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S.A.(MD).Nos.545 and 546 of 2017

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.12.2023**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).Nos.545 and 546 of 2017

S.A.(MD).No.545 of 2017:

Thirumalaikolundhu (died)

- 1.Soundravalli
- 2.Vairamani
- 3.Karikalcholan
- 4.Ananthi
- 5.Vengateshan
- 6.Loma
- 7.Asokan
- 8.Prabha
- 9.Karthiga

... Appellants

/Vs./

- 1.Gnanasekaran
- 2.Chidra

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 18.03.2015, passed by the



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Principal District Court, Thanjavur, in A.S.No.61 of 2012, by partly modifying the Judgment and Decree, dated 23.12.2011, passed by the Additional Sub-Court, Thanjavur, in O.S.No.297 of 2010.

For Appellants : Mr.G.Karnan
For Respondents : Mr.Raguvaran Gopalan

S.A.(MD).No.546 of 2017:

Thirumalaikolundhu (died)

- 1.Soundravalli
- 2.Vairamani
- 3.Karikalcholan
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- 6.Loma
- 7.Asokan
- 8.Prabha
- 9.Karthiga

... Appellants

/Vs./

Gnanasekaran

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 18.03.2015, passed by the Principal District Court, Thanjavur, in A.S.No.62 of 2012, by partly modifying the Judgment and Decree, dated 23.12.2011, passed by the Additional Sub-Court, Thanjavur, in O.S.No.305 of 2010.



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For Appellants : Mr.G.Karnan
For Respondent : Mr.Raguvaran Gopalan

COMMON JUDGMENT

The plaintiff Thirumalaikolunthu had filed suit in O.S.No.297 of 2010 inter alia praying to declare the sale deed, dated 19.02.2008, as null and void, the sale is not binding on the plaintiff and for the consequential injunction and the suit was decreed.

2. The defendant in suit O.S.No.297 of 2010 is one Gnanasekaran and the said Gnanasekaran had filed suit in O.S.No.305 of 2010 inter alia praying to declare that he is the owner of the suit property and consequently direct the defendant to deliver the suit property with damages and future damages and the suit was dismissed.

3. For the sake of convenience the said Thirumalaikolunthu is referred as plaintiff and the Gnanasekaran is referred as defendant.

4. The contention and the brief facts as stated by the plaintiff



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Thirumalaikolunthu is that he had borrowed Rs.3,00,000/- on 21.04.2003 for which he is paying Rs.3,000/- as interest per month. In order to secure the said loan, the sale agreement, dated 21.04.2003 and hence the said sale agreement is Sham and Nominal. But the contention of the defendant is that the plaintiff had agreed to sell the property and an advance amount of Rs.4,50,000/- was paid and the balance amount of Rs. 25,000/- alone is payable at the time of registration and the sale ought to be completed within 18 months though the time is not essence of the contract. Moreover, the plaintiff was allowed to stay in the house until alternative accommodation is arranged. The defendant was ready and willing to complete the sale agreement. But the said plaintiff demanded more amount to complete the contract and the defendant agreed to pay additional amount of Rs.2,00,000/-. Since the plaintiff declined, the power of attorney of the plaintiff had executed sale deed dated 19.02.2008. Hence the Gnanasekaran had filed the suit in O.S.No.305 of 2010 to declare the said Gnanasekaran as the absolute owner of the suit property and consequential damages and future damages and to deliver the possession to the said Gnanasekaran. Both the suits were heard



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together and the O.S.No.297 of 2010 was decreed and O.S.No.305 of 2010 was dismissed.

5. Aggrieved over the same, the Gnanasekaran has preferred the first appeal in A.S.No.61 of 2010 of 2012 against the decree passed in O.S.No.297 of 2010. The said Gnanasekaran had also preferred first appeal in A.S.No.62 of 2012 against the decree passed in O.S.No.305 2010. The First Appellate Court has confirmed the judgment and decree passed in O.S.No.297 of 2010, but directed the plaintiff to repay the debt of Rs.4,50,000/- with interest at the rate of 9% p.a. from 21.04.2003 within a period of six months, failing which the judgment and decree passed in O.S.No.297 of 2010 would be set aside and first appeal would be allowed.

6. As far as A.S.No.62 of 2012 is concerned, the First Appellate Court has directed the plaintiff Thirumalaikolunthu to repay the debt of Rs.4,50,000/- with interest at the rate of 9% p.a. from 21.04.2003 within a period of six months, failing which the judgment and decree passed in



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O.S.No.305 of 2010 would be set aside and first appeal would be allowed.

