

Nachimuthu Gounder Vs. D.Devendran

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SooperKanoon Citation : sooperkanoon.com/1169528

Court : Chennai

Decided On : Jun-30-2014

Judge : R.Karuppiah

Appellant : Nachimuthu Gounder

Respondent : D.Devendran

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated :

30. 06.2014 Coram THE HONOURABLE MR.JUSTICE R.KARUPPIAH C.R.P.(NPD).No.783 of 2006 and C.M.P.No.6575 of 2006 1.Nachimuthu Gounder (Deceased) 2.Sellammal 3.Gurusamy 4.Perumal 5.Kuppusamy 6.Sundaram ... Petitioners (Petitioners 2 to 6 brought on record as LR's of the deceased sole petitioner under Order of Court dated 06.01.2014 made in CMP Nos.869 and 870 of 2011 in CRP(NPD) No.783 of 2006). Vs.

1. D.Devendran @ Rajan 2. Jothi .. Respondents Prayer:- Civil Revision Petition is filed under Section 115 of CPC against the judgment and decree dated 31.03.2005 made in A.S.No.8 of 2004 on the file of the Subordinate Court, Bhavani reversing the judgment and decree dated 17.09.2003 made in O.S.No.350 of 1982 on the file of the Principal District Munsif Court, Bhavani. For Petitioners : Mr.N.Manokaran For Respondents : Mr.T.Murugamanickam

ORDER

The deceased 1st revision petitioner filed this revision petition against the decree and judgment dated 31.03.2005 made in A.S.No.8 of 2004 on the file of Subordinate Court, Bhavani reversing the decree and judgment made in O.S.No.350 of 1982 on the file of Principal District Munsif Court, Bhavani.

2. During the pendency of the revision petition the sole 1st revision petitioner died and the revision petitioners 2 to 6 brought on record as legal heirs of the deceased sole revision petitioner.

3. For the sake of convenience, the plaintiff in the original suit referred as deceased 1st revision petitioner. The legal heirs of the deceased plaintiff referred as revision petitioners 2 to 6 and the defendants 3 and 4 in the main suit are referred as the respondents 1 and 2 hereafter.

4. The deceased 1st revision petitioner filed a suit for recovery of money on promissory note. According to the deceased 1st revision petitioner, on 17.01.1975, the deceased 1st defendant in the suit namely Duraisamy Reddy borrowed a sum of Rs.3500/- and executed a promissory note and also agreed to pay 12% interest but the deceased 1st defendant has not paid any amount. It is also averred in the plaint that up to 15.7.1978, this suit is not barred in view of the ban imposed till 15.07.1978 under Tamil Nadu Debt Relief Act. Further, the 1st revision petitioner is seeking interest only at 9%. During the pendency of the suit, the 2nd defendant, wife of 1st defendant also died and the respondents herein are liable to pay the above said amount out of estate of the deceased first defendant.

5. The 2nd respondent herein who is 3rd defendant in the above said suit remained exparte before both courts below. Only the 1st respondent who is 4th defendant in the suit filed a written statement, in which, it is denied the alleged execution of Ex.A1 promissory note dated 17.01.1975 by the deceased 1st defendant. It is also stated in the written statement that due to land boundary dispute, the above said promissory note was created and also barred by limitation. Further, the first respondent herein and the defendants 2 and 3 in the above said suit are entitled to the benefits of Debt Relief Act 13 of 1980. Hence, the suit is liable to be dismissed.

6. The trial court framed five issues from the above said pleadings and on the side of the deceased 1st respondent/plaintiff two witnesses were examined as PW1 and PW2 and marked one document as Ex.A1. On the side of the 1st respondent/4th defendant two witnesses were examined as DW1 and DW2 and marked 8 documents as Ex.B1 to B8.

7. The trial court has discussed the above said oral and documentary evidence adduced on either side and finally decreed the suit as prayed for by the deceased 1st respondent/plaintiff. Aggrieved over the above said findings of the trial court, the 1st respondent herein, who is 4th defendant in the suit alone preferred first appeal in A.S.No.8 of 2004. The first appellate court has discussed the above said oral and documentary evidence and finally held that the deceased 1st revision petitioner failed to prove the genuineness of the signature found in Ex.A1 promissory note and hence, set aside the decree and judgment passed by the trial court and dismissed the suit.

8. Aggrieved over the reversal finding of the first appellate court, the deceased 1st revision petitioner preferred this revision petition.

