

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :22.11.2016

PRONOUNCED ON:12.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.463 of 2011

&

M.P.No.1 of 2011

Manohar

Vs.

... Appellant

Arul Pakyaraj

... Respondent

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 27.01.2011 passed in A.S.No.16 of 2009 on the file of the Fast Tract Judge(Additional District Judge), Cuddalore confirming the judgment and decree dated 31.12.2008 passed in O.S.No.98 of 2007 on the file of the I Additional Subordinate Judge, Cuddalore.

For Appellant : Mr.R.Gururaj

For Respondent : Mr.K.A.Ravindran

J U D G M E N T

The defendant in this Second Appeal has impugned the

judgment and decree dated 27.01.2011 passed in A.S.No.16 of 2009 on the file of the Fast Track Judge(Additional District Judge), Cuddalore confirming the judgment and decree dated 31.12.2008 passed in O.S.No.98 of 2007 on the file of the I Additional Subordinate Judge, Cuddalore.

2.Suit on a promissory note.

3.According to the plaintiff, the defendant borrowed a sum of Rs.2,00,000/- from the plaintiff on 10.10.2004 and in evidence there of executed the suit promissory note in favour of the plaintiff promising to repay the same with interest @ 12% per annum and despite several demands, the defendant did not pay any sum and as the defendant did not pay any sum even after the issuance of the legal notice on 18.07.2007, the suit has been laid. According to the defendant he had not borrowed any sum much less of Rs.2,00,000/- from the plaintiff on 10.10.2004, as put forth in the plaint, the suit promissory note is a forged and concocted document and not supported by any consideration and due to enmity, the suit promissory note has been fabricated by the plaintiff and the false suit has been laid and it is false to state that the plaintiff issued a legal notice calling upon the defendant to pay the suit amount and

hence the suit is liable to be dismissed.

4.In support of the plaintiff's case, PW1 to 3 have been examined. Exs.A1 to 3 were marked. On the side of the defendant, DW1 to 4 have been examined. Exs.B1 to B13 were marked. 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. The defendant is now before this Court by way of the present Second Appeal.

5.According to the plaintiff, the defendant borrowed a sum of Rs.2,00,000/- from him on 10.10.2004 and executed the suit promissory note, marked as Ex.A1. The defendant has pleaded that the suit promissory note has been fabricated and forged by the plaintiff on account of enmity between the plaintiff and the defendant.

6.In the light of the above defence taken by the defendant, it could be seen that the plaintiff has to establish that the defendant had borrowed the suit amount from him and executed the suit promissory note as pleaded by him. To buttress his case, the

plaintiff has examined the attessor to the suit promissory note P.Devados as PW2 and the scribe of the suit promissory note Balaraman as PW3. The plaintiff has examined himself as PW1. PW1 to 3 have clearly tendered evidence that the suit promissory note has been executed by the plaintiff in token of the receipt of the consideration mentioned therein from the plaintiff and the suit promissory note is a true document.

7.The Courts below have found their evidence acceptable and trustworthy. Nothing has been projected to disbelieve their version. It could therefore be seen, as rightly found by the Courts below, the plaintiff through the evidence of PW1 to 3 has established the genuineness of the suit promissory note, Ex.A1. Accordingly, it could be seen that the presumption that could be raised under Section 118 of the Negotiable Instruments Act come into play and therefore the onus is now shifted to the defendant to establish that he had not borrowed the amount from the plaintiff and executed the suit promissory note as defended by him. In the written statement, the defendant has very vaguely pleaded that on account of enmity the suit promissory note has been fabricated and forged by the plaintiff. However, as rightly found by the Courts below as to on what account there was enmity between the plaintiff and the

defendant and whether the said enmity would have driven the plaintiff to create the suit promissory note have not been clearly pleaded by the defendant in the written statement. Only for the first time during the course of evidence, the defendant has come forward with a case that in respect of the sale of the plot belonging to the defendant, there were negotiations between the defendant and the plaintiff's father-in-law and paternal uncle and as the above said transactions had become time barred and as the plaintiff's father-in-law and paternal uncle were unable to recover the advance amount from the defendant, according to the defendant with the connivance of the plaintiff, the suit promissory note has been fabricated and the false suit has been preferred.

