the execution of Ex.A1 by the first defendant ?

2. Whether the Courts below were right in concluding that the mere fact that the first defendant is a literate person would amount to proof of Ex.A1 ?

9.Heard Mr.A.Muthukumar, learned counsel for the appellants and Mr.V.Nicholas, learned counsel for the respondent. This Court also carefully considered the materials available on record and the findings rendered by both the Courts below.

10.The Trial Court had completely placed reliance upon Ex.A1 which was disputed by the defendants. The Trial Court rendered a finding to the effect that a legal notice was issued by the plaintiff and the defendant did not give any reply for the same. This finding rendered by the Trial Court on the face of it is erroneous since the defendant had given reply to the plaintiff through a letter dated 21.7.1982 wherein he had categorically stated that the averments contained in the notice are a bundle of lies and that he is prepared to defend himself in the Court of Law. The reply sent by the defendant was also marked as Ex.A4.



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11. The Trial Court believed Ex.A1 inspite of the fact that the document was questionable and infact two of the witnesses had disowned this document. Inspite of the plaintiff referring to some panchayat, not one person was examined who attended the said panchayat. In short, the Trial Court completely relied upon Ex.A1 and decreed the suit.

12.The Lower Appellate Court virtually confirmed the Judgment of the Trial Court by placing reliance upon Ex.A1. The Trial Court took into consideration the evidence of DW-1 who was the son of the deceased defendant. He did not have any idea about the transaction that took place between the plaintiff and the defendant. The Lower Appellate Court went ahead and compared Ex.A1 and Ex.A4 and came to a conclusion that the signature of the defendant tallied.

13. In the considered view of this Court, both the Courts below misdirected themselves while appreciating Ex.A1 which was completely relied upon to sustain the claim made by the plaintiff.

14.When this Court heard the matter on 2.3.2022, this Court entertained serious doubts on the genuineness of Ex.A1 and the improbabilities of the case projected by the plaintiff. Hence, the following order was passed on 2.3.2022:



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This Court heard Mr.Muthukumar, the learned counsel appearing on behalf of the appellant, in part. The entire case revolves around Ex.A1. There are three crucial factors which drew the attention of this Court, when the learned counsel for the appellant was putting forth his arguments.

2.The first issue is that at the time of filing the suit, the plaintiff was aged about 30 years. According to the plaintiff, he was appointed as an agent in the year 1964 and he supplied the goods prior to the year 1969. At the time of adducing evidence, the plaintiff has stated that his age was 54 years. If the plaintiff was aged 54 years at the time of adducing evidence in the year 2009, he should have been born in the year 1955. In which case, he should have been made as an agent when he was hardly 9 years and he had supplied goods when he was hardly 12 years. Even if the age given in the plaint is taken to be correct by the time he adduced evidence in the year 2009, the plaintiff should be aged about 57 years. This means that the plaintiff should have born in the year 1952. If this is taken into consideration, the plaintiff was made as an agent when he was 12 years and he would have supplied goods when he was hardly 16 years. It is not known as to how the minor at that age would have entered into a transaction as projected in the plaint. It looks improbable.

3.The second issue is with regard to the very validity and genuineness of Ex.A1. At the time when Pauper O.P. was filed in O.P.No.98 of 1992, the defendant who was alive at that point of time had questioned



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the genuineness of Ex.A1 by filing a counter. By the time, the written statement was filed, he expired and the impleaded defendants were not competent to talk about the genuineness or otherwise of Ex.A1. This Court also carefully examined the original document Ex.A1 and found that signatures were available only in the last page and there is no signature in the first and second pages. This also requires a close scrutiny in the present case.

4. The third issue that requires the consideration of this Court is as to whether the stand taken in the counter filed in the Pauper O.P. can be incorporated as the stand of the defendants, who were impleaded subsequently in the place of the deceased defendant.

5.The learned counsel for the respondent sought for some time to take instructions in this regard. The learned counsel for the respondent is also directed to produce an authentic document that will reveal the correct age of the plaintiff.

6.Post the second appeal as a part heard case on 09.03.2022.

15. When the matter was taken up for hearing today, the learned counsel for the respondent filed an affidavit to the effect that they have no instructions from the respondent inspite of sending a letter to the respondent on 3.3.2022 seeking for clarification. Therefore the learned counsel for the respondent argued the case with the available materials and supported the findings of both the Courts below.



