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S.A.No.332 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 29.07.2024

JUDGMENT PRONOUNCED ON: 02.09.2024

CORAM

THE HON'BLE MRS JUSTICE N.MALA

S.A.No.332 of 2021
and CMP.No.6411 of 2021

A.Janakiraman

...Appellant

VS

M.A.Janakiraman

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure Code, 1908 to set aside the Judgment and Decree in A.S.No.36 of 2018 on the file of II Additional District Judge, Vellore at Ranipet, dated 24.02.2020 in reversing the Judgment and Decree in O.S.No.607 of 2014 on the file of the Sub Court, Arakonam, dated 12.04.2017.

For Appellant : Mr.G.Surya Narayanan

For Respondent : Mr.Kaithamalai Kumaran

JUDGMENT

This Second Appeal is filed to set aside the Judgment and Decree in A.S.No.36 of 2018 on the file of II Additional District Judge, Vellore at Ranipet, dated



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24.02.2020 in reversing the Judgment and Decree in O.S.No.607 of 2014 on the file of the Sub Court, Arakonam, dated 12.04.2017.

2.The unsuccessful defendant before the lower appellate court is the appellant in the Second Appeal. The Second Appeal is filed against the reversing judgment of the lower appellate court.

3.The suit is based on two pronotes said to have been executed by the defendant for a borrowal of Rs.2,50,000/- for his urgent family expenses. As the defendant did not repay the amount along with the agreed interest of 12% per annum, the plaintiff sent legal notice on 19.01.2012 to the defendant demanding repayment of principal amount along with interest. The defendant sent reply on 28.01.2012 requesting the plaintiff to send the notice in Tamil language, as he was not conversant with English language. The plaintiff thereafter sent another legal notice on 13.09.2012 in Tamil language with the very same request. The defendant though received notice on 13.12.2012 did not choose to reply to the same nor repaid the loan amount with interest. The plaintiff therefore filed suit for recovery of loan amount of



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Rs.6,35,000/- along with 9% interest from the date of the suit till the date of decree and 6% from the date of decree till date of realisation and other reliefs.

4.The defendant filed written statement denying all the plaint averments. The defendant stated that the defendant, one Balasubramaniam and Ravi were jointly doing real estate business. The plaintiff in the year 2008, approached the defendants and offered to purchase the landed property situate at Panapakkam village. The defendant further stated that the defendant along with his colleagues showed various lands to the plaintiff and plaintiff also paid advance amount to the owners of the land through the defendant, the said Balasubramaniam and Ravi. The plaintiff obtained signatures in blank stamp papers from the defendant and the said Balasubramaniam and Ravi whenever the advance was paid to the owners of the land. According to the defendant there were no actual money transactions between the plaintiff and the defendant. The defendant stated that plaintiff gave a complaint against the defendant, Balasubramaniam and Ravi to the Nemili police station, because of certain differences arose in the course of the above sale transactions. The plaintiff obtained

Pana Patru Rasithu dated 06.04.2009 jointly from defendant, Balasubramaniam and

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Ravi. The defendant stated that said Balasubramaniam and Ravi in pursuance of the Pana Patru Rasithu dated 06.04.2009 repaid the amount to the plaintiff within 60 days as agreed therein and therefore there was no money due and payable to the plaintiff for the aforesaid sale transactions. The defendant denied that he had ever borrowed any amount from the plaintiff and he also specifically denied the execution and passing of consideration under the pronotes. The defendant therefore stated that the plaintiff received the entire amounts due under the sale transactions and only with an intent to grab money from the defendant filed the vexatious suit.

5.Before the trial court, the plaintiff examined himself and the attesor of the pronote and marked Ex.A1 to Ex.A9. The defendant on the other side examined himself and marked Ex.B1 to Ex.B5. The trial court on an appreciation of entire evidence on record dismissed the suit holding that plaintiff failed to prove the execution of the suit pronotes and therefore dismissed the suit. Aggrieved by the judgment and decree of the trial court the plaintiff filed the appeal before the lower appellate court.



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6.The lower appellate court on an appreciation of the entire evidence on record reversed the judgment and decree of the trial court on its finding that the defendant did not deny the execution of the pronotes as he admitted that he signed in blank papers. The Court also found that the defendant failed to prove by supporting documentary evidence the repayment of the amounts to the plaintiff. The lower appellate Court also held that as the defendant failed to reply to the suit notice he is deemed to have admitted the same. The lower appellate court therefore reversed the judgment and decree of the trial court and concluded that as the plaintiff had proved the execution and validity of the suit pronotes, he was entitled to recover the suit amount with interest. Aggrieved by the judgment and decree of the lower appellate court the defendant has filed the above Second Appeal.

