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Spl.Civil Suit No. 456/2013.J

Received on :- 18/03/2013.

Registered on:- 05/04/2013.

Decided on :- 04/01/2017.

Duration Y M D
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IN THE COURT OF 6TH JOINT CIVIL JUDGE, SENIOR DIVISION, AT PUNE.
[Before M.M.Rao]

Special Civil Suit. No.456/2013.

Exh. No.

Shri. Vinayak Kondiba Pawar

Age- about 48 years, Occu- Agriculturist & business,

R/at- Mukampost Panshet, Tal. Welha,

Dist. Pune.

...Plaintiff.

V/S.

1) **Shri. Arun D. Badalkar**

Age- about 73 years, Occu- Agriculturist,

2) **Sou. Liliyan B. Badalkar**

Age- about 68 years, Occu- Agriculturist,

Both R/at- Flat No. 302, Tiwera Building,

Orchid Co-Op.Housing Soc.Ltd.,

Kondhwa, Pune- 411007

... Defendants.

Suit for recovery of amount Rs. 5,35,000/-,
for declaration and injunction.

Shri. S.H.Godbole, learned advocate for the Plaintiff.

Learned advocate for the Defendants – Ex-prate.

:: J U D G M E N T ::

[Delivered on :- 04th January, 2017]

Description of the suit property :-

All that piece and parcel of agricultural land bearing Gat No. 28, totally admeasuring to 37 R situated at Ambegaon Budruk Grampanchayat, Tal.Welhe, Dist.Pune. It is bounded as follows :-

- 1) On or towards East - Gat No. 24
- 2) On or towards South - Gat No. 27
- 3) On or towards West - Irrigation acquired (Water)
- 4) On or towards North - Gat No. 29

Brief facts-

2. The defendant no. 1 took a hand loan of Rs. 5,35,000/- from plaintiff on dated 22/03/2010. He deposited the original sale deed of the suit property as a security to the said hand loan with plaintiff. Thereafter, the plaintiff made several request to defendant for repayment of loan amount. The same was not paid. Hence, the plaintiff issued a letter dated 11/02/2013 to defendant no. 1. But, the said letter were returned back as refused. Hence, the plaintiff is constrained to file the present suit.

3. On the other hand, vide Exh.-6 defendant no. 1 & 2 are served. But, as the service of summons was effected on the fixed date on 30/07/2013. Therefore, liberty was given to plaintiff for getting the defendants served by way of R.P.A.D. The defendant no. 1 and 2 refused to accept the postal summons issued to them by court. The R.P.A.D. packet, at Exh.12 & Exh.13, returned back to this court with an postal endorsement refused to accept. Therefore, the matter came to be proceeded further Ex-parte against defendants by passing an order below Exh.1 on dated 22/04/2015.

4. Heard learned advocate for the plaintiff Shri. S.H.Godbole.

5. Upon the pleadings and documents filed by plaintiff on record the following points arise before this court for determination, to which findings are

given with suitable reasoning's thereto.

Sr. No.	Points for determination	Findings
1	Whether the plaintiff prove that, he is entitle to recover an amount of Rs. 5,35,000/- @ 18% from defendants as prayed ?	... Yes, but, @ 6% p.a.
2	What order and decree ?	... As per final order.

: R E A S O N S :

6. Plaintiff in order to substantiate his case filed his evidence affidavit at Exh.16 as P.W.No.1 and one Alok Joshi at Exh.25 as P.W.No. 2. Plaintiff closed his evidence by filing pursis below Exh.29.

7. On the other hand, the defendant though served with suit summons but, failed to cause any appearance. The matter was proceeded Ex-parte.

8. **As to point no. 1 :-**

The plaintiff examined himself as P.W.No. 1 at Exh.16. He contended that, initially the suit property was owned by deceased Sakharam Genu Gandle and thereafter it was owned by Sou. Nathabai Hanwati Jagade. She executed a power of attorney in favour of plaintiff in respect of suit property. On the basis of said power of attorney, the plaintiff sold the suit property to defendants on 11/01/2010. During this period, the plaintiff and defendant no. 1 developed cordial friendly relations with each other. Defendant no.1 requested for a help of Rs. 6 lakhs initially from plaintiff. The plaintiff declined the request on the ground that, he can't able to manage that much of amount. Again the defendant no. 1 requested to pay atleast Rs. 5,50,000/- as he is in need of it. He further stated that, he requires the said amount to go to abroad for visiting his two sons who are residing there. His sons has already sent the money which can be permissible by the Government in a year to him. Therefore, now, they can't sent

further money to him. Plaintiff considering the situation of the defendant no. 1, made arrangement of Rs. 5,35,000/- from collecting it from his friends and relatives. Thereafter, plaintiff gave Rs. 5,35,000/- to defendant no. 1. It was paid by plaintiff through a cheque bearing no. 3000191 dated 22/03/2010 drawn in favour of Axis Bank bearing account no. 910010008609758. The defendant no. 1 as a security to the said hand loan gave the possession of original copy of sale deed of suit property to him.

