



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2008

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

A.S.No.36 of 2001

UCO Bank ,Erode
by its Manager

.. Appellant/Plaintiff

-vs-

1. E.C.Chinnannan
2. P.Shanmugham

.. Respondents/Defendants

This appeal is filed under Section 96 CPC, against the Judgment and Decree dated 30.6.2000 passed in O.S.No.66 of 1994 on the file of the Court of Subordinate Judge,Sankagiri.

For appellant :: Mr.D.Mukundan,Advocate
For respondents :: Mr.N.Ishtiq Ahmed,Advocate

JUDGMENT

This appeal has been directed against the decree and Judgment in O.S.No.66 of 1994 on the file of the Court of Subordinate Judge, Sankagiri. The plaintiff UCO Bank has lost his case before the trial Court is the appellant herein.

2. The averments in the plaint relevant for the purpose of deciding this appeal in brief are as follows:

The first defendant had approached for a loan with the plaintiff for the purpose of a Tractor and a Trailor for a sum of Rs.1,18,500/- and the same was sanctioned by the plaintiff with the following conditions.

- a) That the loan is to be guaranteed by equitable mortgage by deposit of title deeds with the plaintiff.
- b) That the tractor to be purchased should be hypothecated with the plaintiff.
- c) That the loan amount be paid within seven years
- d) that the first defendant shall pay interest at 12.5%
- e) interest is calculable at half yearly rests and as per the varying rates of interest then and there according to the directions of the Reserve Bank of India.

The defendants agreeing for the above said conditions, availed loan to the tune of Rs.1,18,500/- on 18.6.1983 by executing the documents viz.,

- (1) Demand promissory note in favour of the plaintiff
- (2) Letter to waive presentment of the promissory note
- (3) Agreement relating to Term Loan



- (4) Agreement relating to Hypothecation of Standing Crops
- (5) Agreement relating to Hypothecation of Tractor
- (6) Guarantee Agreement

(7) Letter of confirmation of deposit of Title Deeds in favour of the plaintiff. The second defendant stood as a guarantor for the suit loan availed by the first defendant and executed a deed of guarantee dated 18.6.1983 which is a continuing guarantee till the discharge of the loan. The defendants at the time of availing loan, after executing the above said loan documents, have also agreed to pay interest at 12.5% p.a. Further varying rate of interest by the directions of the Reserve Bank of India and at present they are bound to pay interest at the rate of 15.5% p.a. from 9.10.1991. The defendants, on 18.6.1983 have created mortgage by deposit of title deeds and all the relevant documents were produced by the defendants as a collateral security for the loan availed by them. The defendants have agreed to pay the loan amount within seven annual instalments. The defendants have also acknowledged the liability by executing the letters of confirmation dated 19.1.1984, 14.10.1985, 23.8.1986, 27.7.1987, 18.4.1988, 9.6.1989, 22.6.1991 and 27.8.1992. As per the books of account maintained by the plaintiff in the regular course of business transaction, a sum of Rs.2,16,935/- is the amount due under the suit loan as on 14.10.1993. The defendants are not entitled to any relief under Debt Relief Act since the plaintiff Bank is a Nationalised Bank. The plaintiff is entitled to claim interest at the rate of 14.5% p.a. The plaintiff had issued notice dated 16.6.1993 for which there was no reply received from the defendants. Hence the suit.

3. The second defendant had adopted the written statement filed by the first defendant as follows:

The first defendant has submitted a loan application with the plaintiff in the first week of January 1983 for the purchase of Tractor and Tractor for a sum of Rs.1,18,400/- and after satisfying with the requirements, the plaintiff has sanctioned the loan in favour of the first defendant for which the second defendant stood as a guarantor. A deed of hypothecation was also executed by the first defendant on 18.1.1993 and has also executed a promissory note, term loan agreement on 18.1.1983 agreed to repay the loan in 10 half yearly instalments together with interest at 12.5% p.a. The second defendant executed a letter of guarantee on 18.1.1983 itself and that the first defendant has also mortgaged the Tractor and Tractor purchased by him after availing the loan by creating equitable mortgage by deposit of title deeds and that the allegation that the first defendant had agreed to repay the loan in seven years and that had agreed to pay the interest at the rate of 12.5% p.a minimum interest with half yearly rests and as per the varying rate of interest as per the directions of Reserve Bank of India are all false. The first defendant has not executed any demand promissory note or agreement relating to the term loan or any deed of hypothecation on 18.6.1983. The documents mentioned in the plaint are fabricated and forged documents. On 18.1.1983, the defendants were asked to subscribe their signatures in many printed unfilled forms, the plaintiff might have fabricated and converted those forms into that of seven documents detailed in the plaint. The second defendant has also not executed any deed of guarantee on 18.6.1983. The first defendant has



not executed any documents created collateral security for the loan availed by him from the plaintiff. The first defendant has not given any immovable property as security for the loan availed from the plaintiff. The first defendant has not created any equitable mortgage with the plaintiff for the loan availed by him. The first defendant has not deposited any document to the plaintiff on 18.6.1983. The first defendant has paid the loan borrowed from the plaintiff on 18.1.1983 through many instalments and at last on 22.3.1994 also paid Rs.20,000/- under protest with the plaintiff's Bank. The alleged letter of confirmation of liability dated 19.1.1984, 14.10.1985, 23.8.1986, 27.7.1987, 18.4.1988, 9.6.1989, 22.6.1991 and 27.8.1992 are all false.

