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SA.No.102 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.102 of 2010

Karunambikai Ammal
Represented by her Power of Attorney
Ramalingam

... Appellant

- Vs -

1. Shanthipaul
2. Haridevan

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the learned Principal District Judge, Villupuram passed in A.S.No.11 of 2006 dated 27.1.2009 reversing the judgment and decree passed by the learned Second Additional Subordinate Judge, Villupuram in O.S.No.142 of 1996 dated 29.9.2005.

For Appellant : Mr.J.Ramakrishnan

For Respondents : Mr.N.Suresh for R1
R2-NDW



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JUDGMENT

The instant Second Appeal has been filed at the instance of the plaintiff. The respondents 1 and 2 are the defendants 1 and 2 before the Trial Court.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

3. The brief facts, which give rise to the instant Second Appeal is that; the defendants have borrowed a sum of Rs.70,000/- from the plaintiff by executing a promissory note on 03.03.1993, agreeing to repay the said sum with interest at the rate of 12% per annum. The plaintiff further submits that in spite of issuance of legal notice, the defendant neither sent any reply nor repaid the borrowed amount. Hence, the plaintiff came forward with a suit for recovery of sum of Rs.70,000/- with interest.

4. The said suit was resisted by the first defendant by contending that they came to know that the plaintiff is related to one Mr.V.Ramalingam, who was the Office Manager in the Sugar Factory, where the defendants were working. According to this defendant, the said Mr.Ramalingam used to lend money on usurious rates of interest to the employees and used to take their signature on a blank printed pronote. While so, this defendant was in need of



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money, as such he approached the said Mr.Ramalingam, who was working in the Housing Co-Operative Society at Kallakurichi and who is known to this defendant. The said Mr.Ramalingam agreed to advance the loan, if the 2nd defendant join in the execution of the pronote. Therefore, both the defendants 1 and 2 have signed on the empty pronote during 1990 and borrowed a sum of Rs.10,000/- from Mr.Ramalingam. According to this defendant, they have signed on the empty pronote and handed over the same to Mr.Ramalingam. Therefore, this defendant disputes the due execution of the pronote, which allegedly filed by the plaintiff. It is the further submission of this defendant that they have already discharged the loan to the said Ramalingam. This defendant has also stated that the suit is barred by limitation and bad for non joinder of necessary party qua Ramalingam. In the Additional Written statement, he has also taken a defence in respect of material alteration in the pronote. Hence, prayed to dismiss the suit.

5. In line with the first defendant, the 2nd defendant has also filed a written statement supporting the defence of the 1st defendant.

Evidence, Documents and Finding of the both the Court below:-

6. Before the Trial Court, the plaintiff examined 2 witnesses as PW1 and PW2, and marked as many as 4 documents as Exs.A1 to A4. On behalf



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of the defendants, 17 documents have been marked as Exs.B1 to B17 and 2 witnesses have been examined as DW1 and DW2.

7. The Trial Court, after considering the oral and documentary evidence, has ultimately decreed the suit. Aggrieved with the said judgment, when the matter was taken up in the appeal by defendants, the First Appellate Court, while re-appreciating the evidence, held that the plaintiff has not proved the passing-off consideration, and has ultimately allowed the appeal, thereby dismissed the suit. Aggrieved with the same, the plaintiff is before this Court.

Submission of either side counsel:-

8. (a). The learned counsel for the plaintiff would vehemently contend that the defendants have admitted their signature. Therefore, by virtue of Sections 20 and 118 of The Negotiable Instruments Act, even for argument sake, if we presume that the defendants had signed in the blank promissory note, still, the plaintiff is entitled to fill up the said instrument and that there will be a presumption in favour of the plaintiff in passing-off consideration. Therefore, the learned counsel for the appellant would submit that the order



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passed by the First Appellate Court is contrary to the settled legal principles.

Hence, the same is liable to be interfered with. In support of his contention, more particularly in respect of Sections 20 and 118 of The Negotiable Instruments Act, the learned counsel relied upon the following judgments:-

1. ***Vediappan Vs. Padmanaban*** reported in **(2018) 3 MLJ 436**.
2. ***Venkatachalam Vs. Kannayiram*** reported in **MANU/TN/3365/2023**.

8. (b). The learned counsel for the plaintiff would further contend that, by virtue of Order 3 Rules 1 and 2 of CPC, the plaintiff could be represented through the Power Agent. Therefore, the non examination of the plaintiff cannot be held against the plaintiff. In this regard, the learned counsel for the appellant/plaintiff also relied upon the following judgments:-

1. ***Krishna Pillai Vs. Murugan*** reported in **2020 (3) MWN (Civil) 257**.
2. ***G.Jothimani Vs. K.M.Nachimuthu*** reported in **2021 (1) MWN (Civil) 63**.