7.At the time of admission this court framed the following substantial questions of law:

“1. Whether the Lower Appellate Court is right in holding that the defendant had admitted the execution and borrowing when the evidence quoted by the Court does not reflect such admission?”



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2. Whether the Lower Appellate Court is right in setting aside the order of the Trial Court which was held that PW1 has stated that Promissory Note is written and on the other hand the promissory note is typed and whether the Lower Appellate Court is right in doing so without proper reasoning? ”

8. The learned counsel for the appellant submitted that the lower appellate court erred in thinking that defendant had admitted the execution of the suit pronote. The learned counsel submitted that lower appellate court failed to note that absolutely no amount was received by the defendant from the plaintiff under the suit pronotes. The learned counsel further submitted that the plaintiff had given contradictory statements on the execution of the pronotes and therefore the trial Court rightly held that the suit pronotes were not valid. The learned counsel therefore submitted that judgment and decree of the lower appellat court deserved to be set aside and the Judgment and decree of the trial Court restored.

9. The learned counsel for the respondent on the other hand submitted that the



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defendant having admitted the execution of the pronotes, the lower appellate court rightly cast the burden of proof on the defendant to establish that no consideration passed under the pronotes. As the defendant failed to discharge the burden, the lower appellate court rightly decreed the suit. The learned counsel further submitted that the substantial questions of law framed were only questions of facts and therefore this court should not interfere with the finding of facts of the lower appellate court.

10.I have heard both the learned counsels and I have perused the materials placed on record.

11.As both the substantial questions of law are inter-related same are taken up together.

12.It is undisputed that the suit is based on two pronotes viz., Ex.A1 and Ex.A2 dated 08.10.2010 executed for a consideration of Rs.2,50,000/- each. The plaintiff claims that the defendant inspite of several requests and legal notice did not repay the amounts and therefore the plaintiff was constrained to file the suit.



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13.The defendant claims that the defendant along with one Balasubramanian and Ravi was conducting real estate business and the plaintiff approached them for purchase of certain lands. In the course of the real estate business the plaintiff took the defendants signatures in signed blank papers. The defendants case was that as certain disputes arose in the course of real estate business between plaintiff and the defendants and on complaint by the plaintiff to the police station the defendant along with Balasubramanian and Ravi executed Pana Patru Rasithu on 06.04.2009 agreeing to re-pay the amount to the plaintiff within 60 days. The defendants further case was that the amounts under Pana Patru Rasithu were paid by Balasubramanian and Ravi to the plaintiff and therefore there was no outstanding amount payable to the plaintiff. The defendants stated that the plaintiff misused the blank signed blank papers obtained by him from the defendant and foisted the case against him.

14.The plaintiff in order to prove the suit pronote Ex.A1 and Ex.A2 examined himself as P.W1 and the attestor of the pronote as P.W2. The defence of the defendant is that the plaintiff obtained his signature in certain blank stamp papers and



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falsely foisted the suit against him. As the defendant has not denied the execution of the pronotes but merely states that his signatures were obtained in blank stamp papers, the execution of pronotes stands admitted. The defendant further states that in fact no consideration was received by him under the pronotes. It is well settled that once execution of the pronote is admitted a presumption as to consideration arises under Section 118 of the Negotiable Instrument Act, 1881. It is also well settled that as per Section 20 of the Negotiable Instrument Act a holder in due course is entitled to fill in blank promissory notices. In the light of the aforesaid legal position, the burden is on the defendant to establish that no consideration passed under the suit pronotes. Useful reference in this regard is made to the Hon'ble Supreme Court Judgment in the case of *Kundan Lal Railaram Vs. Custodian Evacuee Property* reported in *AIR 1961 SC 1316*.

15.It was held therein as follows:

"Section 118 of the Negotiable Instrument Act laid down a special rule of evidence applicable to the negotiable instruments and the presumption contemplated there under is one of law which



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obliges the court to presume, inter alia, that the negotiable instruments or endorsement was made or endorsed for consideration and the burden of proof of failure of consideration is thrown on the maker of the note or the endorser as the case may be".

