

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2015

CORAM

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No. 352 of 2009
and
M.P. No. 1 of 2009

P. Madhev

... Appellant/Ist
Respondent/Ist Defendant

Vs.

1.S. Sankar

... Ist Respondent/Appellant/
Plaintiff

2.Kalaselvi
(R2 Given up)

... 2nd Respondent/2nd Respondent/
2nd Defendant

Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 30.07.2008 in A.S. No. 29 of 2007 on the file of the Court of Subordinate Judge, Dharmapuri, partly reversing the judgment and decree dated 26.04.2007 made in O.S. No. 122 of 2005 on the file of the District Munsif, Dharmapuri.

For Appellant : Ms. R. Sripriya
for V. Raghavachari

For Respondents : Mr. S. Saravanakumar
for Mr. R. Subramanian

सत्यमेव जयते
JUDGMENT

The first defendant in a suit for recovery of money, has projected this instant Second Appeal against the judgment and decree dated 30.07.2008 passed by the Subordinate Judge, Dharmapuri, in A.S. No. 29 of 2007 wherein and by which the judgment and decree dated 26.04.2007 recorded in a suit for recovery in O.S. No. 122 of 2005 on the file of the District Munsif, Dharmapuri, were reversed allowing the First Appeal at the instance of the plaintiff.

2. The case of the plaintiff is that the defendants borrowed a sum of Rs.30,000/- from him on 01.8.1996 agreeing to repay the same on demand, with interest at the rate of Rs.2/- per hundred per month and also executed A - promissory note on the same day. It is stated that again, on 15.8.1996, the plaintiff lent them a sum of Rs.27,000/- on the basis of B- promissory note on the same terms. The further case of the plaintiff is that while the first defendant paid a sum of Rs. 5000/- on 27.7.1999 and Rs.5,000/- on 12.7.2002 towards A - promissory note and another sum of Rs.10,000/- in two instalments on 06.8.1999 and 05.8.2002 respectively towards B - promissory note, they did not care to repay the balance amount and discharge the promissory notes inspite of demands and hence, the plaintiff issued a notice to the defendants on 18.5.2005 for which they did not send any reply. Hence, the plaintiff filed the suit for recovery of a sum of Rs. 82,427.50 with interest.

3. Resisting the suit, the first defendant filed written statement, adopted by the second defendant, denying all the allegations mentioned in the plaint. Stating that the promissory notes are forged documents, he prayed for dismissal of the suit.

4. The trial Court before which the parties examined the witnesses and filed documents, on consideration of the evidence adduced and the materials available thereon, finding that the first defendant has already paid a sum of Rs.73,000/- even in the year 1999, decreed the suit in part holding that the first defendant is liable to pay the balance amount of Rs.9,427.50/- and dismissed the suit as against the second defendant. Not satisfied with the finding rendered by the trial Court, the plaintiff preferred appeal in A.S. No. 29 of 2007. The Lower Appellate Court, on appreciation of the facts, found that the first defendant is liable to pay the amount except the admitted amount of Rs.10,000/- in each of the pronotes and accordingly, decreed the suit as prayed for modifying the judgment and decree of the trial Court in respect of the first defendant. As regards the suit against the second defendant, the Lower Appellate Court dismissed the appeal confirming the judgment and decree of the trial Court. Challenging the judgment and decree passed against the first defendant, he has come up with the present Appeal.

5. Heard the learned counsel appearing for the parties and perused the records.

6. Learned counsel appearing for the appellant / first defendant fairly conceded that execution of promissory notes Exs. A.1

and A.4 are admitted by the defendants. The only contention raised by the learned counsel was that when the liabilities were discharged by the defendants even in 1999 and where the repayments were also acknowledged by the plaintiff, the Lower Appellate Court ought not to have decreed the suit. Relying on Ex. B.2 receipt issued by the plaintiff, learned counsel for the appellant assailed the reasoning of the Lower Appellate Court and submitted that admitted facts need not be proved by way of documentary evidence and according to her, the Lower Appellate Court ought to have rejected the case of the plaintiff. According to the learned counsel appearing for the appellant, the very promissory notes were executed by the defendants only for the purpose of transaction they were having with the grandfather of the plaintiff.

