

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 16.11.2016****PRONOUNCED ON : 18.11.2016****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No.406 of 2011****and****M.P.No.1 of 2011**

K.Boopathy

...

Appellant

Vs.

N.S.Kamalanathan

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Principal District Judge of Krishnagiri, dated 09.08.2010 in A.S.No.2 of 2009 confirming the judgment and decree of the learned Principal Subordinate Judge of Krishnagiri, dated 12.10.2007 in O.S.No.243 of 2002.

For Appellant : Mr.J.Hariharan
for M/s.V.Nicholas

For Respondent : Mr.P.Mani

JUDGMENT

The defendant in this second appeal has challenged the judgment and decree dated 09.08.2010 passed in A.S.No.2 of 2009 on the file of the Principal District Judge, Krishnagiri, confirming the judgment and decree dated 12.10.2007 passed in O.S.No.243 of 2002 on the file of the Principal Subordinate Judge, Krishnagiri.

2. The suit has been laid for recovery of money.

3. The case of the plaintiff in brief is as follows:

On 29.12.1999, the defendant borrowed a sum of Rs.1,40,000/- from the plaintiff agreeing to repay the sum on demand by the plaintiff and in evidence thereof, executed the suit promissory note promising to repay the amount with interest at 12 % per annum. However, the defendant did not pay any amount as promised by him, either the principal or the interest and on account of the same, the plaintiff sent a legal notice calling upon the defendant to pay the amount due and though the defendant received the same, he did not respond nor made any payment to the plaintiff. Hence, the suit.

4. The case of the defendant, in brief, is as follows:

The suit is not maintainable either in law or on facts. He did not borrow any amount from the plaintiff, as claimed, on 29.12.1999 and did not execute the suit promissory note promising to pay the principal sum with interest as detailed in the suit promissory note. The suit promissory note has been created by the plaintiff by forging the signature of the defendant. The defendant did not receive the legal notice dated 14.11.2002. One Karunakaran, who is a close relative of

the defendant, borrowed a sum of Rs.13,000/- from the plaintiff on the basis of the surety given by the defendant in the year 1997 and the said Karunakaran delayed the repayment of the sum and instead of resorting to legal process, the plaintiff and others assaulted the said Karunakaran and when the same was questioned by the defendant, subsequently, on 01.2.2002, a panchayat was convened by the plaintiff, in which, the defendant also participated and a sum of Rs.25,000/- was given to the plaintiff. However, the plaintiff and his men, taking a grudge on the defendant, created the suit promissory note and filed the false suit. Further, the suit claim is barred by time and hence, the suit is liable to be dismissed.

5. In support of the plaintiff's case, PWs 1 and 2 were examined and Exs.A1 to 3 were marked. On the side of the defendant, DWs 1 to 3 were examined and Ex.B1 has been marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to decree the suit as prayed for. The first appeal preferred by the defendant also failed. Hence, the present second appeal by the defendant.

7. The suit has been laid by the plaintiff for recovery of money on the basis of a promissory note. According to the plaintiff, the defendant borrowed a sum of Rs.1,40,000/- from him on 29.12.1999 and in evidence thereof executed the suit promissory note marked as Ex.A1 and agreed to repay the sum with interest on demand. According to the plaintiff, inasmuch as the defendant did not pay the amount in spite of several demands and also after the issuance of the legal notice, he has been necessitated to lay the suit for recovery of money.

8. The defendant has disputed the borrowal pleaded by the plaintiff and according to the defendant, the suit promissory note has been created by the plaintiff on account of some enmity between him and the plaintiff. It is the case of the defendant that his close relative, by name, one Karunakaran had borrowed a sum of Rs.13,000/- from the plaintiff, on the assurance given by the defendant and on the failure of Karunakaran to repay the said amount, the plaintiff and his men assaulted him and when the defendant intervened, a panchayat was convened and a sum of Rs.25,000/- was paid to the plaintiff. However, the plaintiff, developing a grudge against the defendant, it is

stated that he has created the suit promissory note by forging the defendant's signature and laid a false suit.

9. In the light of the above defence, it could be seen that the onus is upon the plaintiff to establish that, as pleaded by him, the defendant borrowed the said amount and in evidence thereof executed the suit promissory note.