8. Prior to the institution of the suit, the plaintiff has issued a legal notice, which has been marked as Ex.A2. The receipt of the same has not been disputed. If really the defendant had not borrowed any sum from the plaintiff and executed the suit promissory note, as rightly found by the Courts below, the defendant would have sent a suitable reply repudiating the case of the plaintiff. However, the defendant has not sent any reply. It could therefore be seen that as rightly found by the Courts below in as much as the defendant has no case to repudiate the claim made

by the plaintiff under the legal notice, Ex.A2, he has not chosen to send any reply to the same.

9. Therefore, the plea now put forth by the learned counsel for the defendant that non issuance of reply would not be fatal to the case of the defendant, as such cannot be readily accepted. Further, if as per the case of the defendant, on account of enmity, the suit promissory note had been fabricated, as rightly found by the Courts below, advertng to the same, the defendant would have issued a suitable reply. Further, as seen earlier, other than vaguely stating that on account of enmity, the plaintiff had created the suit promissory note, the defendant has not given the details of the so-called enmity between him and the plaintiff in the written statement. As rightly put forth by the learned counsel for the plaintiff, if at all there had been any property transaction between the defendant and the plaintiff's father-in-law and paternal uncle and which according to the defendant himself took place in the year 2002, the concerned persons would take appropriate legal action against the defendant and therefore there is no need for creating the promissory note for enforcing the sale agreement by them through the plaintiff. The above argument of the learned counsel for the plaintiff seems acceptable.

10.The plaintiff has established the genuineness of the suit promissory note through the evidence of PW1 to 3. Despite the same, the defendant has not endeavoured to have the suit promissory note examined through an expert with his admitted signature. The reasons for the same has not been explained. The contention that it is for the plaintiff to establish the same through an expert does not hold water in as much as the plaintiff as seen earlier established the genuineness of the suit promissory note through the evidence of PW1 to 3.

11.Further, as rightly found by the Courts below, the defendant in order to deceive the lawful claim of the plaintiff seems to have put his signature in the acknowledgment card in a different version than his usual signature. This has also been noted by the Courts below. Further, the Courts below have also made a comparison of the signature found in the suit promissory note with that of the admitted signatures of the defendant and found then to be similar. The action of the Courts below in comparing the signature cannot be faulted with.

12.During the course of appeal, the defendant has also

preferred an application for the reception of the additional written statement. It could be seen that the attempt made by the defendant to file the additional written statement at the time of tendering his evidence did not fructify and the same came to be dismissed as not pressed. The Appellate Court has also noting the same and finding that the defendant has not made out a convincing ground for the reception of the additional written statement, at the appeal stage dismissed his application. Therefore, the defendant on finding that he has not put forth his defence in the written statement clearly, had made attempts to file the additional written statement both before the trial Court as well as in the first Appellate Court. However, his attempts had failed. The plea of enmity projected by him during the course of evidence has not been substantiated with convincing evidence and proof. The documents marked as Exs.B1 to 13 and the evidence tendered through DW1 to 4 are found to be not helpful to sustain the defendant's version.

13. Therefore, it could be seen that the Courts below have analysed the evidence adduced by the respective parties in the right perspective and on the scrutiny of the same found that the suit promissory note is a true one and the defendant has falsely pleaded that it is a concocted document. Accordingly, negating the plea of

the defendant, the Courts below have upheld the case of the plaintiff.

14. In view of the above discussions, it could be seen that no substantial question of law is involved in this Second Appeal for consideration. Hence, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

.12.2016

Index: Yes/No
Internet: Yes/No

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To

1. The Fast Track Judge
(Additional District Judge),
Cuddalore
2. The I Additional Subordinate Judge,
Cuddalore.

T.RAVINDRAN.J.,
Dn

S.A.No.463 of 2011

.12.2016

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