7. The first defendant, who was examined as D.W.1, has deposed admitting the execution of the suit promissory notes Exs. A.1 and A.4 in favour of the plaintiff. He has also accepted the receipt of Exs. A.7 legal notice and A.8 acknowledgment card. At this juncture, it is pertinent to point out that though the first defendant claims to have replied for Ex. A.7 notice, he has neither produced any evidence in support of the same nor marked any document. It is also seen from the records that there has been transactions between the plaintiff and the defendants and the same has been admitted by the defendants. In such circumstances, the trial Court found that the first defendant has already paid a sum of Rs.73,000/- even in the year 1999 and held that the first defendant is liable to pay the balance amount of Rs.9,427.50/-. On the other hand, the Lower Appellate Court found that the first defendant is liable to pay the amount except the admitted amount of Rs.10,000/- in each of the pronotes.

8. While holding the liability of the first defendant, since the trial Court and the Lower Appellate Court have expressed divergent opinions on the amount to be repaid, this Court has to consider whether the findings of the Courts below are based on evidence and whether such evidence is based on pleadings.

9. The fact remains that the defendants are husband and wife and both are employed in Government sector. The execution of the pronotes Exs. A.1 and A.4 by the first defendant is not disputed. The dispute revolves around Exs. A.1 and A.4 suit pro-notes alleged to have been executed by the defendant in favour of the plaintiff. Normally, when the execution is denied and forgery is alleged regarding the signature, the burden is on the plaintiff to prove the execution. In the instant case, though the execution of the suit

promissory notes is admitted, the stand of the defendants is that it was with regard to the transaction they had with one Kumarasamy, grandfather of the plaintiff.

10. The only point to be decided before this Court is whether the plaintiff on whom the burden of proof lies for establishing the execution of the promissory notes, has discharged the same.

11. In this regard, it is seen that the plaintiff had examined the scribe of the promissory note as P.W.2. He has specifically deposed that the defendants had executed the suit promissory notes for the loan amounts obtained by them and repaid a sum of Rs. 10,000/- in two instalments in respect of each of the promissory note. Curiously, in Exs. A.1 and A.4, there was no attester and only the scribe has put a signature. Excepting the fact that P.W.2 is the scribe, there is no other document to discredit his evidence. Hence, this Court holds that the execution of the promissory notes is proved.

12. Even with regard to the signature of the first defendant in Exs. A.2, A.3, A.5 and A.6 documents, it is seen that the Lower Appellate Court compared the signatures in the above documents with that of his admitted signature and came to the conclusion that the signatures found in the said documents are that of the first defendant.

13. As stated earlier, in the instant case, the first defendant / appellant has conceded to the execution of the suit promissory notes. It is to be seen that though it is the consistent stand of the appellant that he had paid an amount of Rs. 1,400/- on 04.10.1999 and Rs.51,600/- on 22.9.1999 to the plaintiff under Ex. B.2 receipt issued by the plaintiff in support of the suit promissory notes, there is no iota of evidence from the defendant in this regard. When the execution of the promissory note is accepted by the defendant, the intention is to borrow the money. Further, if the first defendant had settled the amount to the plaintiff even in the year 1999 as contended by him on the basis of Ex. B.2, it is not known as to why he had made a mention in Exs. A.1 and A.4 with regard to the payment of Rs. 5000/- in the year 2002. In such circumstance, this Court is of the opinion that the Lower Appellate Court has rightly come to the conclusion that the amount under Ex. B.2 was not paid with regard to the suit promissory notes. In the absence of any proper evidence in support of his contention, the Lower Appellate Court had rightly held that the first defendant had not repaid the amount borrowed.

14. From the above pleading and deposition of the first defendant, this Court comes to the definite conclusion that the first defendant / appellant is not speaking the truth and has set up the defence only to defeat the rights of the plaintiff / first respondent. It is also clear that the first defendant / appellant has deposed contrary to his pleadings. The plaintiff / first respondent has established the execution of the suit promissory notes as well as passing of consideration on the same. It is also not established that P.W.2 scribe of Exs. A.1 and A.4 had any enmity with the first defendant / appellant and that he had deposed against him. As such, in my considered opinion, no question of law, much less substantial question of law, arises for consideration as the finding of the Lower Appellate Court in decreeing the suit against the first defendant is correct and no case is made out warranting interference of this Court.

In the result, the Second Appeal fails and the same stands dismissed confirming the judgment and decree of the Lower Appellate Court. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

gri
To

Sub Assistant Registrar

1. The Subordinate Judge
Dharmapuri
2. The District Munsif
Dharmapuri
3. The Section Officer
V.R. Section
High Court, Madras

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.46539
+1cc to Mr.R.Subramaian, Advocate, S.R.No.47599

S.A. No. 352 of 2009

PUR(CO)
CA(08/10/2015)