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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

SECOND APPEAL (MD) No.921 of 2013

and

M.P (MD) No.1 of 2013

Francis

... Appellant/Appellant/Defendant
Vs.

Baskaran

... Respondent/Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 against the Judgment and decree dated 01.09.2009 passed in Appeal Suit No.13 of 2007 by the Additional District Court (Fast Track Cour No.I), Thoothukudi, confirming the Judgment and decree dated 27.03.2006 passed in Original Suit No.105 of 2004 by the Sub Court, Thoothukudi.

For Appellant : Mr.C.Dhanaseelan

For Respondent : Mr.S.Muthal Raj

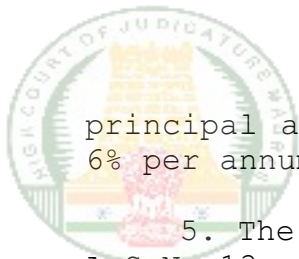
JUDGMENT

The defendant, who suffered a money decree based on a pro-note before the trial Court and conducted an appeal before the lower Appellate Court unsuccessfully, is before this Court by preferring the present Second Appeal against the decree of the lower Appellate Court, confirming the decree passed by the trial Court.

2. The respondent herein filed O.S.No.105 of 2004 on the file of the Subordinate Court, Thoothukudi claiming a sum of Rs.2,68,000/- towards principal and interest as the amount due from the appellant herein, based on the suit promissory note, dated 26.08.2001. The appellant herein, as the sole defendant in the said case, resisted the claim of the respondent herein/plaintiff contending that the suit promissory note was fabricated and that he did not borrow any amount from the respondent herein/plaintiff. The claim was also resisted on the ground that the suit promissory note had been materially altered.

3. The trial Court framed necessary issues and conducted trial, in which, three witnesses including the respondent herein/plaintiff were examined as P.Ws.1 to 3 and four documents were marked as Exs.A.1 to A.4 on his side. On the side of the appellant herein/defendant, two witnesses were examined as D.Ws.1 and 2 and no document was produced.

4. The learned trial Judge, on appreciation of evidence, rendered a finding that the case of the respondent herein/plaintiff regarding the alleged borrowal and execution of the suit promissory note marked as Ex.A.1, had been substantiated by reliable evidence by the respondent herein/plaintiff. The learned trial Judge also held that there was no material alteration in the suit pro-note, as contended by the appellant herein/defendant. Accordingly, the learned trial Judge decreed the suit directing the appellant herein/defendant to pay the amount claimed in the suit, namely, Rs.2,68,000/- together with a subsequent interest on the



principal amount from the date of plaint till realisation at the rate of 6% per annum.

5. The said decree was challenged before the lower Appellate Court in A.S.No.13 of 2007. The learned lower Appellate Judge (Additional District Judge, Fast Track Court No.I, Thoothukudi), after hearing, dismissed the appeal confirming the decree passed by the trial Court by Judgment and decree, dated 01.09.2009. As against the said appellate decree, dated 01.09.2009 made in A.S.No.13 of 2007, the present Second Appeal has been filed.

6. The respondent has entered appearance in the S.R stage itself, since the appellant sought the leave of the Court to file the appeal as an indigent person. As such, both the parties are represented by counsel and the matter stands listed today 'for admission'.

7. The arguments advanced by Mr.C.Dhanaseelan, learned counsel for the appellant and Mr.S.Muthal Raj, learned counsel for the respondent are heard. The Judgments of the Courts below and the copies of the other documents produced in the form of typed-set of papers are also perused and considered.

8. An appeal from the Appellate decree of a Court Subordinate to the High Court shall lie to the High Court under Section 100 of the Code of Civil Procedure, 1908 only on a substantial question of law. A party filing such a Second Appeal shall precisely formulate and incorporate the same in the memorandum of grounds of Second Appeal with the distinct heading. The High Court, if satisfied that such a substantial question of law or any other substantial question of law arises for consideration in the Second Appeal, shall admit the Second Appeal and formulate the substantial question of law, on which, the Second Appeal is to be heard. The mere fact that the Second Appeal has been admitted identifying a particular question to be a substantial question of law involved in the Second Appeal will not prevent the respondent in the Second Appeal from advancing an argument and contending that the said question is not at all a substantial question of law or that such a substantial question of law does not arise for consideration in the Second Appeal. After admission, the appellant can also raise any other question as substantial question of law, provided the High Court grants leave to raise such a question at the time of final hearing.

9. The scheme provided under Section 100 of the Code of Civil Procedure, 1908 will make it clear that unless the High Court is satisfied that a substantial question of law has arisen for consideration in the Second Appeal, the Second Appeal has to be dismissed at the threshold.

10. In the case on hand, the appellant in the Second Appeal has suggested the following to be the substantial questions of law that have arisen for consideration in the Second Appeal:-

"1. Whether the Courts below are legally correct in decreeing the suit inspite of the material alteration in the numerical form of the amount of one lakh into two lakh in Ex.A.1, pro-note?



