



S.A.(MD)No.315 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.06.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.315 of 2023

Maruthu

... Appellant

/Vs./

1.Mohan

2.Balakrishnan

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree passed in A.S.No.48 of 2012, on the file of the Sub Court, Paramakudi, dated 13.12.2013 confirming the judgment and decree passed in O.S.No.23 of 2010 on the file of the District Munsif Court, Paramakudi, dated 31.01.2012.

For Appellant : Mr.A.Mohamed Haneef
for Mr.M.P.Senthil

For Respondents : Mr.S.Kumar



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JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The plaintiff in the suit in O.S.No.23 of 2010 on the file of the District Munsif Court, Paramakudi, is the appellant herein. The respondents are the defendants in the said suit. The suit was filed for redemption of an alleged pledge of jewellery, which the plaintiff claims to have pledged with the defendants and said to have availed a loan. However, the respondents / defendants have disputed the same and they have categorically stated that they had only purchased the jewellery from the plaintiff and there was no pledge as pleaded by the plaintiff in the plaint. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The trial Court framed issues based on the pleadings of the respective parties. The primary issue was that whether the plaintiff had pledged his jewellery with the defendants or the transaction between the plaintiff and the defendants was only a sale transaction.



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3. Before the trial Court, namely, the District Munsif Court, Paramakudi in O.S.No.23 of 2010, the plaintiff filed 4 documents, which were marked as Exs.A1 to A4. The details of the said exhibits are as follows:

Ex.A1 - Pledge receipt

Ex.A2 - Complaint given by the plaintiff on 01.05.2007 to the President of the Goldsmith Association against the defendants.

Ex.A3 - A copy of the complaint given by the plaintiff to Paramakudi Town Police Station against the defendants.

Ex.A4 - FIR registered against the plaintiff on 16.07.2007 based on the complaint given by the defendants and a copy of the final report submitted by the police.

On the side of the plaintiff, three witnesses were examined, namely, P.Ws.1 to 3. P.W.1 is the plaintiff. P.W.2 is Backiyam, whom the plaintiff claims to be a witness for pledge transaction. P.W.3 is Lakshmi Kandhan, whom the plaintiff claims to be the President of Goldsmith Association.



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4. On the side of the defendants, two witnesses were examined as D.Ws.1 and 2, namely Chadramohan and Selvaraj respectively and six documents were filed, which were marked as Exs.B1 to B6 and they are as follows:

Ex.B1 - Sale deed dated 29.11.2007 standing in the name of the defendants pertaining to a different transaction, wherein the plaintiff was also involved.

Ex.B2 - Order dated 13.06.2008 passed by this Court in CrI.O.P.(MD)No.5412 of 2008, by which a direction was issued to the police to register an FIR against the plaintiff.

Ex.B3 - Order passed by this Court in CrI.O.P.(MD)No.7147 of 2007 dated 25.07.2007 against the plaintiff.

Ex.B4 - A copy of the private complaint lodged against the plaintiff by the defendants under Section 200 of Cr.P.C., before the Criminal Court.

Ex.B5 - A copy of the application given by the first defendant under the Right to Information Act seeking for particulars relating to the plaintiff.

Ex.B6 - Acknowledgment copy with regard to Ex.B5.



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5. Based on the oral and documentary evidence available on record, the trial Court namely the District Munsif Court, Paramakudi, by its judgment and decree dated 31.01.2012 passed in O.S.No.23 of 2010 held that the plaintiff has not proved that he had pledged his jewels with the defendants and had availed a loan under Ex.A1 (alleged pledge receipts said to have been issued by the defendants). The trial Court has accepted the case of the defendants that it was only a sale transaction and not a case of a pledge as pleaded by the plaintiff. The trial Court has given a categorical finding that the plaintiff has not produced any documents to prove that he had pledged jewels with the defendants and had availed a loan.

6. This Court has also perused and examined Ex.A1, which was relied upon by the plaintiff for the purpose of substantiating his claim that he had pledged jewels with the defendants and had availed a loan. As seen from Ex.A1, it was only a bit of paper from the plaintiff's diary maintained by him in August 2002. The trial Court has rightly held that the said document is not a document creating pledge and it is not



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admissible in evidence. The trial Court has also rightly held that it is not a receipt issued by a pawn broker. The name of the pawn broker or the name of the shop has also not been mentioned in Ex.A1, which will clearly go to show that it is not a valid document, by which the pledge was created. No receipts have been produced by the plaintiff as seen from the evidence available on record that he had availed a loan from the defendants by pledging his jewellery with them.

7. As seen from Ex.A1, the total weight of the jewellery is only 20 sovereigns and the number of items disclosed therein is 6, whereas in the plaint schedule, the number of items of the jewels said to have been pledged with the defendants is 5 and therefore, there are contradictions. Similarly, in Ex.A2 complaint given before the President of the Goldsmith Association by the plaintiff against the defendants, items of jewellery mentioned therein are 9 in number, though the plaint schedule disclosed only five items. There are several contradictions in the statements made by the plaintiff in his pleadings as well as in his oral and documentary evidence.



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8. On the contrary, the defendants have categorically pleaded that there was no pledge created in their favour. But the transaction between the plaintiff and the defendants was only a sale transaction, for which the defendants had already paid the sale consideration to the plaintiff. The initial burden for proving the plaintiff's claim is on the plaintiff as per Sections 101 to 103 of the Indian Evidence Act, 1872. The plaintiff has miserably failed to discharge his initial burden, as no documentary evidence has been produced by him to prove that he had infact pledged the jewels with the defendants and had availed a loan. The plaintiff cannot rely upon the weakness of the defendants case by relying upon the deposition of the defendants during their cross examination. The trial Court has therefore rightly dismissed the suit filed by the plaintiff seeking for redemption of pledged jewels. The lower appellate Court, namely the Sub Court, Paramakudi in A.S.No.48 of 2012 has also rightly confirmed the findings of the trial Court by dismissing the first appeal filed by the plaintiff. Aggrieved by the concurrent findings of the Courts below, this second appeal has been filed.



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9. The issues raised by the plaintiff in the grounds of this second appeal have been well considered by the Courts below only based on the oral and documentary evidence available on record. There is no infirmity in the findings of the Courts below, which requires further interference by this Court under Section 100 of CPC. There are no substantial questions of law involved in this second appeal which requires further consideration of this Court. In the result, there is no merit in this second appeal and accordingly, this Second Appeal is dismissed. There shall be no order as to costs.

22.06.2023

Index : Yes / No
NCC : Yes / No
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TO:

- 1.The Sub Court, Paramakudi.
- 2.The District Munsif Court, Paramakudi.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.315 of 2023

Dated:
22.06.2023