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16. In the present case, Ex.A1 is surrounded by a serious suspicion. The claim of the plaintiff is that he was working as a commission agent and in that capacity he had supplied goods to the defendant. If this is taken to be true, the actual supplier should have filed the suit or the plaintiff should have been authorised to file the suit on behalf of the supplier. The plaintiff in his cross-examination states that the supplier authorised him to file the suit. However, not even a single scrap of paper is available to prove this stand taken by the plaintiff.

17. If really materials worth Rs.25,00,000/- had been supplied to the defendant, there must be some invoice or voucher or receipt to substantiate that materials were supplied to the defendant. Not a single document was filed by the plaintiff. The only document that was filed by the plaintiff was the agreement of settlement dated 23.12.1980. According to the plaintiff, the defendant compromised the dispute in front of the panchayat dhars and agreed to pay a sum of Rs.5,00,000/- towards full and final settlement. This Court had the advantage of looking into Ex.A1 and it is found that there are no signatures available in the first two pages. Only the last page contains the signatures. That apart, there are three witnesses to this document. Two of the witnesses had issued notice to the plaintiff, which were marked as Ex.B1 and B2 wherein they have disowned this document. The other witness was not examined by the plaintiff. The fact that two of the witnesses had disowned this document, clearly shows that all is not well with this document.



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18. According to the plaintiff, this agreement was entered into only after a panchayat. At paragraph 7 of the plaint, the plaintiff has given the names of different persons who conducted the panchayat. Not one person was examined as a witness in this case. The examination of witness becomes very crucial since Ex.A1 is a questionable document.

19. The plaintiff had examined PW-2 to PW-4. PW-2 and PW-3 are said to be the electricians who worked for the defendant and PW-4 claims to be a secretary to the Bishop. A careful reading of their evidence shows that it really does not help the case of the plaintiff to prove the genuineness of Ex.A1.

20. The most crucial aspect that was lost sight of by both the Courts below is the very claim made by the plaintiff that he was acting as a commission agent for the supplier during the period from 1964 to 1970. The plaintiff during the cross-examination states that he supplied the materials to the defendant during the period 1969-1970. The plaintiff also specifically states that he was 54 years at the time of giving the evidence on 11.9.2009. If this statement is taken to be true, the plaintiff should have been born in year 1955. If he had started working as an agent from 1964, he would have been hardly 9 years and at the time when he supplied goods to the defendant, he would have been hardly 14 years. It is quite unnatural that a minor of that age would be permitted to act as a commission agent by the supplier. This crucial fact makes the very case of the



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N.J. plaintiff improbable.

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21.This crucial fact strengthens the doubt on the genuineness of Ex.A1. The plaintiff did not have an authorisation from the supplier, the plaintiff was a minor aged about 9-14 years when he is supposed to have acted as a commission agent, the plaintiff does not file a single document to substantiate the supply of materials to the defendant, Ex.A1 which was relied upon by the plaintiff does not contain any signatures in the first two pages and looks highly doubtful, two of the witnesses in Ex.A1 have disowned this document, the plaintiff did not care to examine the only other witness, the agreement marked as Ex.A1 was as a result of a panchayat according to the plaintiff and not a single person who attended the panchayat was examined as a witness and when the genuineness of Ex.A1 was questioned, the plaintiff did not even take steps to send it for expert opinion to be compared with the admitted signatures of the defendant. This is a case where the facts projected by the plaintiff is improbable and cannot be accepted to sustain the claim.

22. Both the Courts below went wrong in granting the decree in favour of the plaintiff by placing reliance upon Ex.A1 and none of the crucial factors that were discussed by this Court supra were even considered by both the Courts below. At the risk of repetition, this Court holds that both the Courts misdirected themselves while decreeing the suit. The preponderance of probabilities which was expected to be established by the plaintiff to make the claim, is completely absent in the present case



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and there are absolutely no merits in the claim made by the plaintiff. Both the substantial questions of law are answered accordingly in favour of the appellants.

23.In the result, the Judgment and Decree of both the Courts below are set aside and consequently the suit is dismissed with cost throughout. Consequently, connected miscellaneous petition is closed.

06.04.2022

Internet: Yes
Index: Yes/No
KP

To

1. II Additional District and Sessions Judge,
Vellore at Ranipet, Vellore District.
- 2.Subordinate Judge,
Ranipet, Vellore District.
- 3.The Section Officer
V.R.Section, High Court, Madras.

N.ANAND VENKATESH,J.



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