

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-09-2015

CORAM:

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 633 of 2009

and

M.P. No. 1 of 2009

Karruppana Gounder

...Appellant/Plaintiff

Vs.

Karruppasamy Gounder

...Respondent/Defendant

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.01.2009 passed by the learned Principal District Judge, Coimbatore in A.S.No.137 of 2006, reversing the judgment and decree passed by the learned Subordinate Judge, Udumalpet, in O.S.No.23 of 2000, dated 31.07.2006.

For Appellant : Mr. S.Gunalan

For Respondent : Mr.P.Srinivas

JUDGMENT

The appellant herein is the plaintiff in a suit for promissory note.

2. The case of the plaintiff is that the defendant had executed a demand promissory note for a valuable consideration of Rs.1,50,000/- (Rupees one lakh fifty thousand only), agreeing to re-pay the same with interest at the rate of 12% p.a. on demand. However, as defendant is an agriculturist, the plaintiff had claimed only interest at the rate of 9% per annum. As there was no repayment coming forth from the defendant, despite several demands, a legal notice was issued on 06.08.1999, which was received by him on 12.08.1999. According to the plaintiff, the defendant gave a belated reply

containing false and untenable facts. Hence, the suit came to be filed.

3. The suit was resisted by the defendant in an usual manner, denying the execution of promissory note and the receipt of consideration of Rs.1,50,000/-. It was further contended by the defendant that on receipt of the notice dated 11.08.1999, a reply was sent immediately on 12.08.1999.

4. On the above facts, the suit was taken up for trial. The plaintiff was examined as PW.1 and one more witness was examined as P.W.2 and three documents were marked as Exs.A1 to A3. On the side of the defendant, the defendant examined himself as D.W.1 and marked the documents as Exs.B1 to B6.

5. The trial Court, after considering the oral and documentary evidence, decreed the suit. Aggrieved, the defendant preferred an appeal in A.S.No.137 of 2006 along with I.A.No.37 of 2006, for receipt of additional document, viz., the reply notice dated 12.08.1999 issued by the defendant, which was marked as Ex.B7. The lower appellate Court, after considering the facts and evidence, dismissed the suit and allowed the appeal. Aggrieved by the same, the above Second Appeal has been filed.

6. At the time of admission, the following substantial question of law was formulated as hereunder:

"Whether the lower appellate Court has failed to appreciate the material evidence on record?."

7. The plaintiff has based his claim on Ex.A1, promissory note, dated 07.07.1997. The said promissory note was said to have been executed in the presence of P.W.2. The defendant, after receipt of the money, is alleged not to have paid either the interest or the principal. Hence, the claim. However, the execution of promissory note itself was denied and disputed by the defendant. Further the defendant has alleged that the promissory note was created for the purpose of the suit. The defendant also alleged that the plaintiff had not proved the execution of the document in the manner known to law. P.W.2 has been examined on the side of the plaintiff, he is said to be the scribe of the document, dated 07.07.1997. He has deposed that the defendant had signed the promissory note and also received the cash from him. P.W.2 admitted that he has been doing business along with the sons of the plaintiff, which is a partnership business. Though he had stated that he had seen the defendant received the consideration under the suit promissory note, in the cross

examination, he has admitted other than filling up the promissory note, he did not know any other detail about the same. Therefore, the evidence of P.W.2 was discredited by the first appellate Court.

8. The plaintiff, who examined himself as P.W.1, had stated that the suit promissory note was executed in a work shop and it was written by one of his friends. However, the plaintiff, in his chief examination, has not even stated about the name of the scribe, the place of execution of the promissory note and about the passing of consideration. In the cross examination also, P.W.1 has not mentioned the name of the scribe. Though, P.W.2 has been examined as scribe of the document, even with respect to the place of execution, there is a discrepancy in the evidence of P.W.1. Initially, he has stated that the promissory note was written in a work shop and the same was written by a friend, who is the partner in the mill. Whereas, in the re-examination again, he says, the suit promissory note was written in a work shop near Anusham theatre and the co-worker of his son-in-law had written the promissory note.

9. From the above evidence, the lower appellate Court had come to the conclusion that the plaintiff could not even state the name of the scribe, who wrote the promissory note and also made contradictory statement with respect to the payment of consideration. The plaintiff also had not categorically pleaded or proved when the defendant had requested for money and how much was asked. He has also not established the passing of consideration under the suit promissory note and the persons present at the time of execution of the same. In such circumstances, the lower appellate Court found that the plaintiff had not proved his case of execution of promissory note and also the passing of consideration.

10. The plaintiff also was not able to say, whether the scribe wrote the name and address of the witnesses. Even, when the plaintiff himself is not able to say in whose presence the money was paid to the defendant, the evidence of P.W.2 that though the money was given in his presence and that he counted the same and gave him, was rightly disbelieved by the lower appellate Court, as the evidence of P.W.1 and P.W.2 are contradictory to each other.

11. Above all, admittedly, P.W.2 is an interested witness, doing business in partnership with the plaintiff. Even, with respect to the place of execution of the promissory

note, the lower appellate Court had found the discrepancies in the evidence of the plaintiff and rejected the contention of the plaintiff, which seems to be acceptable.

12. When admittedly, the defendant had denied and disputed the signature on Ex.A.1 - promissory note, the burden of proof of execution, lies on the plaintiff. When the plaintiff discharges the initial burden on him, the onus would shift on the defendant. The plaintiff has not also taken any steps to send the signature to an expert for comparison of the same in the process of establishing the execution of the promissory note. When the plaintiff had issued a legal notice on 06.09.1999, the same was received by the defendant on 11.08.1999 and was replied on 12.08.1999 as per Ex.B7.

13. In Ex.A2 - notice dated 06.08.1999, the plaintiff has stated that the defendant had executed the promissory note, after receiving a sum of Rs.1,50,000/-, agreeing to repay the same on demand with an interest at the rate of 18% per annum. Whereas, in the plaint, in para-3, it has been stated that the suit promissory note was executed, agreeing to repay the same on demand at the rate of 12% p.a. However, the plaintiff was demanding only 9% p.a, in view of the fact the defendant is an agriculturalist.

14. Even from the above said contradicting rate of interest as found in Ex.A1 and Ex.A.2 and the plaint, one can understand that the plaintiff has not come to this Court with clean hands. The plaintiff cannot make contradictory statement, when he is approaching the Court for certain reliefs. As a Civil suit itself is based on probabilities of the case, in the case on hand, the plaintiff having not established the execution of the promissory note in the manner known to law, having made contradictory statements with respect to the rate of interest in Ex.A1, Ex.A2 and the plaint and also having not proved the disputed signature of the defendant in Ex.A.1, is not entitled to a decree as prayed for. The initial burden on the plaintiff to prove the execution of the document has not been discharged by the plaintiff. P.W.2, who is the scribe, also had not supported the case of the plaintiff. In such circumstances, the plaintiff had failed to prove that the suit promissory note under Ex.A.1 was executed by the defendant for valuable consideration. In view of the above reasons, the question of law is answered against the appellant.

15. In the result, the Second Appeal is dismissed, confirming the judgment and decree of the lower appellate

Court and setting aside the judgment and decree of the trial court, thereby dismissing the suit. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Principal District Judge,
Coimbatore.
2. The Subordinate Judge,
Udumalpet.

1 CC to Mr. S.Gunalan, Advocate SR.No. 52075

1 CC to Mr.P.Srinivas, Advocate SR.No. 51937

S.A. No. 633 of 2009
and
M.P. No. 1 of 2009

VD (CO)
PSI (16.10.2015)

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