



S.A.No.419 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.419 of 2017
and
C.M.P.No.10273 of 2017

Venkatachalam

... Appellant

VS.

1.R.Rajaram

2.R.Ponne

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 08.12.2016 passed in A.S.No.114 of 2015 by the learned II Additional District Judge at Salem reversing the Judgment and Decree dated 22.06.2015 passed in O.S.No.49 of 2011 by the learned I Additional Subordinate Judge, Salem.

For Appellant : Mr.S.Santhosh Kumar

For Respondents : Ms.P.Abirani
for M/s.V.Srimathi
Senior Advocate



S.A.No.419 of 2017

J U D G E M E N T

WEB COPY

The plaintiff in a suit for recovery of money is the appellant. The appellant herein filed a suit for recovery of money and the suit was decreed by the Trial Court and findings of the Trial Court were reversed by the First Appellate Court and aggrieved by the same, the appellant/plaintiff is before this Court.

2. According to the appellant/plaintiff, the defendants borrowed a sum of Rs.5,00,000/- from the appellant on 23.03.2008 and executed a suit promissory note agreeing to repay the amount with interest at the rate of 12% per annum. In spite of several demands, the respondents failed to repay the said amount. Hence, the appellant issued a legal notice on 10.01.2011 calling upon the defendants to repay the amount due under the promissory note. The notice sent to the 1st defendant was returned and the notice was received by the 2nd respondent. Thereafter, the respondents issued a reply denying the execution of the promissory note. Therefore, the appellant was constrained to file a suit for recovery of money.



S.A.No.419 of 2017

3. The respondents herein filed a written statement and denied very execution of suit promissory note and passing of consideration. It was also stated by the respondents that the appellant herein was only a money lender and he had been set up by one A.Arunachalam and A.Vijaya to file the present suit. It was further stated that signed blank promissory note were stolen from respondents by said A.Arunachalam and A.Vijaya and being close associates of said persons, at the instance of A.Arunachalam and A.Vijaya, the appellant has filed the present suit.

4. Before the Trial Court, the appellant was examined as PW.1 and Attestor to the suit promissory note was examined as PW.2 and 5 documents were marked on behalf of appellant as Exs.A1 to A5. The 1st respondent was examined as DW.1 and one Gomathi Nayagam, Manager of the Canara Bank, Chennai was examined as DW.2. On behalf of respondents, 28 documents were marked as Exs.B1 to B28.

5. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that appellant proved his suit claim and granted a decree for recovery of money. Aggrieved by the same,



S.A.No.419 of 2017

the respondents preferred an appeal in A.S.No.114 of 2015 on the file of the Additional District Court, Salem. The First Appellate Court reversed the findings of the Trial Court and allowed the appeal. Aggrieved by the same, the unsuccessful plaintiff has come by way of this second appeal.

6. At the time of admission, this Court formulated the following substantial questions of law:-

“(i) Whether the applicability of Legal Position with regard to the word “Execution” and “Presumption” under Section 118 (a) of the Negotiable Instruments Act in the case of money suit Demand Promissory Note is correct or not?

“(ii) Whether the First Appellate Court was correct in ignoring the evidence of DW1 especially his admissions during the cross examination which are all very vital in deciding the issues involved in the case?

“(iii) Whether Lower Appellate Court was correct in rejecting Ex.A1 Demand Promissory Note executed in favour of the Appellant herein?



S.A.No.419 of 2017

(iv) Whether the Demand Promissory Note is legally tenable when the Defendants have subscribed their signatures and Thumb impression to the promissory note and that they are not illiterate?”

7. The learned counsel appearing for the appellant submitted that the appellant proved due execution of suit promissory note by examining himself as PW.1 and attesor to the document as PW.2. Therefore, the due execution of suit promissory note has been proved by the appellant by leading cogent evidence. The learned counsel further submitted that the 2nd respondent, who denied her signature in the suit promissory note was not examined by the respondents. When execution of suit promissory note is proved, the appellant is entitled to presumption under Section 118 of the Negotiable Instruments Act, 1881. Therefore, passing of consideration is presumed and consequently, the judgement and decree passed by the First Appellate Court is liable to be set aside.

8. The learned counsel appearing for the respondents by taking this Court to evidence of PW.1 and PW.2 submitted that evidence of PW's are



S.A.No.419 of 2017

not sufficient to prove due execution of promissory note and therefore, on proper appreciation of their evidence, the First Appellate Court rightly came to the conclusion that execution of suit promissory note was not proved by the appellant.

9. Though the respondents in their written statement pleaded that signed blank promissory note has been removed from their office by one A.Arunachalam and A.Vijaya and the same could have been used by the plaintiff to file a present suit, there is no admission regarding execution of promissory note. Merely because, the respondents admitted the signature in the suit promissory note, it cannot be presumed that due execution of promissory note was admitted. Hence, it is incumbent upon the appellant/plaintiff to prove the due execution of promissory note atleast *prima facie*. In order to prove the same, the plaintiff examined himself as PW.1 and attesor to the document was examined as PW.2. The plaintiff in his cross examination clearly admitted that he did not know anything about the financial status of the respondents and he never enquired about their financial status and the avocation of the respondents. When appellant lent Rs.5,00,000/- to the respondents under a promissory note without getting



S.A.No.419 of 2017

any property security, it is highly unbelievable to say that appellant lent such huge amount of Rs.5,00,000/- without enquiring about the financial and repayment capacity of the respondents. Further, PW.1 in his evidence deposed that suit promissory note was not prepared by him and the same was prepared by the respondents themselves.

10. A close scrutiny of the plaintiff's evidence would suggest that plaintiff was not very well acquainted with defendants. Taking into consideration, the shaky evidence of PW.1, the First Appellate Court rightly came to the conclusion that the evidence of PW.1 and PW.2 are not sufficient to prove due execution of suit promissory note. When First Appellate Court being a final Court of facts, on proper appreciation of evidence of PW.1 and PW.2, came to the conclusion that due execution of promissory note is not proved, this Court cannot substitute its own view on re-appreciation of oral evidence especially when there is no perversity in the findings reached by the First Appellate Court. When due execution of suit promissory note is not proved by the appellant/plaintiff, he is not entitled to take benefit of presumption under Section 118 of the Negotiable Instruments Act, 1881.



S.A.No.419 of 2017

11. In view of the discussions made earlier, the substantial questions of law framed at the time of admission of this second appeal, are answered against the appellant and in favour of the respondents. Consequently, the Second Appeal is dismissed by confirming the judgement and decree passed by the First Appellate Court.

In Nutshell:-

(i) The Second Appeal is dismissed by confirming the judgement and decree passed by the First Appellate Court.

(ii) Consequently, the connected civil miscellaneous petition is closed.

(iii) In the facts and circumstances of the case, there shall be no order as to costs.

24.11.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm



S.A.No.419 of 2017

To

1.The II Additional District Judge, Salem.

2.The I Additional Subordinate Judge, Salem.



WEB COPY



S.A.No.419 of 2017

S.SOUNTHAR, J.

dm

S.A.No.419 of 2017

24.11.2023