



A.S.No.490 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.490 of 2022
and C.M.P.No.17785 of 2022

Thanigaivelan

. . Appellant/Defendant

Vs

Babu

. . Respondent/Plaintiff

Prayer: This Appeal Suit is filed under Section 96 read with Order XLI Rule 1 & 2 of the Civil Procedure Code to set aside the judgment and decree dated 14.12.2020 made in O.S.No.30 of 2019 on the file of the III Additional District Court, Cuddalore at Virudhachalam.

For Appellant : M/s.T.L.Thirumalaisamy



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JUDGMENT

The Appeal suit has been instituted against the judgment and decree dated 14.12.2020 passed in O.S.No.30 of 2019. The defendant is the appellant and the respondent instituted a suit for recovery of money based on the mortgage deed executed by the defendant.

2. The suit was instituted for recovery of a sum of Rs.12,16,000/- on the ground that the defendant borrowed a sum of Rs.5,00,000/- on 07.03.2007 and executed a registered mortgage deed agreeing to repay the amount with interest at the rate of Re.1/- for Rs.100/- per month. The plaintiff states that he made several attempts to recover the amount but the defendant had not come forward to settle the dues and thus he was constrained to send a legal notice on 12.01.2019 and thereafter instituted a suit in OS No.30 of 2019.

3. The defendant denied the plaint averments and pleaded that at the time of borrowal, the plaintiff demanded to give five blank cheques containing the signatures of the defendant drawn on ICICI limited, Vridhachalam Branch under Savings Bank General Account No.618901006640 bearing Cheque Nos, 930727, 930728, 930729, 930730 & 930731 respectively. The plaintiff was



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not satisfied with the blank cheques and obtained signatures in two unfilled printed promissory notes. The plaintiff further obtained the signature of the father of the defendant in three unfilled blank printed promissory notes with revenue stamps affixed in each promissory note.

4. The defendant has further stated in the Written Statement that the plaintiff has set up one Rajalingam, S/o.Ganagachalam to file two suits, one against the defendant and another against his father Paramasivam in O.S.Nos.361 & 362 of 2014 by misusing the bond promissory notes sent by the defendant and his father.

5. The Trial Court based on the complaint and Written Statement formulated the two issues, which reads as under:

(i) Whether the plaintiff is entitled to the suit claim ?

(ii) To what other reliefs the plaintiff is entitled ?

6. On the plaintiff's side, PW1 was examined and Exhibits A1 to A3 were marked as documents. On the side of the defendant, DW1 was examined and Exhibits R1 to R8 were marked as documents. With reference to issue



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number one, the Trial Court considered the mortgage deed executed by the defendant on 07.03.2007 for the borrowal of a sum of Rs.5,00,000/-. The said registered mortgage deed was not disputed by the defendant and it was agreed between the parties. However, the defendant has disputed the interest rate claimed by the plaintiff i.e., 36% per annum. It was pleaded by the defendant that he has paid a sum of Rs.3,15,000/- towards interest by way of cash to the plaintiff which has also been taken into account in respect of the mortgage amount. However, the Trial Court found that the said interest was not agreed between the parties in the mortgage deed and accordingly arrived as conclusion that the 12% would be the interest which was agreed between the parties. Therefore in respect of the dispute raised by the defendant regarding the claim of 36% interest by the plaintiff, the trial court held in favour of the defendant and found that the plaintiff is entitled for 12% interest per annum and thus in the mortgage deed executed by the defendant on 07.03.2007 the agreed interest between the parties are at the rate of Re.1/- for Rs.100/- per annum.

7. While so, in the mortgage deed, there is no mentioning about the 36% interest as claimed by the plaintiff and therefore the Trial Court has taken the interest amount as stated in the mortgage deed i.e., Re.1/- for Rs.100/- per annum. Regarding the payment of interest as claimed by the defendant i.e., a



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sum of Rs.3,15,000/- the defendant had failed to establish the same, since there is no document to prove the said payment. Even there is no oral evidence to establish the said payment of interest to the tune of Rs.3,15,000/- and in the absence of any piece of evidence, the Trial Court arrived a conclusion that the said contention cannot be taken into consideration. Even before this Court, the appellant/defendant has not filed any document to establish that he has paid a sum of Rs.3,15,000/- by way of cash to the respondent/plaintiff. In the absence of any proof to establish the same, the Court cannot take into account for the purpose of considering the issues.

8. When the plaintiff and the defendant agreed execution of mortgage deed on 07.03.2007 for the borrowal for a sum of Rs.5,00,000/- by the defendant from the plaintiff and the interest rate also has been mentioned in the said mortgage deed, the Court arrived at a conclusion that the plaintiff is entitled for the relief to the extent of the mortgage deed and the plea regarding the payment of cash by the plaintiff was rejected. Since the defendant has not filed any document to establish the same nor any oral evidence was submitted for the purpose of establishing any such payment by cash. This being the finding of the Trial Court, there is no perversity or otherwise.



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S.M.SUBRAMANIAM, J.

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9. Accordingly, this Court do not find any infirmity in respect of the findings and the decision arrived by the Trial Court. Thus, the judgment and decree dated 14.12.2020 passed in O.S.No.30 of 2019 stands confirmed and the A.S.No.490 of 2022 stands dismissed. Consequently, the connected Miscellaneous Petition stands closed. No Costs.

09.02.2023

Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

Neutral Citation: Yes/No

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To

III Additional District Court,
Cuddalore at Vridhachalam.

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