

C. Essak Vs. Susal Ammal

C. Essak Vs. Susal Ammal

SooperKanoon Citation : sooperkanoon.com/800742

Court : Chennai

Decided On : Aug-18-1986

Reported in : (1987)1MLJ414

Appellant : C. Essak

Respondent : Susal Ammal

Advocate for Pet/Ap. : Mr. V. Krishnan

Judgement :

Swamikkannu, J.

1. Section 5 of the Tamil Nadu Indebted Agriculturists' Temporary Relief Act, XV of 1976 and Section 6 of the Tamil Nadu Indebted Persons' Temporary Relief Act, XVI of 1976, are the provisions relating to exclusion of time for purposes of limitation, wherein good faith is pleaded by the creditor in instituting suits belatedly, that is, beyond the period of limitation. The suit had been laid before the lower Court on foot of two promissory notes, marked as Exs. A4 and A5 and the suit had been decreed, believing the evidence of the plaintiff who had gone into the box as P.W. 1. The only witness on behalf of the defendant is none other. than the defendant himself, who was also the scribe of both the promissory notes on which the suit had been laid.

2. The three main issues that were framed for consideration by the lower Court are:

1. Whether the plaintiff is entitled to any amount as prayed for as per her accounts?

2. Whether the plaint promissory notes are not supported by consideration? and

3. Whether the suit is in time?

This Court has gone through the entire evidence, both oral and documentary, on the same having been taken through by Mr. V. Krishnan, Learned Counsel for the appellant. The defence that had been put forward in the written statement filed by the defendant-appellant was as follows: He is a small trader in coconuts and the plaintiff is not a retail dealer in coconuts. The defendant had at no time any transaction with the plaintiff. The diary and the entries made therein were not written by the defendant, and they are fabricated for purposes of the suit claim, which is false. The plaintiff never advanced any amount to the defendant as alleged in the plaint, and she had no means to advance such huge amounts. On the other hand, the defendant, being in affluent circumstances, had no necessity to borrow from the plaintiff. The suit promissory notes are also supported by consideration. In 1972 the defendant borrowed a sum of Rs. 1,000 and another of Rs. 2,000 from the plaintiff's husband. On the date of the promissory notes, the plaintiff and her husband approached the defendant and wanted him to execute promissory notes for double the amounts actually borrowed by him, and the defendant was compelled to execute the promissory notes for Rs. 2,000 and Rs. 4,000 respectively at the instance of the plaintiff's husband. The promissory notes being not supported by consideration, the plaintiff is not entitled to any relief claimed. Further, the suit is also barred by limitation.

3. Exs. A1 and A2 are the diaries produced by the plaintiff. The contents of the same are spoken to by the plaintiff as P.W. 1, in whose favour they have been executed. They have been actually written by the defendant himself. Ex. A4 reads as follows:

Exclusion A-5 promissory note reads as follows:

Ex. A6 is the office-copy of the notice issued by the plaintiff to the defendant, and Ex.A7 is the defendant's reply thereto. Ex.A8 is the extract of accounts maintained by the plaintiff. A careful perusal of the evidence of the plaintiff, as impressed on the lower Court, shows that there is absolutely nothing material that has been elicited in her cross-examination 'so as to reject her evidence regarding the claim made in the suit. The defence put forward by the defendant-appellant has been stoutly denied by the plaintiff-respondent in the witness-box. A reading of the contents of Exs. A4 and A5, the promissory notes, clearly shows that both the instruments were executed by the appellant and that they are supported by consideration. The lower Court has correctly disbelieved the ipsa dixit OF the appellant and relied on oral testimony and the contents of the documentary evidence adduced by the plaintiff, and has decreed the suit,

4. As for the question relating to the limitation, that has been raised by Learned Counsel for the appellant, it is but necessary that we have to extract both the provisions relied on by him. Section 5 of Tamil Nadu Act XV of 1976 and Section 6 of Tamil Nadu Act XVI of 1976 read as follows:

Section 5 of Act XV of 1976:

Section 5:

Exclusion of time for limication:

(1) In computing the period of limitation or limit of time prescribed for a suit for the recovery of a debt or an application for the execution of a decree passed in such suit, the time during which the institution of the suit or the making of an application was barred by Section 3, or during which the plaintiff or his predecessor-in-title, believing in good faith chat Section 3 applied to such suit or such application, refrained from instituting the suit or making the application, shall be excluded....

Section 6 of Act XVI of 1976:

Section 6: Fxclusion of time for limitation:

In computing the period of limitation or limit of time prescribed for a suit for the recovery of a debt or an application for the execution of a decree passed in such suit, the time during which the institution of the suit or the making of application was barred by Section 4, or during which the plaintiff or his predecessor-in-title, believing in good faith that Section 4 applied to such suit or such application, refrained from instituting the suit or making the application, shall be excluded....

The plaint transactions have taken place during 1974, 1975 and 1976, during which-period the debt relief laws were in force in Tamil Nadu. Under the said special enactments, proceedings against agriculturists and non-agriculturists, whose income is mentioned under the enactments, were either prohibited or stayed. The respondent would contend that under the bona fide belief that the appellant is entitled to the benefit of Acts XV of 1976 and XVI of 1976, she had been prevented from instituting the suit in time. Her evidence cannot be controverted regarding this aspect. It is seen that the plaint had been filed before the lower Court on 2.1.1979. These promissory notes are dated 27.12.1975 and 31.12.1975 respectively. Both these promissory notes do not contain any endorsement of the appellant. So, they are clearly barred by limitation. But, the explanation offered by the plaintiff for the delay in instituting the suit is not properly controverted by the defendant either by oral evidence or by adducing documentary evidence. Therefore, there is absolutely nothing wrong in the lower Court accepting the reasons offered by the plaintiff-respondent for the delay in the institution of the suit, in view of the provisions of Section 5 of XV of 1976 and Section 6 of Act XVI of 1976. So, these points raised on behalf of the appellant in this appeal cannot also be countenanced. Under these circumstances, there is no merit in the appeal. Hence, the appeal is dismissed with costs.