The first defendant has not executed any document of letter of confirmation of liability for the alleged debt borrowed on 18.6.1983. The first defendant has not borrowed any amount from the plaintiff on 18.6.1983. The accounts produced by the plaintiff are fabricated one, the plaintiff is not entitled to claim interest at 14.5% p.a. After the receipt of the notice, the first defendant approached the plaintiff's Bank Manager and explained the defendants' case and hence the first defendant has not sent any reply. The plaintiff has no cause of action to file the suit. Considering the regular account maintained by the first defendant with the plaintiff's Bank and taking into consideration, the considerable business conducted by the first defendant and the deposits made by him with the plaintiff in the year 1983, the then Manager of plaintiff's Bank has sanctioned a Tractor loan for the first defendant on production of his registration copy of the sale deed and also the lease deed in favour of the first defendant. On 18.1.1983 for a sum of Rs.1,18,400/- a draft was sent to the company only by the plaintiff. The defendants are repaying the same periodically. On 30.10.1990, the plaintiff demanded the first defendant to produce the registration book and Insurance policy for the Tractor. The said request was heeded by the first defendant and he produced the same in the year 1991 before the then Manager of the plaintiff's bank. Later the plaintiff's bank Officials have not returned those documents. In the year 1992, the plaintiff's men seized the Tractor and Trailer and took the same to Erode and when the first defendant requested the plaintiff to return the same. The plaintiff's Bank said that in the account maintained by them for the said loan availed by the first defendant on 18.1.1983, there is some discrepancy and they assured to rectify the same. In order to reply to the queries made by the head office of the plaintiff, the plaintiff's men required the defendant to execute two letters on 22.6.1991. Hence the first defendant executed the letters. The plaintiff's men have assured that the Tractor will be returned soon. On 18.6.1993 and 5.7.1993, the plaintiff's men induced the first defendant to pay the amounts to return the Tractor. The defendants paid the same. But the plaintiff's men failed to keep up their words. Hence there was exchange of words and strained relationship between the plaintiff's men and the defendants. The plaintiff's men threatened to take revenge on the defendants. At last the first defendant was requested by the plaintiff's men to pay Rs.20,000/-. The first defendant paid the same under protest on 22.3.1994. The plaintiff's men after receiving the same requested the defendant to come after two months for getting approval from the head office for return of the Tractor. But the first defendant has received only suit summons from the Court. The defendant's tractor as on date is worth Rs.1,75,000/-. The plaintiff



has unlawfully retaining the same. The second defendant is not the necessary party to the suit. There is no cause of action to file the suit. The suit is barred by limitation. The court fee paid on the plaint is incorrect. Hence the suit is liable to be dismissed.

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4. On the above pleadings, the learned trial Judge has framed as many as eight issues for trial. On the side of the plaintiff, P.Ws 1 to 7 were examined and Exs A1 to A34 were marked. On the side of the defendants, first defendant has examined himself as D.W.1 and Exs B1 to B3 were exhibited. After meticulously going through the evidence both oral and documentary and after due deliberations on the submissions made by both sides, the learned trial Judge has come to a conclusion that the plaintiff is not entitled to any relief as prayed for in the suit has dismissed the suit which necessitated the plaintiff to approach this Court by way of this appeal.

5. Now the points for determination in this appeal are

- i) Whether the first defendant has availed only a loan as per Ex B2 notice dated 30.10.1990 and that he had discharged the same?
- ii) Whether the suit filed by the plaintiff is barred by limitation?
- iii) Whether the Judgment and decree in O.S.No.66 of 1994 on the file of the Court of Subordinate Judge, Sankagiri is liable to be set aside for the reasons stated in the memorandum of appeal?

6. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for first respondent and considered their submissions.

7. Point No 1:

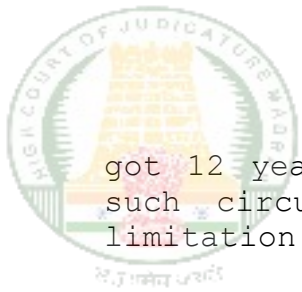
The entire defence of the first defendant was built up on the basis of Ex B1 notice sent by the counsel for the plaintiff to the defendant dated 11.4.1988. Under Ex B1, according to P.W.1, the Assistant Manager of the Plaintiff's Bank, the then advocate of the plaintiff's Bank had by mistake has mentioned the date of availing of term loan by the first defendant as 18.1.1983 instead 18.6.1983. The first defendant as D.W.1 would deny for having obtained a loan of Rs.1,18,500/- from the plaintiff's Bank on 18.6.1983. But he would admit that he took delivery of the Tractor and Tractor which was purchased by him after availing the loan of Rs.1,18,400/- from the plaintiff's Bank on 18.1.1983. But absolutely the first defendant has not produced any document to show that he has availed loan for a sum of Rs.1,18,400/- on 18.1.1983 and that he had discharged the same. The plaintiff has filed the suit on the basis of Ex A20 notice wherein the date of loan and the amount of loan availed by the first defendant has been stated as 18.6.1983 and Rs.1,18,500/- respectively and for the said loan, the second defendant stood as a guarantor. The learned trial Judge has held that Ex A9 does not contain the signature of the first defendant. But the findings of the learned trial Judge for coming to the conclusion that Ex A9 does not contain the signature of the first defendant, there is no reasoning given in the Judgment. The learned trial Judge has not stated on what basis, he has come to a conclusion that the signature in Ex A9 is not