7. Aggrieved over the judgment and decree the present two appeals are preferred. The S.A.(MD)No.545 of 2017 is filed against the Judgment and Decree passed in A.S.No.61 of 2012 and the S.A.(MD)No.546 of 2017 is filed against the Judgment and Decree passed in A.S.No.62 of 2012. The second appeal S.A.(MD)No.545 of 2017 was admitted on the following substantial questions of law and the same is extracted hereunder:

"1. Whether the finding of the lower Appellate Court is correct in awarding the repayment of money with interest in the suit filed by the plaintiff when there is neither any prayer nor any pleading for the same?

2. Whether the Lower Appellate Court correct in default of payment the appeal is allowed when there is no Court fee is paid for the same?

3. When suit itself decreed then any decree can be granted in favour of the Defendant?"



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The second appeal S.A.(MD)No.546 of 2017 was admitted on the following substantial questions of law and the same is extracted hereunder:

"1. Whether the finding of the lower Appellate Court is correct in awarding the repayment of money with interest when there is neither any prayer nor any pleading for the same?

2. Whether the Lower Appellate Court is correct in default of payment the appeal is allowed when there is no Court fee is paid for the same?

3. When suit itself decreed then any decree can be granted in favour of the plaintiff?

4. Whether the Lower Appellate Court is correct in directing to pay the amount with interest in suit for declaration?"

8. Heard Mr.G.Karnan the Learned Counsel appearing for the appellant and Mr.Raguvaran Gopalan, the Learned Counsel appearing for the respondent.

9. All the substantial questions of law revolves around on the relief



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of repayment of loan amount to the defendant with interest with default relief. This Court is of the considered opinion that the Appellate Court ought not to have granted the default relief, since the default relief states if not paid with the stipulated time, then the suit property belongs to the defendant. The Appellate Court has power to fix increased interest rate if there is default. But granting the relief of declaration that the property belongs to the defendant on default of repayment is absurd. Therefore, the 2 and 3 in both the appeals are answered in favour of the appellant.

10. The next substantial question of law whether the relief of repayment can be granted when there is no such prayer and no court fees paid to such prayer. It is seen that the claim of the plaintiff is that transaction between the plaintiff and the defendant is loan transaction. Once it is accepted by the plaintiff that the plaintiff borrowed amount, then it is loan transaction, then the plaintiff is bound to repay the same. The defendant has also filed a suit to declare the suit property belong to him. Therefore, the Lower Appellate has power to modify the relief between parties. Hence the other substantial questions of law in both the



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appeal are partly held against the plaintiff. As far as interest is concerned the plaintiff is bound to pay reasonable interest for the loan transaction.

11. The defendant has not filed any appeal or cross appeal against the judgment and decree of the First Appellate Court and hence this Court is confirming the finding of the Courts below that the transaction between the parties is only loan transaction.

12. Now the issue which has to be decided between the plaintiff and the defendant is only whether the plaintiff has to pay Rs.3,00,000/- or Rs.4,25,000/-. The First Appellate Court has come to the conclusion even if there is a loan transaction of Rs.3,00,000/-, the plaintiff has accepted in the deposition that as per Ex.A1, the plaintiff Thirumalaikolunthu has received Rs.4,25,000/- from the said Gnanasekaran. But the said finding was vehemently opposed by the plaintiff stating that when the loan transaction is for Rs.3,00,000/-, the remaining amount of Rs.1,25,000/- was included for the interest portion, which the Lower Appellate Court failed to consider it as interest. But any



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loan transaction carries interest, therefore even it is accepted that the said amount is interest, then the plaintiff is bound to pay interest for the loan transaction.

13. It is seen at the time of admission, while granting interim order, the plaintiff was directed to deposit Rs.2,00,000/- and the same was deposited before the Executive Court. The defendant is permitted to withdraw the same. If it had accrued any interest, the defendant is permitted to withdraw the accrued. If it has no accrued interest the defendant shall not claim any interest to the said amount. Further the legal heirs of the plaintiff shall pay Rs.5,25,000/- over and above the aforesaid Rs.2,00,000/- within a period of five months from the date of receipt of a copy of this judgment. If the same is not paid with the period of five months, the said amount of Rs.5,25,000/- shall carry interest at the rate of 6% per annum from the date of default. With this modification, the S.A.(MD)No. 545 of 2017 and S.A.(MD)No. 546 of 2017 are is partly allowed in the above terms.



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14. Hence, S.A.(MD)No.545 of 2017 and S.A.(MD)No.546 of 2017 are partly allowed on the above terms. No costs.

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Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. Principal District Court, Thanjavur.
2. Additional Sub-Court, Thanjavur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD).Nos.545 and 546 of 2017

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