2. When there is material alteration in Ex.A.1, pro-note, whether the Courts below are legally correct in presuming that Ex.A.1 is supported by consideration?

3. Whether the lower Courts are legally correct in overlooking the contradictory versions with respect to the alleged disbursement of loan amount as per the plaint averments and the evidence of P.Ws.1 to 3?"

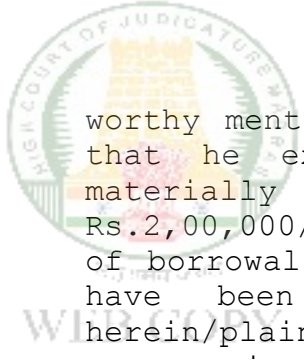
11. Even though three questions were formulated and incorporated in the memorandum of grounds of Second Appeal as the substantial questions of law that have arisen in the Second Appeal, the learned counsel appearing for the appellant is not in a position to advance an argument that the third question cited above can be accepted as a substantial question of law that has arisen in the Second Appeal. So far as the first and second questions are concerned, there is duplication and a single question has been camouflaged into two different questions.

12. The crux of the contention of the appellant is that there is a material alteration in the suit promissory note marked as Ex.A.1 and that in view of the material alteration, the respondent herein/plaintiff should have been non-suited for the relief sought for in the plaint and that the Courts below committed an error in law in holding that there was no material alteration as projected by the appellant herein/defendant. In short a finding of fact as to whether there is a material alteration in Ex.A.1 or not is sought to be projected as a substantial question of law?

13. The alteration pointed out by the appellant herein/defendant in Ex.A.1, promissory note is the overwriting of the first number '2' in the figure Rs.2,00,000/-. According to the appellant herein/defendant, the figure originally written as Rs.1,00,000/- came to be altered as Rs.2,00,000/- by correcting the first digit of the number from '1' to '2'. A xerox copy of Ex.A.1 has also been included by the appellant in the typed-set of papers. The said promissory note has been prepared using a printed form wherein the date, name of the parties, purpose of the loan, amount borrowed and the rate of interest have been filled up. The amount in figure has been noted not at one place, but at two places. One at the top of the pro-note and the other in the body of the pro-note. There is no correction in the figure noted in the column provided at the top of the pro-note. In the body of the pro-note while noting the figure there is a overwriting in the numerical '2'. The same is sought to be projected as a material alteration from Rs.1,00,000/- to Rs.2,00,000/-. Apart from the fact that the column provided at the top of the pro-note contains the figure Rs.2,00,000/- without any correction, in the body of the pro-note also the amount has been noted in words in vernacular "இரண்டு லட்சத்திற்கு". From the same it shall be obvious that a overwriting that occurred at the time of preparing the pro-note has been sought to be projected as a material alteration.

14. Both the Courts below, after considering the above said aspects and on an appreciation of evidence, rendered a concurrent finding that there is no material alteration in the suit promissory note, as contended by the appellant herein/defendant.

15. In addition to the above said aspect, yet another aspect is also



worthy mentioning. It is not the case of the appellant herein/defendant that he executed a promissory note for Rs.1,00,000/- and it was materially altered by changing the figure from Rs.1,00,000/- to Rs.2,00,000/-. The case of the appellant herein/defendant is total denial of borrowal and execution of the pro-note. If at all the pro-note could have been fabricated, there is no need for the respondent herein/plaintiff to alter the figure, he could have very well prepared a new promissory note anti-dating the same and filed the suit without any material contradiction. The plaintiff as P.W.1, the person, who actually handed over the cash to the appellant herein/defendant as P.W.2 and attessor as P.W.3 have deposed regarding the fact of borrowal by the appellant herein/defendant and execution of the suit promissory note marked as Ex.A.1. Nothing has been elicited from anyone of them regarding the alleged fabrication of or material alteration of the suit promissory note.

16. Of course, a finding of fact can get elevated to the level of a substantial question of law, if the appealing party is able to show that such a finding is perverse. In the case on hand, the appellant herein/defendant has not even made out a prima facie case that the finding of the Courts below regarding the execution of pro-note and the alleged material alteration are perverted. The finding of the Courts below in this regard cannot be termed either defective or infirm, much less, perverse capable of being interfered by this Court in exercise of its power in the Second Appeal. There is no merit in the Second Appeal. The Second Appeal does not even merit admission, as it has not been demonstrated that any substantial question of law has arisen in the Second appeal. The same deserves to be dismissed.

17. In the result, the Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub- Assistant Registrar

To

1.The Additional District Judge,
(Fast Track Court No.I),
Thoothukudi.

2.The Subordinate Judge,
Thoothukudi.

+1cc to Mr.C.Dhanaseelan, Advocate in SR.No. 20545
+1cc to Mr.S.Muthal Raj, Advocate in SR.No. 21445

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and MP(MD).No.1 of 2013



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