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S.A.No.1192 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2024

PRONOUNCED ON : 30.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A.No.1192 of 2011

Ravichandran

...

Appellant

Vs.

Viji @ Vijayakumar

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 30.09.2010 passed in A.S.No.9 of 2010 on the file of the Sub Court, Cheyyar in reversing the judgment and decree dated 30.03.2010 passed in O.S.No.170 of 2008 on the file of the Additional District Munsif Court, Cheyyar.

For Appellant : Mr.T.Mani

For Respondent : Mr.A.Goumathan



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JUDGMENT

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Challenge in this second appeal is made to the Judgment and Decree dated 30.09.2010 passed in A.S.No.9 of 2010 on the file of the Sub Court, Cheyyar in reversing the judgment and decree dated 30.03.2010 passed in O.S.No.170 of 2008 on the file of the Additional District Munsif Court, Cheyyar.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3.The defendant in O.S.No.170 of 2008 on the file of the Additional District Magistrate, Cheyyar is the appellant herein.

4. The case of the plaintiff, in brief, is that the defendant had written a pronote to the plaintiff on 01.04.2005, agreeing to pay Rs.20,000/- with interest at 12% per annum for due consideration and upon plaintiff's demand, defendant has to pay the principal amount with interest to the plaintiff. Eventhough, the plaintiff requested several times to pay the amount mentioned in the pronote, the defendant did not pay the same. In the meantime, the



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defendant filed a false case against the plaintiff in O.S.No.463 of 2006 in order to avoid paying the amount to the plaintiff. Therefore, the plaintiff has filed the suit for repaying of money along with interests and costs.

5.The defendant contested the suit, denied the allegations in the plaint and filed a written statement contending that the defendant did not receive the amount as alleged by the plaintiff. Plaintiff is the brother of the defendant. Due to a dispute regarding family properties, already two cases are pending. The promissory note mentioned by the plaintiff is a forged one. No evidence has been let in by the plaintiff to prove that the defendant received Rs.20,000/- from the plaintiff. Thus, pleaded to dismiss the suit.

6.On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial Court for consideration:

“1.வாதி கோரும் தாவா தொகை கிடைக்கத்தக்கதா?

2. வாதிக்கு கிடைக்கும் இதர பரிகாரம் யாது?”

7. Before the Trial Court, in support of the plaintiff's case, PW 1 to PW3 were examined and 5 documents were marked as Ex.A.1 to Ex.A.5. On the side of the defendant, 1st defendant himself examined as DW1 and no document has been marked.



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WEB COPY 8. Upon considering the evidence and documents, the trial Court dismissed the suit and rejected the claim of the plaintiff.

9. Aggrieved over the same, the plaintiff had filed A.S.No.9 of 2010, before the Sub Court, Cheyyar. The First Appellate Court, after considering the entire materials and evidence on record, reversed the Judgment and Decree of the trial Court and allowed the appeal. Aggrieved by the same, the defendant has filed the present second appeal.

10. The second appeal has been admitted on the following substantial questions of law:

"1. Whether the Lower Appellate Court erred in law in holding that Ex.A1 pronote was duly executed by the defendant by relying upon the evidence of PW2 and PW3 who are interested witnesses, enemical and filed suit against the defendants?"

2. Whether the Lower Appellate Court erred in law in holding that Ex.A1 pronote is supported by consideration on the basis of the oral evidence of PW1 to PW2 which are contrary to the reasons



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stated in Ex.A1 pronote?

3. Whether in law the judgment and decree passed by the Lower Appellate Court are sustainable when it has failed to appreciate the evidence on record in their proper perspective and based its conclusions on mere surmises and conjectures?"

11. The learned counsel for the appellant submitted that the First Appellate Court erred in holding that Ex.A1 pronote was duly executed by the defendant by relying upon the evidence of PW2 and PW3 and overlooked the fact that they are interested witnesses and also overlooked the fact that Ex.A1 pronote is not supported by consideration and failed to appreciate the evidence on record in proper prospective and based his conclusions on mere surmises and conjectures and reiterated the other grounds raised in the grounds of appeal and thus pleaded to allow the second appeal. To support his contention, he relied on the following judgments,

1. **AIR 2008 SC 1541** in the case of ***Thiruvengadu Pillai Vs. Navaneethammal and another.***
2. **2006 4 CTC 850** in the case of ***N.Chinnasamy Vs. P.S.Swaminathan.***
3. **2011 2 MWN (CvI) 637** in the case of ***K.R.Chinnasamy Vs.***



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K.R.Chinnasamy.

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12.The learned counsel for the respondent supported the judgment of the First Appellate Court and further submitted that the plaintiff is the brother of the defendant. The pronote is proved by supporting evidence. The PW2 and PW3 clearly deposed that the defendant borrowed a sum of Rs.20,000/- from the plaintiff and executed the promissory note. The defendant had already borrowed a sum of Rs.20,000/- from PW3. To discharge that debt, he obtained loan from the plaintiff. Therefore, the First Appellate Court rightly decreed the suit and set aside the judgment and decree of the trial Court. There is no ground for interfering with the judgment and decree passed by the First Appellate Court and no substantial question of law is involved in this case. To support his case, he relied on the following judgments reported in,

1. MANU/TN/5320/2011 in the case of ***R.Arumugham Vs. Natesan.***

2.MANU/TN/0856/2020 in the case of ***B.A.Duraisamy Vs.***

A.S.Kandaswamy.