9. Per contra, the learned counsel appearing on behalf of the defendants has contended that the non examination of the plaintiff is fatal to the plaintiff's case. It was also contended that even prior to the Power of Attorney, Mr.Ramalingam was introduced to this suit, they have taken the



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defence that the pronote filed before the Court was at the behest of the power of attorney Mr.Ramalingam. It was also contended that the attesor to the promissory note was not examined, and even the one attesor who was examined as PW2, has not subjected himself for cross examination. Therefore, his evidence has no evidenciary value. It was also contended that the conduct of the plaintiff in filing the suit for recovery on the last date of limitation, that too without sufficient court fee would exemplify that case set up by the plaintiff is on the premise of the falsity. Hence, this defendant prayed to dismiss the suit. In support of the defendant's case, the learned counsel has relied upon the judgement of this Court in ***K.Natarajan Vs. P.K.Rajasekaran*** reported in ***2003-3-L.W.803***.

10. I have given my anxious consideration to either side submissions.

Analysis of the submissions:-

11. The main contention put forth by the learned counsel for the appellant is on the basis of the admission made by the defendant viz., DW1 as to the admission of the signature in the promissory note. The admission, which the plaintiff relies is as follows:-



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“..... பூர்த்தி செய்யப்படாத பிராமசரி நோட்டீஸ் வாதி என்னிடம் கையெழுத்து வாங்கிக் கொண்டார். 2ம் பிரதிவாதியிடமும் கையெழுத்து வாங்கினார். அந்த கையெழுத்து பேரில் தான் கருணாம்பிகை தாவா பிராமசரி ஜோடிக்கப்பட்டது என்றால் சரி தான்.”

12. Therefore, it was contended that when the defendant himself has admitted the signing of the promissory note in favour of the plaintiff, then the presumption under Sections 20 and 118 of The Negotiable Instruments Act can be invoked in favour of the plaintiff to decree the suit.

13. In this regard, the learned counsel for the appellant/plaintiff relied upon *Vediappan's* case [cited supra] and would contend that when the signature is admitted in the promissory note, the attesor need not be examined. On the very same line, the plaintiff relied upon *Venkatachalam's* case (cited supra). But according to the defendant, it is their specific case in the written statement that they had given promissory note to Mr.Ramalingam, that too while borrowing a sum of Rs.10,000/- from him. To put it in other words, the defendants have specifically disputed the execution of the pronote in favour of the plaintiff. If we harmoniously read the above admission, though that appears to be an admission in respect of the



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execution of the pronote in favour of the plaintiff, the next statement that the plaintiff has signed during 1990 and not on 1993 would only support the defendants' case. Therefore, this Court is of the view that the alleged admission cannot be given undue weightage in isolation to the other part of the evidence and the defence put forth by the defendants. If such admissions are given undue importance, then naturally even the plaintiff's admission during his chief examination that the promissory note was executed in favour of Mr.Ramalingam would also assume importance. The relevant portion of the admissions of PW1 during the chief examination is as follows:-

“..... மேற்படி கடனுக்காக இருவரும் சேர்ந்து மேற்படி கடன் பெற்ற தேதியிலேயே திருக்கோவிலூரில் வைத்து என் பெயருக்கு கடனுறுதிச் சீட்டு ஒன்றும் எழுதிக் கொடுத்தார்கள். அந்த கடன் உறுதிச்சீட்டு வாதி தரப்பு சான்றாவணம் எக்ஸ் ஏ1 ஆகும். பிரதிவாதிகள் என்னிடம் கடன் பெற்ற போது கடன் தொகை பைசலாகும். பிரதிவாதிகள் என்னிடம் கடன் பெற்ற போது கடன் தொகை பைசலாகும் வரை மாதம் ஒன்றுக்கு ரூ.100/-க்கு ரூ.100 வீதம் வட்டி தருவதாகவும் ஒப்புக் கொண்டார்கள்.....”

14. If we read the above admission, even according to PW1, the alleged pronote was given in favour of the Power Agent of the plaintiff. The First Appellate Court in its order, has relied upon the conduct of the plaintiff's witness one Kumar, who has not subjected himself for cross



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examination, who according to the plaintiff was an attestor, and the non examination of the plaintiff and has arrived at a conclusion that the due execution of the pronote has not been proved.

