



WEB COPY



S.A.No.804 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.804 of 2013

RM.Ranganathan

... Appellant/Respondent/Plaintiff

Vs.

1.T.Andal @ T.Devi

2.T.Kasiram @ T.Ramu

3.T.Surya Prakash @ T.Surya

Minor rep.by mother and

Natural Guardian – T.Andal

4.K.Lalithambal

...Respondents/Appellants/Defendants

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the Judgment and Decree dated 17.09.2012 in A.S.No.135 of 2011 on the file of the III Additional Judge, City Civil Court, Chennai, reversing the Judgment and Decree dated 03.02.2010 in O.S.No.5405 of 2008 on the file of the XVIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.M.Jagadheesan
for Mr.P.B.Ramanujam

For Respondents : Notice served - No appearance



S.A.No.804 of 2013

JUDGMENT

WEB COPY

The present Second Appeal arises against the Judgment and Decree of the learned III Additional Judge, City Civil Court, Chennai, in A.S.No.135 of 2011 dated 17.09.2012 in reversing the Judgment and Decree of the XVIII Assistant Judge, City Civil Court, Chennai, in O.S.No.5405 of 2008 dated 03.02.2010.

2.The suit is for recovery of money on the basis of pronote. The case of the plaintiff is that one Thirunavukkarasu, the husband of the 1st respondent and the father of the respondents 2 and 3 and the son of the 4th respondent had borrowed a sum of Rs.65,000/- from the plaintiff. The borrowal took place on 28.11.1996. The said Thirunavukkarasu used to pay principal and interest and made endorsements on the promissory note. As he did not make the payments after 01.08.2005, the suit came to be presented.

3.The suit was filed on 28.07.2008. The Trial Court after detailed analysis of the case decreed the suit for the principal amount of Rs.2,50,000/- which carried 9 % interest from 28.07.2008 till 03.02.2010



S.A.No.804 of 2013

and subsequent interest at the rate of 6 % per annum. This Judgment and Decree was put in challenge before the III Additional Judge, City Civil Court at Chennai. The learned Judge allowed the appeal on the ground that the last payment made by Thirunavukkarasu was on 09.06.2004 and therefore, the suit having been filed on 28.07.2008 was hopelessly barred by time. The learned Judge, on this basis dismissed the suit, as barred by limitation.

4. Aggrieved against the Judgment and Decree of the 1st Appellate Court in A.S.No.135 of 2011 dated 17.09.2012, the present Second Appeal has been filed. The notice regarding admission was ordered on 05.09.2013. The substantial questions of law that arise for consideration in this appeal are:

a) Whether the First Appellate Court was right in reversing the well considered findings of the trial Court, based on pleadings and evidence, on the ground of limitation alone ?

b) Whether the First Appellate Court was right in holding that the last payment was only under Ex.A.7 when Ex.A.25 was the last payment, that too by cheque, duly credited also ?



S.A.No.804 of 2013

c) Whether the First Appellate Court had not erred in ignoring vital documentary evidence available on record, viz., Ex.C1 to C4 which clearly established that the suit was well within time ?.

5.Though the respondents have been served, there is no appearance on their side. The matter was listed before me on 02.01.2014 and in order to give an opportunity, it was adjourned to 05.01.2024. Even today, there is no appearance for the respondents.

6.Mr.M.Jagadheesan, learned counsel appearing on behalf of Mr.P.B.Ramanujam, would bring to my attention ***Exs.A-8 to 10*** and also ***Exs.C-1 to 3***. He would on the basis of these documents contend that Thirunavukkarasu had acknowledged the debt and sent a letter and also a cheque for the same. He would contend that this factum has not been taken into consideration in the right perspective by the learned 1st Appellate Judge.

7.I have carefully considered the arguments of the appellant and have gone through the records.



S.A.No.804 of 2013

WEB COPY

8.The substantial questions of law are taken up together and answered as follows:-

The 1st Appellate Court had come to a conclusion that **Exs.A-8 to 10** though had been issued in the name of Thirunavukkarasu, had been signed by Devi and therefore, it is not binding on the legal heirs of Thirunavukkarasu. **Ex.C-3** is the statement of account that had been maintained by Thirunavukkarasu in Account No.109010100089803. The true extract from the book of accounts maintained by the Axis Bank has been summoned to the Court and marked through proper witness. In the said document, it is clear that a cheque bearing No.057774 for a sum of Rs.5,000/- had been issued on 01.08.2005 and encashed on 08.09.2005. The letter enclosing the aforesaid cheque can be found under **Ex.A-10**. Devi, the person, who has signed the letter, is none else than the wife of Thirunavukkarasu. She has sent the letter enclosing the cheque issued by Mr.Thirunavukkarasu and that was presented for clearance on 08.09.2005 and the same had been cleared. If 08.09.2005 is the date on which part payment had been made towards the amount due, then the period of limitation would expire with 07.09.2008. The suit having been filed on



S.A.No.804 of 2013

28.07.2008 is well within time and therefore, the dismissal of the suit as barred by limitation cannot be termed anything but as perverse. The learned Judge has not looked into the documents viz., **Exs.A-8 to 10** and in particular the statement of accounts produced by M/s Axis Bank, to substantiate the fact that the cheque issued had infact been encashed. The acknowledgment is not beyond the period of limitation, but within 1 year from **Ex.A-7**, which is dated 09.06.2004. Therefore, the order of the learned III Additional Judge, City Civil Court, Chennai dated 17.09.2012 cries out for interference and accordingly it is interfered with.

9.From the above, the substantial questions of law framed above are answered in favour of the plaintiff / appellant and against the respondents. The suit is decreed for a sum of Rs.2,50,000/- which would carry interest of 6 % from 28.07.2008 till the date of realisation.

10.In fine, the Second Appeal is allowed. The Judgment and Decree of the III Additional Judge, City Civil Court, Chennai in A.S.No.135 of 2011 dated 17.09.2012 is set aside and the Judgment of the learned Trial Judge in O.S.No.5405 of 2008 dated 03.02.2010 is restored with the following



S.A.No.804 of 2013

modification:-

WEB COPY

(i) The principal amount of Rs.2,50,000/- shall carry interest at the rate of 6 % from 28.07.2008 till the date of realisation,

(ii) The respondents are liable to the extent of the property of the Thirunavukkarasu that came into their hands,

(iii) Cost throughout.

05.01.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking order / Non-speaking order

Jer

To

1.The III Additional Judge
City Civil Court, Chennai.

2.The XVIII Assistant Judge
City Civil Court, Chennai.

3.The Section Officer
V.R.Section, High Court of Madras.



WEB COPY



S.A.No.804 of 2013

V.LAKSHMINARAYANAN, J.

Jer

S.A.No.804 of 2013

05.01.2024