

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02 - 06 - 2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 297 of 2015
and
M.P. No. 1 of 2015

D. Senthilkumar

...Appellant/Defendant

Vs.

M.D. Kumaresan

...Respondent/Plaintiff

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 28.01.2015 passed in A.S. No. 31 of 2014 on the file of the Principal District Judge, Vellore, confirming the judgment and decree dated 28.10.2013 passed by the Subordinate Judge, Vellore, in O.S. No. 63 of 2011.

For Appellant : Mr. S. Vadivel Murugan

JUDGMENT

Not satisfied with the findings rendered by the Courts below in a suit for recovery of money, the unsuccessful 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 29.12.2008.

3. The case of the plaintiff is that the defendant borrowed a sum of Rs.2,00,000/- and executed Ex.A.1 promissory note dated 29.12.2008 promising to pay interest at the rate of 24% per annum. 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 22.05.2011 demanding the sum borrowed and the same was returned as refused. Hence, the plaintiff filed the suit for recovery of a sum of Rs.2,00,000/- along with interest at 24% per annum.

4. Resisting the suit, the defendant filed written statement denying the borrowal of money and execution of promissory note. It was contended by the defendant that the plaintiff has brought the suit due to misunderstanding between them in their business dealings. He also filed additional written statement contending that the signature as found in Ex. A.1 was forged one and that he wanted to get the report of expert regarding the signature and the age of ink used by the plaintiff. 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 three issues. Before the trial Court, the plaintiff examined himself as P.W.1 and examined four more witnesses as P.W.2 to P.W.5 and marked Exs. A.1 to A.6. To disprove the case of the plaintiff, the defendant besides examining himself as D.W.1, marked Exs. B.1 to B.12.

6. The trial Court, upon consideration of oral and documentary evidence and after elaborate discussion, held that the defendant is liable to pay a sum of Rs.3,16,000/- as claimed by the plaintiff and accordingly, decreed the suit. Aggrieved by the finding of the trial Court, the defendant filed First Appeal before the Principal District Judge, Vellore. The Lower 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. Learned counsel appearing for the appellant assailed the judgment and decree of the Courts below contending that on the date of execution of pronote, the respondent did not have the said amount available with his bank account. He also contended that the Courts below failed to take into consideration the Voters' list marked as Ex. B.1, which clearly establishes that the respondent and his family members were the residents of Thirupattur and as such, according to the learned counsel, the case of the respondent / plaintiff that the appellant travelled to Gudiyatham to borrow the money, was false.

10. The next contention of the learned counsel for the appellant is that the signature contained in Ex. A.1 pronote was different from the signature found in Exs. A.4 and B.3. Learned counsel finally contended that the documents filed by the appellant / defendant, viz., Exs. B.3 to B.11 were not considered by the Courts below.

11. As regards the contention that respondent and his family members were the residents of Thirupattur, it is seen that the trial Court, after careful consideration of the materials placed thereon, rejected the said contention of the defendant holding that the plaintiff is only a resident of Gudiyatham.

12. Insofar as the contention regarding the signature is concerned, the same is only to be rejected. It is seen that Ex. A.4 is the certified copy of partition deed dated 23.02.2004 while Ex. B.3 is the copy of lease agreement dated 02.01.2008. As regards the non-consideration of Exs. B.3 to B.11 filed by the appellant, it is to be pointed out that the said documents were marked only to compare the signature of the appellant. Further, though the signatures found in the said documents, viz., Exs. B.3 to B.11, are admitted by the appellant, the trial Court, on a careful consideration, has found that each signature is different. In this regard, the trial Court, on an elaborate discussion, has categorically held that the appellant is in the habit of signing differently at each time. Hence, the said contention of the learned counsel for the appellant is unacceptable.

13. When the respondent / plaintiff has established the signature of appellant / defendant in Ex. A.1, the burden is on the appellant to prove that no consideration was passed. Moreover, when the appellant has taken a specific plea of forgery, he could have taken steps to get the signature found in Ex. A.1 promissory note compared with his admitted signature with the aid of a handwriting expert. Unfortunately, the appellant is not able to explain why such exercise was not done and since the appellant failed to do so, he cannot take advantage of his own wrong.

14. The respondent / plaintiff, on whom the burden regarding execution of promissory note, is cast, had examined himself as P.W.1 and also examined one of the attesting witnesses in Ex. A.4 as P.W.2, who had deposed evidence identifying the signature found in the Partition Deed as that of the appellant. Besides, the respondent also examined one of the attestors of the pronote as P.W.3 and the scribe of Ex. A.1 pronote as P.W.4. It is to be pointed out that all the witnesses examined on the side of the respondent had clearly

and categorically spoken about the execution of Ex. A.1 by the appellant / defendant.

15. That apart, this Court has also taken note of the fact that originally the appellant had filed the written statement only denying the signature in the pronote. Subsequently, on a second thought, he has filed an additional written statement taking the other contentions.

16. 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 appellant in this regard. Further when the appellant contended that the respondent did not have enough money during the relevant period when Ex. A.1 was executed, it is for him to establish the same. On the other hand, the appellant 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. 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 28.10.2013 passed by the Subordinate Judge, Vellore, in O.S. No. 63 of 2011 decreeing the suit as affirmed by the judgment and decree dated 28.01.2015 passed by the learned Principal District Judge, Vellore, in A.S. No. 31 of 2014. However, considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar (J)

//True Copy//

Sub Assistant Registrar

gri

To

1.The Principal District Judge,
Vellore.

2.The Subordinate Judge,
Vellore.

1 CC to M/s. S.Vadivel Murugan, Advocate SR.No. 25836

UG (CO)
PSI (17.06.2015)

S.A. No. 297 of 2015



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