

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1053 of 2015
and M.P. No. 1 of 2015

K.K.Eswaran ... Appellant/Appellant/
defendant

Vs.

A.Valliammal ... Respondent/Respondent/
Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree dated 05.12.2012 made in A.S.No.35 of 2012 on the file of the II Additional District Judge, Erode confirming the decree and judgment dated 31.10.2011 made in O.S.No.4 of 2010 on the file of the Subordinate Judge, Gobhichettipalayam.

For Appellant : Mr.Rajendra Prasad
For Respondent : Mr.I.C.Vasudevan

J U D G M E N T

The defendant in O.S.No.4 of 2010 on the file of the learned Subordinate Judge, Gobichettipalayam is the appellant herein and the respondent is the plaintiff in the suit. It is a suit on promissory note for recovery of the amount due borrowed by the defendant. The trial court by decree and judgment dated 31.10.2011 decreed the suit as prayed for. As against the same, an appeal was filed by the appellant in A.S.No.35 of 2012 on the file of the learned II Additional District Judge, Erode. By decree and judgment dated 05.12.2012, the lower appellate court dismissed the suit thereby confirming the decree and judgment of the trial court. Challenging the same, the appellant is before this Court with this Second Appeal.

2. The Second Appeal has come up before me today for admission. I have heard the learned Counsel for the appellant and the learned Counsel for the respondent. I have also perused the records carefully.

3. It is the case of the plaintiff that the defendant borrowed a sum of Rs.50,000/- on 27.12.2006 and duly executed a promissory note on the same day thereby promising to repay the said amount with interest at the rate of 12% p.a. and on the same day, he borrowed another sum of Rs.50,000/- from the plaintiff and executed yet another promissory note. Despite legal notice issued in respect of both the promissory notes, the respondent did not repay the same. Therefore, the plaintiff filed the present suit.

4. The defendant took the plea that when the plaintiff's husband Ammasi Gounder was alive, the defendant had borrowed a sum of Rs.1,00,000/- from him. When the plaintiff's husband was subsequently in the hospital undergoing treatment, the plaintiff demanded the money back. Accordingly, the entire amount was repaid. But the blank promissory note, which was signed and given to the plaintiff's husband, namely, Ammasi Gounder, at the time, when the said amount was borrowed, was not returned despite the loan was settled by the defendant. Subsequently, the defendant has demanded the return of the said promissory note. But the plaintiff was evasive. Now utilising the said promissory notes, the plaintiff has filed the present suit by filling up the same according to her convenience.

5. Based on the same, the trial court framed appropriate issues. On the side of the plaintiff, two witnesses were examined. The plaintiff was examined as P.W.1 and one of the attestors of the promissory notes, namely, Sivakumar was examined as P.W.2 and as many as two documents, namely, two promissory notes have been marked as Ex.A.1 and Ex.A.2. On the side of the defendant, two witnesses have been examined as D.W.1 and D.W.2 and one document Ex.B.1, namely, an agreement entered into between one K.A.Chellamuthu and the defendant has been marked. Having considered all the above, the trial court decreed the suit as prayed for which was reversed by the lower appellate court. That is how the appellant is before this Court with this Second Appeal.

6. The learned Counsel for the appellant would submit that the courts below have not appreciated the evidence both oral and documentary in their proper perspective.

7. But in my considered opinion, it is not so. The courts below have appreciated both the oral and documentary evidences in their proper perspective. Further, the presumption under Section 118 of the Negotiable Instruments Act was invoked against the defendant since the execution of the promissory notes has been proved. At any rate, the judgment of the trial

court which was confirmed by the lower appellate court cannot be stated to be perverse. There is no substantial question of law much less a substantial question of law warranting admission of the Second Appeal. Thus, I find no merit in the Second Appeal.

8. In the result, the Second Appeal fails and the same is accordingly dismissed. The decree and judgment of the lower appellate court is confirmed. No costs. Consequently, connected Miscellaneous Petition is also closed.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

To

1. The Subordinate Judge, Gobichettipalayam.
2. The II Additional District Judge, Erode.

+1 cc to Mr.I.C.Vasudevan, Advocate sr.65226

+1 cc to Mr.K.Rajendra Prasad, Advocate sr.65447

S.A.No.1053 of 2015

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