

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.519 of 2013 and
M.P.No.1 of 2013

Siddhurasani

... Appellant/Defendant

Vs.

Kaliappan

... Respondent/Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree of the learned Principal District Judge, Salem in A.S.No.51 of 2011 dated 13.08.2012 confirming the judgement and decree of the learned Subordinate Judge, Perambalur in O.S.No.39 of 2008 dated 18.03.2011.

For Appellant : Mr.A.K.Kumaraswamy

JUDGEMENT

The defendant in O.S.No.39 of 2008 on the file of the learned Subordinate Judge, Perambalur is the appellant herein. The respondent herein is the plaintiff in the suit. The said suit was filed for recovery of a sum of Rs.1,42,593.75/- due under the promissory note dated 16.09.2006. The suit was decreed by the trial Court. As against the same, the appellant/defendant filed an appeal in A.S.No.51 of 2011 on the file of the learned Principal District Judge, Salem. By decree and judgement dated 13.08.2012, the First Appellate Court dismissed the appeal thereby confirming the decree and judgement of the trial Court. That is how the appellant/ defendant is before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.

3.The case of the plaintiff is that the defendant borrowed a sum of Rs.1,25,000/- on 16.09.2006 from the plaintiff and duly executed a promissory note thereby promising to repay the same with interest on demand. As a security, the defendant had entrusted the sale deed dated 08.04.2004 bearing document No.1064/2004 to the plaintiff. Subsequently, the defendant did not repay the said amount when demand was made by the plaintiff. Therefore, the plaintiff issued a legal notice on 10.03.2008 which was acknowledged by the defendant on 01.04.2008. The said notice was neither complied with by the defendant nor did he sent any reply. Therefore, the plaintiff filed the above suit for recovery of the amount due under the promissory note.

4. In the written statement filed, the defendant took a plea that the defendant was staying at the house of the plaintiff for about 8 years. The defendant had joined an unauthorised chit run by Mr. Settu son of Mr. Sengodan at Omalur Taluk. At the time when the chit amount was paid to the defendant, Mr. Settu had demanded the defendant to sign a blank promissory note as a security. Accordingly, the defendant who is an illiterate woman, signed the blank promissory note on the revenue stamp and entrusted the same to Mr. Settu. Subsequently, she had paid the dues to Mr. Settu and then, she got back the above said blank promissory note but, signed by her. When she was staying in the house of the plaintiff, she has kept the said blank promissory note which was signed by her along with the title deed. Without the knowledge of the defendant, the plaintiff has taken away the same and using the same, the plaintiff has filed the present suit.

5. Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiff, two witnesses were examined and 11 documents were exhibited. On the side of the defendant, two witnesses were examined and no document was exhibited.

6. Having considered all the above, the trial Court decreed the suit which was confirmed by the First Appellate Court. That is how the appellant/defendant is before this Court with this second appeal.

7. In this second appeal, it is submitted by the learned counsel for the appellant that during cross examination, P.W.1 has admitted that his monthly income is only Rs.2,000/- and thus, it has been established by the defendant that the plaintiff had no means to pay the amount to the defendant as stated by the plaintiff. It is further submitted by the learned counsel that the Courts below have relied on Exs.A.10 and A.11. Both the documents would go to show that the plaintiff had sold away his properties only for a sum of Rs.68,000/- in toto, whereas, the loan amount is Rs.1,25,000/-. The sale deeds were dated 13.09.2006 and the promissory note is stated to be executed on 16.09.2006. Thus, according to the learned counsel, there is no evidence for the means for the plaintiff to lent Rs.1,25,000/- to the defendant.

8. I have considered the above submissions.

9. At the outset, I should say that in this case, as against the concurrent findings of the Courts below, the appellant is not able to make out a case for any substantial question of law warranting admission of this second appeal. On appreciating both oral as well as documentary evidences, the Courts below have given a concurrent finding that the suit promissory note was supported by consideration and the same was duly executed by the defendant.

10. The contention of the learned counsel for the appellant is that P.W.1 has admitted during cross examination that his monthly from agriculture was Rs.2,000/-. But, the Courts below have appreciated the entire evidence including Exs.A.10 and A.11 and have come to the conclusion that the suit promissory note is supported by consideration. Even otherwise, there is a legal presumption under the provision of Negotiable Instruments Act that the promissory note is

supported by consideration when there is proof of due execution. The burden is heavily upon the defendant to rebut the said legal presumption. The defendant in my considered view, has failed to discharge the said burden. P.W.2 - Scribe has clearly stated about the transaction and the execution of promissory note.

11.Though, it is stated by the defendant that the blank promissory note signed by her was taken away by the plaintiff without her knowledge, absolutely, there is no acceptable evidence to accept the said stand taken by the defendant. Thus, in my considered opinion, the two Courts below have for sound reasons, decreed the suit in favour of the plaintiff. Further, on proper appreciation of evidence, both the Courts have concurrently held that execution of promissory note is also true. Thus, I do not find any infirmity or any perversity in the said finding.

12.Apart from that, the appellant is not able to place any materials making out a substantial question of law warranting admission of the second appeal. Therefore, this second appeal has to fail.

13.In the result, the second appeal fails and accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Subordinate Judge,
Perambalur.

2.The Principal District Judge,
Salem.

+ 1 cc to Mr.A.K.Kumaraswamy, Advocate Sr.18141

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CNR (CO)
Eu 05.06.2015