

Presented on : 15/12/2005

Registered on : 15/12/2005

Decided on : 28/09/2017

Duration : Year Month Day

11 – 09 – 13

IN THE COURT OF THE CIVIL JUDGE JUNIOR DIVISION, CHANDGAD

AT CHANDGAD, TALUKA-CHANDGAD, DISTRICT-KOLHAPUR

(Presided over by M. D. Thombare)

Regular Civil Suit No.83/2005.

Exhibit No. 41/A.

Shri. Pundalik s/o Rama Patil,
Age 70 years, Occu-Agri. R/O Dholgarwadi, } .. Plaintiff.
Taluka - Chandgad, District - Kolhapur.

Versus

Tamraparni Nagari Sahakari Pat-Sanstha
Maryadit, Kowad, Branch Yeshwant-Nagar, } .. Defendants.
Taluka-Chandgad, District-Kolhapur,
Represented by its (i) the Chairman and
(ii) the Branch Manager.

Advocates Appeared :

Shri. V. G. Desai, Advocate for the plaintiff.

Shri. S.S. Kot and Shri. A.P. Dewan, Advocates for the defendants.

J U D G M E N T

(Delivered on 28/09/2017)

This is a suit for the relief of perpetual injunction.

Description of the suit properties :

2) (A) The residential house bearing Gram Panchayat No.31 corresponding to old Gram Panchayat No.18 situated within the limits of the Gram Panchayat, Dholgarwadi, Taluka-Chandgad, District-Kolhapur.

(B) The agricultural land, bearing Gat No.128, admeasuring 3-Aar situated within the limits of village Dholagarwadi, Taluka-Chandgad, District-Kolhapur.

(For the sake of brevity hereinafter these properties are referred to as “suit properties”).

Facts of the plaintiff's claim in brief are as under :

3) The defendant No.1 is the Co-operative Credit Society incorporated and registered under the provisions of the Maharashtra Co-operative Societies Act, having its registered office at Kowad, Taluka-Chandgad and its branch office at Yeshwant-Nagar, Taluka-Chandgad. It is the case of plaintiff that he is not a member of the defendant Society. The plaintiff and his son Manohar residing separately since last more than 10 years. Manohar had strained relations with the plaintiff, his wife and other family members. Hence, plaintiff and his son Manohar had not jointly approached and demanded loan to the defendant Society. Plaintiff has not executed promissory note, guarantee deed, hypothecation deed in favour of the defendant Society. Plaintiff has not agreed to refund the loan amount of Rs.50,000/- taken by his son from the defendant Society.

4) Howsoever, the defendant Society on 01/09/2004 has filed an application against the plaintiff, his son Manohar and two others before the Assistant Registrar, Co-operative Societies, Chandgad under Section 101 of the Maharashtra Co-operative Societies Act for the recovery of sum of Rs.85,885/- due with interest @ 18% per annum from 01/04/2004 onwards. In pursuance of the said application, the Assistant Registrar, Co-operative Societies, Chandgad was pleased to issue notice to the plaintiff directing him to remain present before him on 23/09/2004. Then for the first time, the plaintiff came to know about the alleged loan transaction. The plaintiff is not liable to the defendant Society for the recovery of Rs.85,884/-. Despite that defendant Society with intention to recover the said amount with interest @ 18% per annum from 01/04/2004 onwards from the plaintiff are intending to attach and sell the properties belonging to the plaintiff. Hence, the plaintiff is constrained to institute this suit for the relief that defendant Society be perpetually restrained from recovering the loan amount with future interest @ 18% per annum from the plaintiff by attaching and selling the suit properties.

5) The defendant Society appeared before the Court and resisted the suit by filing their written statement vide Exh.25. According to defendant society, the plaintiff, his son Manohar and his wife were residing in the suit house as a joint family members and had been in common cultivation of the lands bearing Gat Nos.1, 265, 267, 470, 472

and 513. These properties are ancestral joint family properties of the plaintiff and his son Manohar. According to defendant Society, the plaintiff being eldest in the family, his name was recorded in the record of rights of the above said properties. The plaintiff was and is Karta of the joint family.

6) The son of plaintiff named Manohar had decided to run Xerox Machine and for that he was in need of money. Hence, he applied for loan to defendant Society to purchase xerox machine on 23/02/1999. Accordingly, defendant Society has sanctioned the loan of Rs.50,000/- to him. Appaji Joti Patil and Arjun Gavadu Patil stood surety for said Manohar. The brother of Manohar namely Anil has also signed the loan demand form. The plaintiff has also given consent to create charge upon his properties. So M.E.No.129 was registered and in other rights column the charge of defendant was recorded on 05/03/1999 for the amount of Rs.50,000/-.

7) Defendant Society further contended that the son of plaintiff named Manohar had paid few installments and stopped to make repayment of loan. Thereafter, Manohar was died. Therefore, recovery proceeding was started against the plaintiff according to law.

