

In the High Court of Judicature at Madras

Dated: 21.07.2015

Coram:

The Honourable Mrs.Justice PUSHPA SATHYANARAYANA

Second Appeal No.522 of 2009

Ganesan ... Appellant/Plaintiff

Versus

Deivakkannu ... Respondent/Defendant.

Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 03.04.2007 made in A.S.No.32 of 2006 on the file of the Subordinate Judge, Panruti, reversing the judgment and decree dated 02.09.2006 made in O.S.No.256 of 2006 on the file of the District Munsif, Panruti.

For Appellant .. Mrs.R.Meenal

For Respondent .. Mr.B.Vijayakumar

JUDGMENT

The plaintiff in the suit for recovery of money based on the promissory note is the appellant herein.

2. The suit has been filed based on Ex.A1 promissory note dated 30.08.2002, which was executed by the defendant for the money borrowed by him for the purpose of business and family expenses. According to the plaintiff, as the loan borrowed was not discharged despite issuance of legal notice, the suit has been filed.

3. The defendant / respondent resisted the suit contending that he never executed such promissory note and denied the signature on the same.

4. Before the trial Court, the plaintiff examined himself as PW.1 and one more witness as PW.2 and marked Exs.A1 to A3; the defendant examined himself as DW.1 and marked Ex.B1.

5. Considering the oral and documentary evidence adduced on both sides, the trial Court decreed the suit. On appeal, the suit was dismissed. Aggrieved plaintiff filed this Second Appeal.

6. At the time of admission of the Second Appeal, the following substantial question of law is formulated for consideration:-

"In the light of the defence taken by the defendant denying the execution of the suit promissory note when the plaintiff has examined himself as PW.1 and has also examined PW.2, the attessor of the promissory note, and when admittedly the scribe has expired, is it not the defendant bound to rebut the evidence adduced on the side of the plaintiff by sending the suit promissory note for the opinion of the hand writing expert and whether the lower appellate court has caused the burden on the plaintiff wrongly? "

7. Heard the learned counsel appearing on both sides and perused the materials available on record.

8. The execution of Ex.A1-promissory note, if proved would entitle the plaintiff/appellant for a decree. It is contended by the learned counsel for the appellant that the finding of the lower appellate court is that the promissory note was deliberately made to appear old, which was visible to the naked eye and that the trial court did not take note of the said fact. It is the further contention of the learned counsel for the appellant that the lower appellate court has also held that on Ex.A1, Column No.2 of the witnesses is left blank. In these grounds, the suit was dismissed holding that the execution of the promissory note was not proved by the plaintiff.

9. The plaintiff had examined himself as PW.1 and examined the attessor as PW.2 and admittedly the scribe one Kanagaraj was dead. Though a promissory note is not required to be proved by examining the attesting witnesses, the appellate court has held that the promissory note could not be believed as the second witness column is left blank. The learned counsel for the appellant pointed out that the evidence of DW.1 wherein, he has specifically admitted that the suit promissory note was written by one Kanagaraj and was attested by one Duraisamy. The defendant also had admitted that he has not given any reply to the suit notice. Another ground on which the plaintiff was non suited was that the plaintiff had not taken any steps to send the suit promissory note for a report of the Expert, after comparison of the same with the admitted signature. It is settled proposition that in every suit on promissory note, it is not required to send the promissory note to an Expert wherever the signatures are disputed. Independent of the opinion of the Expert, it is open to the plaintiff to establish the execution of the promissory note and proof of the signature of the defendant by examining necessary witnesses. In this case, the scribe of the

document is not available and the witness, who signed Ex.A1 promissory note has been examined to prove the execution of the same and also the passing of consideration. Therefore, the finding of the lower appellate court negating the claim of the plaintiff for not obtaining the Expert's opinion is unwarranted and unsustainable.

10. Regarding the document Ex.A1 appearing to be old and that the plaintiff had deliberately made it appear old is not even pleaded in the written statement. In the absence of any pleadings, the lower appellate court had exceeded its jurisdiction in giving a finding on mere surmises.

11. The findings of the lower appellate court have to be set aside on the following reasons:-

(a) Though no attestation is required for a promissory note, there was one witness to the document, who had been examined as PW.2 and deposed in favour of the plaintiff. There is no justifiable reason to discredit this fact excepting the fact that he is related to the plaintiff. The defendant has not even responded by replying to the suit notice Ex.A2.

(b) Ex.A2 notice makes it clear that other than the suit transaction there was previous transaction between the parties. The contention of the defendant/respondent that he did not reply to Ex.A2 notice as the appellant agreed not to proceed with the legal action is not established by the defendant by any acceptable evidence.

12. In view of the above reasons and discussions, the execution of Ex.A1 promissory note has been established by the plaintiff as found by the trial court. Hence, the presumption is that the consideration on the same also had passed. In view of the above discussions, the question of law framed is answered in favour of the appellant holding that there was no rebuttal evidence adduced by the defendant to disprove the execution of the promissory note.

13. In the result, the Second Appeal is allowed setting aside the judgment and decree of the first appellate court and restoring the judgment and decree of the trial Court, thereby decreeing the suit. No costs.

mra

s/d-
Assistant Registrar(V)

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge, Panruti.
2. The District Munsif, Panruti.

Copy to:

The Section Officer,
V.R.Section, High Court,
Madras.

+ 1 cc to Mr.B.Vijayakumar, Advocate SR 36783

+ 1 cc to Mrs.R.Meenal, Advocate SR 37005

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