IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

AS. No. 684 of 2019

Manoj H.Mehta
...Appellant

Vs.

1.S.Punitha
2.P.Sathiskumar

...Respondents

PRAYER : This first appeal is filed under section 96 of the Civil Procedure Code, to set aside the judgment and decree dated 24.04.2019 made in O.S No. 4911 of 2017 on the file of XVII Additional City Civil Court, Chennai and to allow the regular appeal by decreeing the suit.

For Appellants : Mr.C.Prabakaran

For Respondents: Mr.R.Ravi

JUDGMENT

The appellant herein is the plaintiff in suit O.S No. 4911 of 2017 filed for the relief of recovery of a sum of Rs.10,01,875/- with interest at the rate of 33% per annum on the principal sum of Rs.5,00,000/- from the date of plaint till the date of realization. After considering the submissions on either side, the Trial Court dismissed the said suit. Challenging the same, the plaintiff filed this appeal.

2.According to the plaintiff, the defendants approached him for loan of Rs.15 lakhs for the construction of flats and executed a registered mortgage deed for a sum of Rs.10,00,000/- and for remaining 5 lakhs executed a joint promissory note thereby the plaintiff paid a sum of Rs.10,00,000/- through cheque dated 05.12.2012 for which both the defendants executed a mortgage deed on 06.12.2012. On 06.12.2012 they took a loan of Rs.5 lakhs from the plaintiff by way of cheque dated 06.12.2012 bearing No. 000123 drawn on karur Vysya bank, chennai main branch and executed a demand joint promissory note for the said amount and agreeing to repay the same with interest at the rate of 33% p.a. In respect of said borrowal under the mortgage and promissory note, the defendants paid a sum of Rs.75,000/- on 19.03.2013 by way of cheque and requested the plaintiff to appropriate it towards the interest on both the loans. Accordingly, the plaintiff appropriated a sum of Rs.33,750/- towards the interest for mortgage loan for 2 1/4 months and the remaining amount of Rs.41,250/- towards in the interest on the pronote loan for three months. The defendants could not make any further payments as their business was dull and they could not completed their projects for wants of funds. The defendants again took a loan of Rs.15 lakhs from the plaintiff's family members including the plaintiff by executing five promissory notes and completed the construction. He sold one flat. After the lapse of 18 months, with that sale price, the defendants paid a sum of Rs.2,47,500/- on 29.09.2014 by way of cheque requesting to appropriate the entire amount for the pro note loan as the rate of interest is higher than the mortgage loan. As per their request the amount of Rs.2,47,500 paid on 29.09.2014 was appropriated for the interest of the pro note loan which covers the period of 18 months from 06.03.2013 to 06.09.2014. Then they stopped payment. When his father and his LIC agent Mr.Srinivasan through whom the defendants approached the plaintiff were demanding the money. The Second defendant promised to clear their dues as soon as they sells the flats. But the defendants set up a plea that they discharge the entire debt by paying the amount in cash and the plaintiff is refusing to give credit. They filed O.S No. 5227 to 5231 of 2016 and all the six suits are pending on the file of II Assistant City Civil Cour. Hence, the averments of the plaintiff makes it clear that they want to defraud the plaintiff. Therefore, the defendants are now due and liable to pay the entire principal sum of Rs.5,00,000/- with accrued interest of Rs.5,01,875/- from 06.03.2014 to 20.09.2017 aggregating in all to Rs.10,01,875/- with future interest. Hence, the suit.

3. The defendants contended that they borrowed a sum of Rs.10,00,000/- as mortgage loan on 05.12.2012 and towards enhancement of another loan for a sum of Rs.5,00,000/- on 06.12.2012 both loan given by way of cheque, at the time of getting the loan the plaintiff and his agent Mr.Srinivasan collected the blank cheques and blank notes from the defendants for security purpose. Thereafter, the defendants settled the said loan and the plaintiff returned the mortgage deed original and promised to return the blank cheques and blank pro notes. Subsequently, the plaintiff and his agent asked more money without returning the blank cheque and pro notes hence, the defendants filed the suit in O.S No. 1480 of 2016 against the plaintiff to return the said documents. Instead of return the said documents the plaintiff filed the present suit. Futhermore, the plaintiff has

not issued any prior demand notice on the alleged demand promissory note which itself proves that the defendants after settling the entire loan amount the plaintiff has filed this suit. Further, the promissory note, blank cheque was only given after the settlement of the loan and filled the rate of 33% on the loan amount. The alleged payment on 29.09.2014 only paid on the mortgage loan of Rs.10,00,000/- dated 05.12.2012 not to this alleged pro note loan. Therefore, the suit is filed by the plaintiff is barred by limitation from the date of loan dated 06.12.2012. Hence, the suit is liable to be dismissed.