15. At this juncture, this Court would like to refer the judgment of the Hon'ble Supreme Court in ***Man Kaur (dead) by LRs. Vs. Hartar Singh Sangha*** reported in ***(2010) 10 SCC 512***. The relevant portion of the said judgment is paragraph 18 and the same reads as follows:-

“18. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney-holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney-holder alone has personal knowledge of such acts and transactions and not the principal, the attorney-holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions



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or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney-holder, necessarily the attorney-holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorised managers/attorney-holders or persons residing abroad managing their affairs through their attorney-holders.

(e) Where the entire transaction has been conducted through a particular attorney-holder, the principal has to examine that attorney-holder to prove the transaction, and not a different or subsequent attorney-holder.

(f) Where different attorney-holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney-holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his “state of mind” or “conduct”, normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who seeks eviction of his tenant, on the ground of his “bona fide” need and a purchaser seeking specific performance who has to show his “readiness and willingness” fall under this category. There is however a recognised exception



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to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or “readiness and willingness”. Examples of such attorney-holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.”

16. The above case arisen in suit for specific performance. This Court would also like to refer the judgment of the Hon'ble Supreme Court in ***State of Maharashtra and others Vs. Chhaya and Others*** reported in (1999) 3 SCC 457. The relevant portion of the said judgment is paragraph 17 and the same reads as follows:-

“17. Admittedly Respondent 1 had an account in Central Bank of India Limited, Sambalpur Branch which his father, namely, Respondent 2 was authorised to operate. It is also an admitted fact that it was from this account that the amount was advanced to the appellant by Respondent 2. It has been given out in the statement of Respondent 2 that when the appellant had approached him for a loan of Rs 7000, he had explicitly told him that he had no money to lend whereupon the appellant had himself suggested to advance the loan from the account of Respondent 1 and it was on his suggestion that Respondent 2 issued the cheque to the appellant which the



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appellant, admittedly, encashed. This fact has not been controverted by the appellant who did not enter the witness-box to make a statement on oath denying the statement of Defendant (Respondent) 2 that it was at his instance that Respondent 2 had advanced the amount of Rs 7000 to the appellant by issuing a cheque on the account of Defendant (Respondent) 1. Having not entered into the witness-box and having not presented himself for cross-examination, an adverse presumption has to be drawn against him on the basis of the principles contained in Illustration (g) of Section 114 of the Evidence Act, 1872.”

17. Though the plaintiff contended that there is an admission made by the defendants in respect of the signature found in the pronote, if we read the said admission along with the chief examination of the Power Agent of the plaintiff, then the pronote was handed over to the plaintiff's power agent. Therefore, this Court is of the view that the admissions made by the defendants cannot be given undue weightage. In the absence of such admission while we see the pleading, the defendant has categorically pleaded that he has handed over the pronote only to the power agent of the plaintiff. On the date of filing of the written statement, the power agent was not in the picture and he came to be act as a power agent by filing an appropriate application later on. Therefore, the sum and substance of the above



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discussion is that it is the duty of the plaintiff to prove the due execution of the promissory note. In respect of such proof, the plaintiff has examined his power agent. In the chief examination, PW1 Power agent of the plaintiff has stated that only in his presence, the defendant has executed promissory note. If that being the case, the non attestation by PW1 [power agent of the plaintiff] in the said pronote is inherent suspicion in the case set up by the plaintiff.

18. Therefore, this Court is of the view that the contention put forth by PW1 that he knew the facts personally, cannot be believed. This would only probablise the case of the defendants that they have borrowed loan from PW1-Ramalingam. The said factum could be vindicated through the non examination of the plaintiff and the attestor. When the advancement of loan is in dispute, the plaintiff ought to have come to the box to subject herself for cross examination, so as to testify that she has advanced loan. Here, the plaintiff did not opt to come as a witness and further, the attestor has not all subjected himself for cross-examination. But only the scribe was examined on the side of the plaintiff. However, while seeing the pronote, he has signed only as a scribe. Therefore, we cannot assume any *animo attestandi* to the



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evidence of PW3-scribe. Thus, this Court is of the view that the plaintiff has not proved the due execution of the promissory note. Therefore, the finding of fact recorded by the First Appellate Court is based on evidence and this Court could not find any perversity over the said finding. Hence, There is no substantial question of law arisen in this matter.

19. In the result, this Second Appeal is dismissed. There shall be no order as to costs.

13.12.2023

kmi

Index : Yes

Speaking Order : Yes

NCC : Yes/ No

To

1. The II Additional Sub Court,
Villupuram.

2. The Principal District Court,
Villupuram.



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C.KUMARAPPAN,J

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