that of the first defendant. Even though, the first defendant in his evidence would deny his signature in Ex A9, he has not taken any steps to send Ex A9 to an Expert for getting an expert report as to the fact that the signature contained in Ex A9 is not that of the first defendant. It is the case of the first defendant that he has not executed any document on 18.6.1983 in favour of the plaintiff for having availed any loan. But on the other hand, the plaintiff's Bank has examined P.Ws 1 to 7 and also produced Exs A1 to A34 to show that only after availing the loan of Rs.1,18,500/- the first defendant has executed suit promissory note dated 18.6.1983 under Ex A1, Ex A3 term Loan agreement, Ex A5 deed of Hypothecation and also after created equitable mortgage by deposit of title deeds under Ex A9. Ex A6 and Ex A7 documents are original sale deed dated 25.6.1965 and partition deed dated 6.3.1968 relating to the first defendant. There is no explanation forthcoming from the first defendant on what circumstances those documents were entrusted to the plaintiff. In the written statement, vague allegations were made by the first defendant as to the fact that the plaintiff's men required the defendant to execute two letters on 22.6.1991. Exs A15 and A16 are the letters dated 22.6.1991 acknowledging the liability of the suit debt by the first defendant. Apart from this, the first defendant has not given any explanation for handing over Ex A6 original sale deed and Ex A7 partition deed to the plaintiff. It is not the case of the first defendant that for the loan availed on 18.1.1983, Exs A6 and A7 were handed over to the plaintiff. The suit loan has been acknowledged and confirmed by the first defendant, under Ex A9 to Ex A18. It is pertinent to note at this juncture that even for the Ex A20, the first defendant has not sent any reply, but has cleverly built up his case on the basis of Ex B1 notice under which, according to P.W1, the then Advocate appearing for the plaintiff had mistakenly mentioned the date of loan availed by the first defendant as 18.1.1983 instead of 18.6.1983. I hold on point No.1 that the first defendant has not availed any loan as stated in Ex B2 notice dated 30.10.1990 and that he had also not discharged the same.

8. Point No.2:

The plaintiff has produced Exs A9 to A18 to show that the first defendant has acknowledged the suit debt. The first defendant has not taken any steps to show that the signatures contained in Ex A9 to Ex A18 do not belong to him. There is absolutely no material placed before the trial Court on the side of the first defendant that the documents under Ex A9 to Ex A18 are all concocted and forged documents. Further under Ex A29, demand draft No.940705 for a sum of Rs.93,925/- was sent to the dealer of the Tractor viz., Excorts Limited Faridabad with a direction to deliver the tractor to the first defendant. Under Ex A28, Demand Draft No.AB940711 dated 18.6.1983 for a sum of Rs.24,476/- was sent to Gajendran Body Builders and Engineering Works, Salem and that the first defendant had delivered the Tractor under Ex A30. Under such circumstances, it is not open to the first defendant to show that he has not availed the suit loan for the purchase of Tractor and Trailor. Even though, there is a vague plea as to the suit is barred by limitation has been raised by the first defendant in his written statement, on the basis of Exs A9 to A18, the plaintiff has proved that the suit is not barred by limitation. Further under Ex A9, the first defendant has created mortgage by deposit of title deeds under which the plaintiff has



got 12 years period of limitation to recover the suit amount. Under such circumstances, it cannot be said that the suit is barred by limitation. Point No.2 is answered accordingly.

9.Point NO.3:

In view of my findings in the earlier paragraphs, I hold on point No.3 that the Judgment and decree in O.S.No.66 of 1994 on the file of the Court of Subordinate Judge, Sankagiri is liable to be set aside for the reasons stated in the memorandum of appeal.

10.In fine, the appeal is allowed and the Judgment and decree in O.S.No.66 of 1994 on the file of the Court of Subordinate Judge, Sankagiri is set aside and the suit is decreed for a sum of Rs.2,16,935/- with interest at the rate of 12.5% p.a from the date of the suit till the date of decree and with future interest at the rate of 9% p.a from the date of decree till the date of realisation on the principal sum of Rs.1,18,500/-. Time for payment is two months from today. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

- 1.The Subordinate Judge,Sankagiri
2. The Record Keeper, V.R.Section, High Court, Madras.

- 1 cc To Mr.V.N.Mohanraj, Advocate, SR.43384.
- 1 cc To Mr.D.Mukundan, Advocate, SR.43382.

A.S.NO.36/2001

GV(CO)
RVL 18.08.2008