9. The plaintiff further contended that, it was agreed at the time of giving and taking of hand loan that, it was to be repaid within 15 to 20 days. There is no levy of interest on it. After payment of loan amount, the original copy of sale deed was to be returned to defendant no. 1 by plaintiff.

10. Thereafter, the plaintiff made several request to defendant no. 1 for payment of the amount of hand loan taken by him. But, the defendant no. 1 did not showed any serious interest in repaying the said loan amount. Lastly, the plaintiff issued one letter dated 19/02/2013 and called upon the defendant to repay the amount of Rs. 5,35,000/-. The defendant no.1 refused to accept the same. It was returned back to plaintiff with postal endorsement "refused" on it. This conduct of the defendant no. 1 confirmed his intention not to pay the hand loan amount to plaintiff. Hence, the plaintiff constrained to file the present suit.

11. The plaintiff in support of his contention filed the original sale deed of suit property executed between plaintiff, as power of attorney of original owner Sou. Nathabai Hanwati Jagade, and defendant no.1 at Exh.20. The returned envelope packet is filed at Exh.22.

12. Apart from above, the plaintiff filed his statement of his account with Axis Bank at Exh.21. To prove the same, he examined the Assistant Manager of Axis Bank, Poona Branch as P.W.No. 2 at Exh.25. With this witness is able to prove that, the plaintiff is having an bank account no. 910010008609758 in Axis

Bank situated at Indrapusti Building Furgusson college road, Pune. The plaintiff further able to show that, there is an entry in the statement of account filed at Exh.27 showing that, on 22/03/2010 vide cheque no. 300191 a debit of Rs. 5,35,000/- in his account in favour of defendant no. 1.

13. The entire evidence of the plaintiff remained unchallenged. From the oral and the documentary evidence brought by the plaintiff clearly goes to show that, plaintiff has paid Rs. 5,35,000/- to defendant no. 1. Furthermore, the plaintiff has also filed the original copy of the sale deed of suit property executed between plaintiff and defendant no.1 in respect of the suit property. As, the defendants though served did not able to cause any appearance. The entire contention of the plaintiff remained as it is. Their appears no other reason to have the possession of the original copy of the sale deed, apart from it, as a security towards the amount of Rs. 5,35,000/- paid to defendant no. 1. The entry in account of his bank statement filed by plaintiff at Exh.27 clearly shows payment of Rs. 5,35,000/- to defendant no. 1 by way of cheque. Hence, the plaintiff is entitle for recovery of Rs. 5,35,000/- from defendant no. 1.

14. The plaintiff has claimed 18% interest on the amount of Rs. 5,35,000/-. Whereas, the plaintiff himself in his plaint clearly stated that, it was agreed between him and defendant no. 1 that, the said amount was given without any interest to defendant no. 1. It clearly shows that, there was no agreement between plaintiff and defendant no. 1 in respect of interest on the loan amount. The loan was agreed to be paid within the period of 10 to 12 days. From the evidence brought on record shows that, the present suit is filed when the period of three years of limitation was going to end by issuing letter dated 11/02/2013 to defendant no. 1. Therefore, an inference can be drawn that, the plaintiff was not so eager and anxious to approach this court at the earliest. On this background, the claim of interest by plaintiff @ 18% does not appears to be a justified one. Moreover, the transaction between plaintiff and defendant no.

It was not a commercial transaction. Furthermore, there is no agreed terms in respect of interest between the parties, then, this court can't grant more than 6%, as per Section 35 of Code of Civil Procedure. In view of this, the answer to point no. 1 is given accordingly.

15. **As to point no. 2 :-**

The cumulative effect of the findings given to the aforesaid points, the suit of the plaintiff deserves to be partly allowed. In view of this, the following order is passed.

ORDER

- 1) The suit is partly allowed with costs.
- 2) The defendants are hereby directed to pay Rs. 5,35,000/- to plaintiff @ 6% p.a. on simple interest from the date of filing of the present suit till its realization within two months from the date of order.

Pune
Date:-04th January, 2017.

Sd/-xxx
(M.M.Rao)
6th Jt. Civil Judge, S.D. Pune.

Certificate

“ I affirms that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno :- Mr. B.M.Salve

Court Name :- Shri. M.M.Rao

6th Jt.C.J.S.D.Pune.

Date :- 04/01/2017.

Judgment signed by presiding officer on :- 04/01/2017.

Judgment uploaded on :- 07/01/2017.