16. Therefore the defendant having admitted the execution of the pronote the burden is on the defendant to prove that no consideration passed under the pronotes. In this regard the pleading of the defendant discloses that the defendant along with one Balasubramanian and Ravi was carrying on real estate business and the plaintiff approached them for purchase of certain lands in Panapakkam village. The defendant identified the land owners and the plaintiff paid advance to the defendant, Balasubramanian and Ravi to be paid to the land owners and at that time the plaintiff took signatures of the defendant in signed blank papers. From the aforesaid pleadings of the defendant two things are clear 1) that the advance amount payable to the vendors was received by the defendant and 2) He signed the blank pronotes. Hence the plea of the defendant that the pronotes were not supported by consideration is belied by his own pleadings.



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17.The defendant then pleaded that the debt under the pronotes were discharged. According to the defendant there were some disputes between plaintiff and the defendant with regard to the aforesaid sale transactions and so a complaint was lodged by the plaintiff before the Nemili police station. The defendant along with the Balasubramanian and Ravi executed a Pana Patru Rasithu on 06.04.2009 in favour of the plaintiff. The defendant claims that the amount under the Pana Patru Rasithu was paid by Balasubramanian and Ravi and therefore there were absolutely no dues outstanding to the plaintiff with regard to the sale transaction. It is pertinent to note here that the amount under the Pana Patru Rasithu dated 06.04.2009 payable by the defendant along with Balasubramanian and Ravi was Rs.18,67,400/- payable within 60 days. The defendant claims that the said Balasubramanian and Ravi discharged the aforesaid amount but absolutely no evidence is available to support the said claim. That apart the evidence of the defendant in this regard is also contradictory to the pleadings.

18.In his oral evidence with regard to discharge of Pana Patru Rasithu, the

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defendant in his cross-examination stated as follows:

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"அதன் பிறகு கண்காணிப்பாளர் முன்னிலையில்
பணத்தை கொடுத்தோம். நாங்கள் பணமாக
கொடுக்கவில்லை, பணத்திற்கு பதிலாக பால
சுப்பிரமணியனுக்கு சொந்தமான 6 ஏக்கர் நிலத்தை எழுதி
கொடுத்து விட்டோம். மேற்படி விவரத்தை பதில் உரையில்
சொல்லவில்லை."

19. Contrary to the claim made in the written statement that the amount payable under the Pana Patru Rasithu was paid by Balasubramanian and Ravi to the plaintiff within 60 days and so there were no dues payable to the plaintiff, the defendant for the first time in his oral evidence came with a new case that instead paying in cash, land of 6 acres belonging to Balasubramanian was transferred to the plaintiff. The defendant in his further cross-examination stated as follows:

"பாலசுப்பிரமணியனை விசாரித்தால் பாக்கிக்காக நிலம் எழுதி
கொடுத்தாரா இல்லையா என தெரிய வரும்."

20. In my view, the failure to examine Balasubramanian, whose lands are said



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to have been transferred to the plaintiff in consideration of the amount payable under the Pana Patru Rasithu is fatal to the defendants case. The defendant in his cross-examination further stated as follows:

"இன்றைய தேதிவரையில் பணபற்று ரசீதில் சொல்லியுள்ளபடி தொகையை செலுத்தவில்லை என்றால் செலுத்தி விட்டேன்."

21.The above statement of the defendant is again contrary to the pleading wherein the defendants said that the amount was paid by Balasubramanian and Ravi. I am of the view that the defendants statement on the discharge of the amount under the Pana Patru Rasithu is contrary to his pleadings and hence unsustainable. The defendant having admitted the execution of the pronotes has failed to prove absence of consideration and so the plea of discharge set up by him and therefore the lower appellate Court has rightly found in favour of the plaintiff that the suit pronotes were valid.

22.As rightly pointed out by the lower appellate court, the trial court gave undue importance to the minor discrepancies in the plaintiff's evidence. The trial



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court misdirected itself in thinking that as the earlier debts were not discharged, the payment of further sum under the suit pronotes did not stand to reason. From the evidence it is clear that the suit pronotes were executed by the defendant in the course of business transaction was admitted by the defendant and so the aforesaid reasoning of the trial Court is unsustainable. I find that lower appellate court had given logical cogent reasons for reversing the judgement of the trial court.

23.For all the above reasons the substantial questions of law are answered against the appellant. Accordingly, the Second Appeal is dismissed. However there shall be no order as to costs. Consequently the connected miscellaneous petition is closed.

02.09.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No



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To

1. The II Additional District Judge,
Vellore at Ranipet.
2. The Sub Court,
Arakonam.



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N.MALA,J.

dsn

PRE-DELIVERY JUDGMENT IN
S.A.No.332 of 2021

JUDGMENT PRONOUNCED ON
02.09.2024