

In the High Court of Judicature at Madras

Dated : 04.11.2016

Coram

The Honourable Mr. Justice K.RAVICHANDRABAABU

Second Appeal No.143 OF 2015

A.Ethiraj

..Appellant/respondent/
Plaintiff

..vs..

Mani alias Aandi

..Respondent/Appellant/
Defendant

This Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 16.04.2013 made in A.S.No.110 of 2012 on the file of the Sub Court, Vellore, reversing the Judgment and Decree dated 17.03.2011 made in O.S.No.337 of 2009 on the file of the District Munsif Court, Katpadi.

For Appellant : Mr.A.Gouthaman
For Respondent : Mr.R.Margabandhu

J U D G M E N T

This appeal is filed as against the judgment and decree dated 16.04.2013 made in A.S.No.110 of 2012 on the file of the Sub Court, Vellore, reversing the Judgment and Decree dated 17.03.2011 made in O.S.No.337 of 2009 on the file of the District Munsif Court, Katpadi.

2. The appellant is the plaintiff. He filed the suit for recovery of a sum of Rs.30,320/- together with interest based on a promissory note dated 05.03.2006 said to have been executed by the defendant. The case of the plaintiff is that the defendant borrowed a sum of Rs.20,000/- on 05.03.2006 agreeing to repay the same on demand with interest at the rate of 24% p.a. and executed the said promissory note. It is the further case of the plaintiff that the defendant did not pay the amount due on the promissory note inspite of repeated demands and therefore he issued a notice on 15.03.2008. As the defendant issued a reply denying his liability, the plaintiff has filed the suit.

3. The defendant contested the suit by specifically claiming that the signature found in the suit promissory note was fabricated and forged one. The defendant also contended that the plaintiff is a broker and friend of the defendant and they were jointly doing brokerage business of purchasing and selling lands and in such course of business, the plaintiff used to get signatures of the defendant in blank pro-notes. It is further contended by the defendant that no consideration was passed on for the suit pro-note.

4. The plaintiff in support of his case marked the suit promissory note as Ex.A1 and notice and reply notice as Exs.A2 to A4. Apart from examining himself as P.W.1, the plaintiff examined one T.Velu, the attesting witness to the suit promissory note, as P.W.2. The defendant apart from examining himself as D.W.1, has neither examined any third party witness nor marked any documents in support of his contention.

5. The trial Court, on appreciation of the respective pleadings of the parties and evidence let in by them, decreed the suit as prayed for. The appeal preferred by the defendant came to be allowed on the reasoning that the plaintiff failed to prove the suit promissory note and that consideration was not passed on to the defendant on the execution of suit promissory note. Challenging the reversal finding of the lower appellate Court, the present second appeal is filed.

6. At the time of admitting the Second Appeal, the following substantial questions of law were raised.

a) Whether the Lower Appellate Court is right in ignoring the presumption of law under Section 118 of the Negotiable Instrument Act that once the signature in the instrument had been admitted by the parties, then it is a presumption that he borrowed money and the said presumption is reputable one?

b) Whether the Lower Appellate Court is right in reversing the Judgment and Decree of the trial Court, shifting the burden of proof upon the plaintiff with regard to passing of consideration.

c) Whether the Lower Appellate Court was right in ignoring the law that when he came to a conclusion that the pro-note is created and forged one, he should send the document to the handwriting expert to get the truth and genuineness of the document?

7. Today the matter is taken up for final disposal. The learned counsel appearing for the appellant submitted that the plaintiff proved the suit promissory note by marking the

original of the same as Ex.A1 and by examining one of the attesting witnesses as P.W.2. It is further contended that the very admission made by the defendant during his cross examination that the signature found in Ex.A1 is that of himself is enough to establish the case of the plaintiff. Therefore, the learned counsel contended that the Lower Appellate Court has erred in dismissing the suit by erroneously shifting the burden on the plaintiff to establish the passing of consideration. He further submitted that as per Section 118 of the Negotiable Instrument Act, the presumption is in favour of the plaintiff as the defendant has admitted the signature in the suit pro-note.

8. Per contra, the learned counsel appearing for the defendant submitted that the defendant though admitted the signature in the suit pro-note, has not admitted it's execution in its entirety and therefore it is for the plaintiff to prove the passing of consideration and genuineness of the transaction. He also invited the attention of this Court to the promissory note marked as Ex.A1 which was in a damaged condition and submitted that the contention of the defendant that his signatures were obtained in some blank pro-notes has to be accepted.

9. Heard both sides and perused the materials placed before this Court.

10. The suit is one for recovery of money based on a promissory note marked as Ex.A1. The defendant evidently admitted his signature in the suit pro-note. However, he contended that the said document is a fabricated one and that his signature obtained in blank pro-notes earlier were utilised by the plaintiff to file the present suit. Thus the defendant, having admitted the signature, denied the passing of consideration. I don't think that the defendant is justified in raising such plea by shifting the burden on the plaintiff to prove the negative especially when the defendant has admitted his signature in the suit promissory note. It is well settled law that if the signature in a promissory note is admitted, the presumption will go in favour of the holder of such promissory note that the same was executed by passing of consideration. Therefore in order to rebut such presumption only the person who raises such contra plea has to plead and prove by letting in evidence. It is needless to say that mere pleading is not enough, unless such pleading is established by letting in material evidence. In this case, the defendant, though raised such plea, has however not discharged such onus by examining any third party witness to disprove the contention raised by the plaintiff more particularly to establish that there was no passing of consideration. When that being the position, the Lower Appellate Court erroneously shifted the burden on the

plaintiff to disprove the contention of the defendant and consequently dismissed the suit by finding that the plaintiff did not disprove such contention. In my considered view, such finding of the Lower Appellate Court cannot be sustained in law. Accordingly, I find that the Judgment and decree passed by the Lower Appellate Court are liable to be set aside by answering all the questions of law raised in this appeal in favour of the appellant. Thus all the questions of law are answered in favour of the appellant.

11. In the result, the Second Appeal is allowed and the Judgment and decree of the Lower Appellate Court is set aside and the Judgment and decree of the trial Court is restored. There is no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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1. The Subordinate,
Vellore.

2. The District Munsif,
Katpadi.

+1cc to Mr.A. Madhavan, Advocate, S.R.No.63613

+1cc to Mr.R. Margabandhu, Advocate, S.R.No.63591

GJ(CO)
EU 18.1.17

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