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S.A(MD)No.645 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.12.2022
PRONOUNCED ON : 07.03.2023

C O R A M

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

S.A(MD)No.645 of 2022
and
CMP(MD)No.9127 of 2022

Sree Gokulam Chit and Finance Company Private Ltd,
through its Branch Manager,
12/5, Lakshmi Complex,
East Car Street,
Tirunelveli Town

...Appellant / Appellant
/Defendant

Vs.

STN.George

... Respondent / Respondent/
Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, as against the judgment and decree dated 24.08.2021 in AS.No.85 of 2018 on the file of the Principal Subordinate Court, Tirunelveli confirming the judgment and decree dated 24.04.2018 in OS.No.269 of 2015 on the file of the Principal District Munsif, Tirunelveli.

For Appellant : Mr.B.Brijesh Kishore

For Respondent : Mr.V.Balaji



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JUDGMENT

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This second appeal is filed as against the judgment and decree dated 24.08.2021 passed in AS.No.85 of 2018 by the learned Principal Subordinate Judge, Tirunelveli confirming the judgment and decree dated 24.04.2018 in OS.No.269 of 2015 on the file of the Principal District Munsif, Tirunelveli.

2.The defendants in OS.No.23 of 2015 is the appellant herein. The suit is filed by the respondent/plaintiff herein for the relief of mandatory injunction directing the defendant to return back the original sale deed dated 11.03.1981 and a blank promissory note with signature of the plaintiff.

3.The case of the plaintiff is that the respondent / plaintiff's son one G.Jerome Gunaseelan had proposed to start a business in his personal capacity in the year 2008. At that time the respondent / plaintiff and his son approached the appellant/ defendant's concern and as per the request of the defendant, his son joined in 10 chit groups and promised him that the first auction amount



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will be given to him and on demand the respondent / plaintiff handed over the original sale deed dated 11.03.1981 in respect of the plaint schedule property and blank promissory note towards advance security to proposed auction and the plaintiff has also handed over the same.

4.The case of the respondent / defendant is that the appellants have not received any document or pronote as averred in the plaint. As per the plaint averment, the original sale deed dated 11.03.1981 as well as the blank pro-note was produced before the appellant/defendant was on 25.04.2008. But the respondent/ plaintiff filed the suit in the year 2015, which is after 7 years, but the suit ought to have been filed within three years from the first cause of action, ie., before 24.04.2011 and therefore, the suit is liable to be struck down under Order 7 Rule 11 CPC and also hit by Limitation as per Article 113 of the Limitation Act. The necessary party was not made as defendant in the suit. Instead of the Managing Director, the Branch Manager has been impleaded as party defendant.



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5.The trial Court allowed the suit and the defendant was directed to return the original sale deed dated 11.03.1981 to the plaintiff within a period of thirty days. Challenging the same the defendant / appellant filed an appeal in AS.No.85 of 2018 before the learned Sub Court, Tirunelveli. The appeal was dismissed by confirming the judgment and decree passed in the original suit.

6.Now aggrieved over the judgment and decree of the Courts below, the defendant have filed the second appeal on the following substantial questions of law:

i.Whether the Courts below are right in holding that the suit is not barred by limitation without properly considering Article 113 of the Limitation Act?

ii.Whether Courts below are right in allowing the suit filed by the respondent / plaintiff without considering the written statement and the evidence adduced in support of the same?

iii.Whether the suit is not liable to be struck down under Order VII Rule 11 of CPC?



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iv. Whether the suit filed by the respondent / plaintiff is maintainable without producing the relevant document in question namely the sale deed dated 11.03.1981 as one of the exhibits in the suit?

v. Whether the courts below have not committed the grave error in allowing the suit is directing the appellant/ defendant to return the original sale deed dated 11.03.1981 to the respondent / plaintiff which is an imaginary one?

7. The ground raised by the appellant is that the cause of action of the suit arose in the year 2008 and the suit for mandatory injunction ought to have been filed within three years from the first accrual of cause of action, which is in the year 2011. Against which the respondent would counter that the both courts below relied on the decision of this court in **Sree Vadivambigai Ginning Industries Pvt Ltd & Ors v. Tamil Nadu Mercantile Bank Ltd, 2015 (3) CTC 831** wherein it is held that suit is not barred by limitation under Article 113 of the Limitation Act as retention of documents each day is a continuous of cause of action. The relevant portions are extracted hereunder:



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had given Power of Attorney in favour of one Robinson, who is the Deputy Manager of the defendant company and he was also examined as PW2. The Courts relied on Ex.A3 - the compliant copy in STC.No.75 of 2014, which was filed by the defendant company with the Deputy Manager as the complainant. In the said case, the Deputy Manager was examined as PW2, who in fact admitted the receipt of sale deed from the father of the plaintiff.

9.The Courts below also found that Ex.A1 notice sent by the respondent before the institution of the suit was received by the appellant and the acknowledgement is marked as Ex.A2. The Courts by relying on the decision in **Raji & Anr v. Shanmugam, 2015 (2) CTC 831**, held that there is neither an affirmation nor denial of the notice by the appellant, which creates a presumption in favour of the plaintiff by applying the principle of *Principiis Obsta.*

10.In view of the above discussion, there are no infirmities in the judgments of the courts below and there is no substantial question of law involved in this case. Therefore, this Second Appeal is dismissed.



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No costs. Consequently connected miscellaneous petition is also dismissed.

07.03.2023

Internet : yes/No

dsk

To

- 1.The Principal Sub Judge, Tirunelveli
- 2.The Principal District Munsif, Tirunelveli.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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B. PUGALENDHI . , J

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JUDGMENT MADE

IN

S . A (MD) No . 645 of 2022

07.03.2023