8) Defendant Society further contended that as the suit properties are ancestral and the son of plaintiff Manohar has 1/3rd joint share in the suit properties. Therefore, plaintiff is bound to clear off the

dues of deceased Manohar. But the plaintiff has failed to pay the loan amount. Hence, defendant Society has right to recover the loan from the plaintiff in accordance with the procedure established by law. Hence, the suit is liable to be dismissed with costs.

9) On the basis of rival pleadings of both the parties, I have framed issues vide Exh.26. I record my findings thereon with reasons as under :

ISSUES

FINDINGS

- | | |
|---|---------------------|
| 1. Whether plaintiff is liable to pay the loan amount of defendant-Society ?. | No. |
| 2. Whether plaintiff is entitled to get the relief of injunction as sought for ?. | Yes. |
| 3. What order and decree ?. | As per final order. |

REASONS

10) In order to substantiate his claim, plaintiff has examined himself by filing his affidavit in lieu of examination-in-chief vide Exh.31 as P.W.1.

11) On the contrary, the defendant Society has filed the documents along with list Exh.37. But they did not prove those documents by leading their oral evidence.

Admitted Facts :

12) It is not in dispute that deceased Manohar was the son of

plaintiff. It is also not in dispute that deceased Manohar had applied to the defendant Society for getting loan of Rs.50,000/-.

AS TO ISSUE NO. 1 :

13) It is the case of plaintiff that he and his son deceased Manohar jointly not applied to the defendant Society for getting loan of Rs.50,000/-. Admittedly, the evidence of plaintiff is remained un-rebutted. Defendant Society has filed the loan application form vide Exh.37/1. The perusal of said loan application form revealed that only plaintiff's son Manohar had applied for getting the loan to the defendant Society. The application nowhere revealed that plaintiff has also applied for getting loan to the defendant Society. The perusal of loan application further revealed that Appaji Patil and Arjun Patil are the sureties for the said loan. Hence, it clearly appears that plaintiff is nowhere in the picture for the loan sanctioned by the defendant Society to his son Manohar.

14) The perusal of promissory note vide Exh.37/2 also revealed that it was executed by the son of plaintiff Manohar and not by the plaintiff. It is the case of defendant Society that plaintiff has consented to the defendant Society for creating charge on his properties by giving consent letter. Defendant Society has filed said consent letters vide Exh.37/10 and 37/11 to show that plaintiff has consented defendant Society to keep the charge on his properties for the loan amount disbursed to his son Manohar. But the defendant Society had not proved the

contents of said consent letters. Hence, the said consent letters cannot be read into evidence.

15) Moreover, defendant Society did not lead their evidence to support their case that plaintiff and his son Manohar were residing jointly and the suit properties are their ancestral joint family properties. Hence, the adverse inference can be drawn that the case set up by defendant Society is incorrect in view of ratio laid down in **Vidhyadhar Vs. Mankikrao and another [AIR 1999 Supreme Court 1441]**. In that case, Hon'ble Apex Court clearly held that *“when a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct”*.

16) Therefore, taking into consideration the above discussion, I hold that plaintiff who is not party to the loan disbursed to his son Manohar by defendant Society, he cannot be held liable for the said loan amount. Hence, I answer issue No.1 in the negative.

AS TO ISSUE NO. 2 :

17) As I held in issue No.1 that plaintiff is not liable to pay the loan amount disbursed by defendant Society to his deceased son Manohar. Hence, I hold that defendant Society has no right to attach and sell the suit properties belonging to the plaintiff. Hence, I hold that plaintiff is entitled to get the relief of perpetual injunction as sought. Hence, I

answer issue No.2 in the affirmative.

AS TO ISSUE NO. 3 :

18) In view of my findings as to issues No.1 and 2, I hold that suit deserves to be decreed with costs. Hence, in answer to issue No.3, I proceed to pass the following order.

ORDER

1. Suit is decreed with costs.

2. The defendant Society or anybody claiming on their behalf, are hereby perpetually restrained from recovering the loan amount disbursed to the plaintiff's deceased son Manohar by attaching and putting into sale, mortgage, lease or any other mode of transfer the suit properties.

3. Decree shall be drawn up accordingly.

Date:- 28/09/2017.

(M. D. Thombare)
Civil Judge, Junior Division,
Chandgad.

C E R T I F I C A T E

I affirm that the contents of this P. D. F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer	Shri. V. L. Tadmok, L. G. Stenographer.
Name of Court	Shri. M.D. Thombare, Civil Judge, Junior Division and Judicial Magistrate, First Class, Chandgad.
Date of Dictation	28/09//2017
Judgment/Order signed by the P. O. on	03/10//2017
Judgment/Order uploaded on	03/10//2017