9. A perusal of the judgment of the trial court revealed that the trial court has accepted the oral evidence of PWs 1 and 2 who were examined to prove the execution and affixture of signature of the deceased 1st defendant in Ex.A1 promissory note and concluded that it is proved as genuine document. But, the 1st appellate court has held that the above said signature found in Ex.A1 promissory note has not been proved as genuine since in Ex.B4 school certificate issued in the year 1977-78, in which, it has mentioned the name of the deceased first defendant as Duraisamy and not Duraisamy Reddiar and therefore, the above said signature is not genuine and both PW1 and PW2 have not signed in Ex.A1 as witnesses and hence allowed the appeal and dismissed the suit.

10. Admittedly, the 2nd respondent herein 3rd defendant in the original suit has not contested the suit before the courts below and only the 1st respondent herein / 4th defendant in the suit contested the suit before both courts below.

11. A careful perusal of the written statement filed by the 1st respondent herein revealed that nowhere it is stated that the 1st respondent has perused the alleged Ex.A1 promissory note filed on the side of the revision petitioner before the trial court by obtaining necessary permission and also not stated in the written statement as the signature found in the promissory note is not the signature of the deceased 1st defendant. Further, at the time of evidence, on the side of the 1st respondent has not cross-examined the revision petitioners side witness as the deceased 1st defendant only signed as Duraisamy and not signed as Duraisamy Reddiar and hence, signatures found in Ex.A1 is not the signature of the deceased first defendant. The 1st respondent himself admitted in his evidence that he had seen the Ex.A1 promissory note only on 25.08.2003, at the time of cross-examination of PW1. Except the averments in the proof affidavit, absolutely no documentary evidence to prove that the deceased 1st defendant used to sign only as Duraisamy and not as Duraisamy Reddiar. A perusal of the documents filed on the side of the respondent (i.e.,)Ex.B1 copy of sale deed dated 27.04.1971 executed by the deceased 1st defendant and his brothers, in which, the name of the 1st defendant mentioned as Duraisamy Reddiar and not Duraisamy. A perusal of Exs.B2 and B3 copies of sale deeds dated 11.06.1998 and Exs.B7 and B8 copies of Adangal extract dated 02.09.2003 issued by Tahsildar revealed that in all the above said documents, the name of the deceased 1st defendant stated only as Duraisamy Reddiar and not Duraisamy as contended by the 1st respondent. Therefore, the documents produced on the side of the respondents itself clearly prove that the name of deceased 1st defendant is only Duraisamy Reddiar not Duraisamy. On the side of the 1st respondent, he has not produced the original document Ex.B1 or any other documents to prove that at the time of execution of Ex.A1 promissory note, he used to sign only as Duraisamy alone. Further, the 1st appellate court has not compared with any other admitted documents so as to found any difference in the above said signature found in Ex.A1 promissory note. The respondent's side witnesses also has not pointed out any difference in the signature. Therefore, the findings of the 1st appellate court regarding genuineness of Ex.A1 promissory note is a perverse finding as rightly pointed out by the learned counsel appearing for the revision petitioners.

12. The learned counsel appearing for the revision petitioner would submit that the contesting 1st respondent clearly admitted that the deceased 1st defendant having several agricultural properties at the time of filing suit but he has not provided the details of total lands so as to prove the eligibility to claim benefit of Debt Relief Act. Further, the 1st respondent has also not proved that the 1st respondent herein, who is the legal heir of the deceased 1st defendant is also entitled to the benefits of Debt Relief Act, by reliable oral and documentary evidence. The 1st respondent himself admitted that he was working and earned more than Rs.5000/- per month. The trial court has considered all the above said facts properly and has given correct finding that the respondents are not entitled to the benefits of the above said Act.

13. As rightly pointed out by the 1st appellate court, while disposing the CRP PD Nos.101 and 102 of 2002, this Court has clearly held that the deceased 1st revision petitioner is not entitled to the interest from 18.08.1988 to 21.02.2003 but, that finding was not considered by the trial court in its judgment. Therefore, the revision petitioners are not entitled to the interest amount from the above said period from 18.08.1988 to 21.02.2003 as per order of this Court. Except the above said interest amount, the revision petitioners are entitled to recover the amount with interest as per the decree and judgment passed by the trial court.

14. In the result, this civil revision petition is partly allowed and set aside the decree and judgment passed by the 1st appellate court and modified the judgment and decree of the trial court as the revision petitioners are entitled to the principal amount with interest except the interest amount from 18.08.1988 to 21.02.2003. No order as to costs. Consequently, connected civil miscellaneous petition is closed. 30.06.2014 Index:Yes/No Internet:Yes / No ssN To 1.The Subordinate Court, Bhavani. 2.The Principal District Munsif Court, Bhavani. R.KARUPPIAH, J., ssN Pre-delivery Order in C.R.P.(NPD).No.783 of 2006 and C.M.P.No.6575 of 2006 30.06.2014