3.MANU/TN/0759/2001 in the case of ***Soundarammal and ors Vs.***

Vasantha and ors.

and thus, pleaded to dismiss the Appeal.

13.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments



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passed by the Courts below.

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14. On perusal of the records and evidence, it is seen that the plaintiff filed a suit against the defendant based upon the promissory note dated 01.04.2005. The plaintiff and the defendant are brothers. This relationship is not disputed. In the written statement, the defendant clearly denied the execution of the promissory note and receiving of Rs.20,000/- from the plaintiff. Under this circumstances, it is for the plaintiff to prove the promissory note was executed by the defendant on payment of Rs.20,000/- as a loan.

15. On perusal of promissory note Ex.A.1, it is noticed that, it is attested by PW2 Sambath and PW3 Prakash. PW2 Sambath is the brother of plaintiff and the defendant. During the cross examination, he deposed that he is not in good terms with his brother/defendant. His evidence runs as follows,

“எனக்கும் பிரதிவாதி ரவிச்சந்திரனுக்கும் தற்போது பேச்சு வார்த்தை இல்லை.

கோர்ட்டில் வழக்கு போடப்பட்ட பின்னர்தான் எனக்கும், பிரதிவாதிக்கும் பேச்சு

வார்த்தை இல்லை என்றால் சரி”

16. Another witness PW3 Prakash, admittedly filed a suit against the defendant in O.S.No.215 of 2008. In that case, the plaintiff in this case deposed



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in favour of PW3 Prakash. The trial Court observed this in its judgment in paragraph No.11 and rejected the evidence of PW2 and PW3 as interested witnesses. Further, the scribe of the promissory note Ex.A.1 is one Subramani. PW1 admitted in his cross examination that Subramani is living and available and he was not examined on the side of the plaintiff.

17.Further, it is seen that, plaintiff while giving evidence in O.S.No.215 of 2008 deposed that, the defendant gave a promissory note on 01.04.2005 and it was executed by hand writing. On perusal of Ex.A.1, it is noticed that the promissory note is a printed one. These contradictions are recorded by the trial Court in its judgment. Apart from this, on perusal of the plaint averment, it is noticed that, nowhere it is stated that when the plaintiff paid Rs.20,000/- to the defendant. For better appreciation, it is reproduced as follows,

“வாதிக்கு, பிரதிவாதி ரூ.20,000/- (ரூபாய் இருபதாயிரம் மட்டும்)-க்கு 01.04.2005 தேதியிட்ட ஒரு புரோ நோட்டை சரியான பிரதிபலனுக்கு எழுதிக் கொடுத்தார். மேற்படி தொகை ரூ.20,000/- (ரூபாய் இருபதாயிரம் மட்டும்)-க்கு ஆண்டுக்கு 12% வட்டி செலுத்தவும், வாதி வேண்டும்போது வாதியிடமாவது (அ) அவரிட உத்திரவு பெற்றவர்களிடமாவது அசல், வட்டியுடன் செலுத்தி பைசல் செய்யவும் பிரதிவாதி சம்மதித்திருந்தார்.”

18.There is no pleadings for payment of Rs.20,000/- to the defendant by



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the plaintiff. Only averment is that, on 01.04.2005, the defendant executed a promissory note for a sum of Rs.20,000/-. There are no pleadings to the effect that the plaintiff gave Rs.20,000/- to the defendant. This fact is overlooked by the First Appellate Court. Without any evidence for payment of Rs.20,000/-, the First Appellate Court allowed the suit in favour of the plaintiff. The First Appellate Court relied upon the oral evidence of the PW1, 2 and 3 for passing of consideration and overlooked the fact that the plaintiff and the defendant are brothers and there is a dispute between them with regard to family properties. In the absence of clear averment in the plaint about the payment of loan of Rs.20,000/- to the defendant by the plaintiff, passing of consideration cannot be presumed.

19.Decreeing the suit by relying upon the evidence of PW1, 2 and 3, without pleading about the payment of Rs.20,000/- to the defendant, is unsustainable and therefore, the First Appellate Court misconceived the oral evidence of PW1, 2 and 3 and overlooked the fact of absence of averment for payment of Rs.20,000/- to the defendant. The substantial questions of law formulated in the second appeal are accordingly answered. The finding of the First Appellate Court is erroneous and liable to be set aside and accordingly, judgment and decree dated 30.09.2010 made in A.S.No.9 of 2010 on the file of



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the Sub Court, Cheyyar is set aside.

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V.SIVAGNANAM, J.

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20.For the aforesaid reasons, the judgment and decree dated 30.03.2010 passed in O.S.No.170 of 2008 on the file of the Additional District Munsif Court, Cheyyar is restored. Accordingly, the Second Appeal is allowed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

30.07.2024

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Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

1. The Sub Court, Cheyyar

2.The Additional District Munsif Court, Cheyyar.

Pre-Delivery Judgment made
in S.A.No.1192 of 2011