4. For the sake of convenience the parties are denoted as per the suit.

5. The learned counsel for the plaintiff submitted that the Trial Court ought to have decreed the suit for the reason that execution of pro note as well as borrowal of mortgage admitted by the defendants and payment of interest in the year 2014 was justified in pro note loan, thereby from the date of loan payment of the year 2014 the suit was filed within the limitation period but the Trial Judge erroneously dismissed the suit as barred by limitation needs to be set aside. Further he submits that when the defendants admit the borrowal, the burden is on the defendants to establish as to how he repaid the loan but the defendants not produced any evidence

nor entered into the witness box to support their contention but the same was not appreciated by the Trial Court. It was submitted that the other suits filed by the defendants in respect of return of the documents also dismissed before the Trial Court as they failed to prove the repayment of the loan. Hence, he prays to allow this appeal.

6. The point to be decided is whether the plaintiff is entitled to the suit claim or whether the suit is barred by limitation ?

7. According to the plaintiff, on two occasions, the defendants borrowed a sum of Rs.15,00,000/- by way of cheque dated 05.12.2012 and 06.12.2012 for the purpose of constructing the flats and also executed the mortgage deed for a sum of Rs.10,00,000/- and they executed promissory note for a sum of for Rs.5,00,000/-. Thereafter, as he failed to pay the interest from the year 2014. Hence, the plaintiff filed the suit. On the other side, the defendants admits that they borrowed a loan from the plaintiff and also contend that they repaid the same. But, the plaintiff failed to return the blank cheque and blank pro note obtained from the defendants hence the defendants filed the suit for return of documents in the year 2016 aggrieved that the plaintiff filed the present suit. Even assuming that there is borrowal of loan in the year 2014 the said claim is barred by limitation, since the suit

was filed after 3 years of limitation period. Admittedly there is no proof that entire amount was repaid as observed by the Trial Judge. Therefore, on 05.12.2012 the defendants borrowed a loan from the plaintiff and executed a promissory note for a sum of Rs.5,00,000/- to repay the same at the rate of 33%. Further, the plaintiff contended that on 29.09.2014, the defendant paid a sum of Rs.2,47,500/- in order to discharge higher interest on pro note 06.01.2014 as requested by the defendants. Thereafter, the defendants had not paid any amount hence they filed the suit in the year 2016 which is very well within a period of three years from the date of last payment. Therefore, the plaintiff relied the last payment date 29.09.2014 as it is within the limitation period. But the defendant contended that amount was paid to discharge the mortgage loan and not for pro note debt. Equally, the burden is on the plaintiff to prove that the said amount was paid by the defendants for the interest of pro note loan. The pro note was marked as Ex.A1. Admittedly there is not endorsements on the back of the promissory note about the payment of interest. Further there is no pre suit notice was issued by the plaintiff to the defendants in respect of receiving the said amount particulars, except for the said pro note loan nor he issued any receipt with regard to the adjust said amount particulars pro note loan. When the defendant denied the said payment particulars for the pro note the plaintiff has to establish the same through material evidence and rightly observed by the Trial Judge there is no endorsement on the backside of the pro noteloan. But the plaintiff relied the complaint copy of the suit filed by the defendants in OS No. 1480 of 2016 but the defendants disputed the contention of the plaintiff relied in Ex.B2 which is written statement filed by the plaintiff in O.S No. 1480 of 2016 for the return of documents, even in that written statement the plaintiff has not stated that the amount was paid in the year 2014 by the defendants for the interest of the promissory note loan. But to calculate the limitation period date evidence is necessary to prove the last payment made by the defendants as there is no evidence on the side of the plaintiff and the same was rightly observed by the Trial Court needs no interference. The plaintiff failed to prove the repayment of loan by the defendants on 29.09.2014 in order to prove that the suit was filed within limitation period. Even though there is no specific issue with regard to the limitation while considering the claim of the plaintiff trial Court perused all the evidence on record held that there is no documents to shows that loan payment was made in the year 2014, as there is no endorsements in pro note thereby the Trial Court rightly arrived the conclusion. Even considering the payment of interest in the year 2013 is taken into consideration the suit ought to have been filed on or before 19.03.2017 but the present suit was filed on 29.09.2017 after the limitation period. Therefore, the plaintiff claim is barred by limitation hence, the plaintiff is not entitled for the suit claim. Accordingly, findings of the Trial Court is confirmed. Accordingly, issues are answered.

8. In the result, the appeal is dismissed. No Costs. Consequentially connected miscellaneous petition if any is/are closed.

13.03.2024

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T.V.THAMILSELVI,J.

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To
1. The XVII Additional City Civil Court, Chennai.
2.The Section Officer,
V.R Section.

AS. No.684 of 2019

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