10. To establish the above case of the plaintiff, the plaintiff examined himself as PW1 and also examined the scribe of the promissory note as PW2. Both Pws 1 and 2, have, in their evidence, clearly testified that the defendant borrowed the suit amount from the plaintiff on 29.12.1999 and in evidence thereof executed the promissory note Ex.A1 promising to repay the amount with interest. The evidence of PWs1 & 2 seems cogent, convincing and reliable. Despite the cross examination, as rightly found by the Courts below, nothing has been elicited by the defendant from the mouth of PWs1 & 2 to discredit their evidence in any manner. That apart, before institution of the suit, the plaintiff has also issued the legal notice marked as Ex.A2 claiming the suit debt. Though the defendant has denied the receipt of the legal notice, from Ex.A3, the

acknowledgment card, it could be seen that the defendant had received the legal notice but the defendant did not respond to the same. If really, the defendant had not borrowed the suit debt from the plaintiff, as claimed in the plaint, on receipt of the legal notice, it could be seen that the defendant would have sent a suitable reply repudiating the case of the plaintiff. Further, as found by the courts below, inasmuch as the defendant had borrowed the suit debt from the plaintiff and also executed the promissory note Ex.A1, it could be seen that unable to resist the claim of the plaintiff, he had not given any reply.

11. The Courts below have also analysed the defence put forth by the defendant with regard to another money transaction between his close relative Karunakaran and the plaintiff and according to the defendant, as he intervened in the said issue, the plaintiff developed animosity against him and created the suit promissory note and laid the false suit. However, the evidence adduced by the defendant, with reference to the same, through DWs 1 to 3, were found by the Courts below, to be inconsistent, contradictory and also unbelievable. That apart, it has not been properly explained by the defendant as to how that money transaction between Karunakaran and plaintiff would have

any nexus to the suit transaction. In addition to that, to say that on account of the said transaction, the plaintiff developed grudge against the defendant and created the suit promissory note is a theory, which cannot be accepted straightaway and in the absence of any proof to buttress the same, as rightly found by the Courts below, the said defence projected by the defendant is only to non suit the plaintiff, one way or the other.

12. The defendant's counsel contended that the plaintiff in order to establish the genuineness of the suit promissory note has not taken steps to send the said promissory note for examination by an expert. However, the above contention cannot be accepted. Once, the plaintiff has established the truth and validity of the suit promissory note by tendering acceptable and reliable evidence through him viz. PW1 and the scribe PW2 and also when it is found that the defendant, despite the receipt of the legal notice had not repudiated the claim of the plaintiff, the Courts below have rightly taken an adverse inference against the defendant. Further, the truth and validity of Ex.A1 having been established, as rightly argued, the presumption, which could be raised under Section 118 of the Negotiable Instrument Act would come into play. Therefore, it could be seen that the burden

is shifted to the shoulders of the defendant and he has to now discharge the onus that he had not received the suit debt from the plaintiff and thus, the suit promissory note is bad for want of consideration. Therefore, it could be seen that the courts below having rightly held that the burden of proof has been shifted to the defendant as per law, if really, the defendant had not borrowed the suit amount and did not execute the suit promissory note, the defendant himself would have taken adequate steps to send the signature found in the suit promissory note for the examination of an expert. However, the defendant has not preferred to go for that process for the reasons best known to him. That apart, the courts below have also noted that the defendant is a person, who used to put different signatures on different occasions to suit his convenience. Accordingly, it could be seen that the defendant has purposefully put varying signatures in the documents as found by the Courts below. Accordingly, it could be seen that the defendant has not endeavoured to send his admitted signature for comparison by an expert to discharge the onus placed upon his shoulders to prove that the suit promissory note is a forged one. Therefore, in toto, it could be seen that the defendant has raised a false defence to resist the plaintiff's lawful claim.

13. The Courts below have rightly found that the defendant had borrowed the suit debt and executed the suit promissory note and accordingly, decreed the suit in favour of the plaintiff. Nothing is projected to warrant any interference in the well considered reasonings and findings of the Courts below.

In conclusion, I do not find any substantial question of law is involved in this second appeal and consequently, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.11.2016

Index : Yes/No
Internet: Yes/No
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To

1. The learned Principal District Judge,
Krishnagiri.

2. The learned Principal Subordinate Judge,
Krishnagiri.

T.RAVINDRAN,J.

sms

Pre-delivery order in
S. A.No.406 of 2011
and
M.P.No.1 of 2011

18.11.2016