

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24 - 04 - 2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 247 of 2015

Rajendran

.. Appellant/Defendant

Vs.

Ramasamy Udaiyar

.. Respondent/Plaintiff

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.07.2012 passed in A.S. No. 43 of 2011 on the file of the III Additional District and Sessions Judge, Vridhachalam at Cuddalore, confirming the judgment and decree dated 27.01.2010 passed by the Additional Subordinate Judge, Vridhachalam, in O.S. No. 4 of 2008.

For Appellant : Ms. AL. Ganthimathi

JUDGMENT

Not satisfied with the findings rendered by the Courts below in a suit for recovery of money, the defendant has filed the present Second Appeal.

2. The suit by the respondent / plaintiff is one for recovery of money due under a promissory note dated 27.11.2004.

3. The case of the plaintiff is that the defendant borrowed a sum of Rs.1,00,000/- and executed Ex.A.1 promissory note dated 27.11.2004 promising to pay interest at the rate of 1% per month. The further case of the plaintiff is that despite several demands made by him, the defendant had not cared to repay the borrowed amount. Hence, the plaintiff issued a pre-suit notice dated 19.11.2007 demanding the principal sum borrowed with interest for which the defendant neither sent any reply nor paid the amount. Hence, the plaintiff filed the suit for recovery of a sum of Rs.1,27,000/- along with interest at 9% per annum.

4. Resisting the suit, the defendant filed written statement denying the borrowal based on the promissory note. However, it was admitted by the defendant that he had mortgaged a property for a sum of Rs.50,000 for the purpose of sending his brother abroad. It is further stated that the defendant and his brother had signed in

the said mortgage deed and that on the same day, the plaintiff also obtained signatures from the defendant and his brother in a blank paper. The further contention of the defendant is that on 27/11/2004, the plaintiff, through his henchmen, waylaid the defendant and obtained signatures on blank promissory notes by coercion and undue influence. Hence, according to the defendant, there was no consideration passed on the suit promissory note and prayed for dismissal of the suit.

5. On the above pleadings, trial court framed four issues. On the side of Plaintiff, Plaintiff examined himself as P.W.1 and marked Exs. A.1 to A.3. On the side of defendant, the defendant examined himself as D.W.1 and marked Ex. B.1.

6. The trial Court, upon consideration of oral and documentary evidence, held that the defendant is liable to pay a sum of Rs.1,27,000/- as claimed by the plaintiff and accordingly, decreed the suit. Being aggrieved by the finding of the trial Court that the defendant is liable to pay the amount as claimed by the plaintiff, the defendant filed First Appeal before the III Additional District and Sessions Judge, Vridhachalam, at Cuddalore. The First Appellate Court, on consideration of the evidence adduced and the arguments advanced therein, dismissed the appeal with cost upholding the judgment and decree of the trial Court. Feeling aggrieved by the concurrent findings of Courts below, the unsuccessful defendant has filed this Second Appeal.

7. The point that arises for consideration in this Second Appeal is whether the concurrent finding of the Courts below suffer from material irregularity.

8. Heard the learned counsel appearing for the appellant and perused the records.

9. It is admitted by the learned counsel appearing for the appellant that the suit promissory note was executed by the defendant. Though it is alleged by the appellant that the suit promissory note was obtained by coercion and undue influence, as execution is admitted, the burden of plaintiff is discharged and the onus is on the defendant to establish that no consideration passed on the suit promissory note. It is also contended by the learned counsel for the appellant that the suit was filed on the last day of limitation only to harass the appellant. According to the learned counsel, since the money was borrowed by the appellant for sending his brother to a foreign country, in the year 1999, the case of plaintiff that the appellant / defendant borrowed the sum of Rs.1 Lakh for the same purpose in the year 2004, is unbelievable.

10. Admittedly, execution of promissory note is proved. Insofar as the passage of consideration is concerned, the learned counsel for the appellant / defendant contended that no money was

received based on Exhibit A1. When it is the specific case of the appellant / defendant that he was waylaid and signatures were obtained by threat and undue influence, the burden is on him to establish the same. However, the appellant / defendant had not given any police complaint about the coercion, alleged by him and the reasons assigned by the appellant / defendant for the same was also not accepted by the Courts below.

11. It is to be seen that though it is the consistent stand of the appellant that no consideration was passed in support of the suit promissory note, 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 when the appellant / defendant contended that there was no necessity for him to borrow money during the relevant period, when Ex-A1 was executed, it is for him to establish the same. On the other hand, the appellant / defendant has not produced any relevant document or evidence to prove the same. In the absence of any evidence, the Courts below had concurrently held that the defendant had not discharged the onus shifted on him and decreed the suit holding that Ex. A.1 was executed by the defendant for valid consideration. Even before this Court, the defendant failed to establish that he did not execute the suit promissory note or the consideration did not pass. As such, in my considered opinion, no question of law, much less substantial question of law, arises for consideration as the findings of the Courts below in decreeing the suit are 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 dated 27.01.2010 passed by the Additional Subordinate Judge, Vridhachalam, in O.S. No. 4 of 2008 decreeing the suit as affirmed by the judgment and decree dated 30.07.2012 passed by the learned III Additional District and Sessions Judge, Vridhachalam at Cuddalore, in A.S. No. 43 of 2011. However, considering the facts and circumstances of the case, there shall be no order as to costs.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District
and Sessions Judge,
Vridhachalam at Cuddalore.
2. The Additional Subordinate Judge,
Virdhachalam at Cuddalore.

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EU(23/07/2015)

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