

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2017  
PRONOUNCED ON : 09.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.550 of 2011  
and  
M.P.No.1 of 2011

S.Thulasirajan ...Appellant/Appellant/Plaintiff  
Vs.

Marcus Fredrick Lazaro ...Respondent/Respondent/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the Subordinate Court, Tambaram dated 16.07.2010 and made in A.S.No.18 of 2008 confirming the judgment and decree of the District Munsif Court, Alandur dated 08.02.2008 in O.S.No.108/2005.

For Appellant : Mr.K.Thirumalai

For Respondent : Mr.Amizhdu

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 16.07.2010 made in A.S.No.18 of 2008 on the file of the Subordinate Court, Tambaram, confirming the judgment and decree dated 08.02.2008 made in O.S.No.108 of 2005 on the file of the District Munsif Court, Alandur.

2. The suit has been laid by the plaintiff for recovery of money.

3. As per the case of the plaintiff, the defendant, in the month of October, 2003, borrowed a sum of Rs.46,000/- from him for developing his business and in evidence thereof, executed a promissory note and agreed to repay a sum of Rs.10,000/- by September, 2004 and the remaining balance by December, 2004 in the presence of two witnesses. However, according to the plaintiff, inasmuch as the defendant had not cared to pay the amount as promised and on the other hand, threatened the plaintiff with dire consequences and demanded the return of the said promissory note, the plaintiff was forced to prefer a

police complaint against the defendant and it is further stated that after exchange of notices between them, the suit has been laid by the plaintiff for recovery of the amount.

4. The defendant has put forth the defence stating that he did not borrow the suit amount as alleged by the plaintiff in the plaint and did not execute any promissory note in recognition of the same. According to the defendant, he was doing handicrafts business and the plaintiff wanted him to take as a partner in the said business, but the same was declined by the defendant. Despite the same, the plaintiff purchased certain machines and put the same in the defendant's shop without his consent, with a view to strike a partnership deal with the defendant. However, the same was not entertained by the defendant. While so, when the defendant was in the midst of a party during the month of August, 2004, at the residence of his friend George, the plaintiff came there and threatened the defendant with dire consequences and asked to return the amount incurred by him for the purchase of the machines kept at the defendant's shop and at that point of time, the defendant was in an inebriated condition and to sort out the problem, the defendant's friend George intervened and accordingly, by force the plaintiff obtained the defendant's signature in a blank pronote and it appears that the plaintiff has fabricated the suit promissory note with the aid of the signature of the defendant obtained as above and in such circumstances, according to the defendant, he has also through his lawyer demanded the return of the pronote, in which, his signature had been obtained. However, the plaintiff, without accepting to the same, preferred a false police complaint against the defendant and thereafter, laid the suit against the defendant falsely and hence, the suit is liable to be dismissed.

5. Though the plaintiff claims to have laid the suit on the basis of the promissory note, as rightly found by the Courts below, the suit promissory note marked as Ex.A1 does not conform to the definition requirements of a promissory note as detailed under Section 4 of the Negotiable Instruments Act. The suit promissory note Ex.A1 is not dated. Further, a perusal of the recitals found therein would go to show that there is no unconditional undertaking given by the defendant to repay the amount mentioned therein. Therefore, it could be seen that as rightly found by the courts below, Ex.A1 cannot be construed as a promissory note as contemplated under Section 4 of the Negotiable Instruments Act.

6. It could be seen from the evidence adduced by the respective parties that even prior to the institution of the suit, there has been a grave enmity between the plaintiff and the defendant. Now, according to the defendant, he had declined the proposal of the plaintiff to take him as a partner in his

handicrafts business and his signature had been obtained by the plaintiff, when he was in an inebriated condition at a party and no consideration was paid to the defendant under the said document. Therefore, according to the defendant, claiming the return of the said document, he had issued a legal notice to the plaintiff marked as Ex.A2, dated 14.09.2004. Responding to the same, it appears that the plaintiff has issued a reply notice dated 21.09.2004 marked as Ex.A3. Following the same, it could be seen that alleging that the defendant had threatened the plaintiff with dire consequences, a police complaint had been preferred by the plaintiff against the defendant, which could be evidenced from the documents marked as Exs.A7 & 8, being the complaint copy and CSR receipt issued by the police respectively. Thereafter, it also appears that the defendant had sent a legal notice to the police that he had been illegally detained by the police for no fault, as could be seen from the notice dated 15.01.2004 marked as Ex.A9. After all these happenings, it appears that the suit has come to be laid by the plaintiff. Therefore, it could be seen that as rightly found by the courts below, there had been a serious enmity between the parties concerned and therefore, it has to be carefully seen whether the defendant had actually borrowed any amount from the plaintiff under the so called promissory note marked as Ex.A1.

7. As rightly argued by the defendant's counsel, inasmuch as Ex.A1 promissory note does not specify the requirements of the definition of a promissory note as stated under Section 4 of the Negotiable Instruments Act, though the defendant has admitted that his signature had been obtained by the plaintiff by practicing deceit, the presumption should not be invoked as provided under Section 118 of the Negotiable Instruments Act as regards Ex.A1. Even the same has been observed by the first appellate Court. However, the first appellate court has proceeded with the case holding that inasmuch as the defendant has taken a plea that his signature had been obtained in a blank promissory note, to dispel the suspicion as to under what circumstances, he had put his signature in the document, according to the first appellate court, the defendant should place adequate proof to establish his case.

8. With reference to the above defence set forth by the defendant, it could be seen that as adverted to earlier, grave enmity had been prevailing between the parties concerned prior to the institution of the suit. That apart, the defendant has examined the scribe of the document marked as Ex.A1 viz., George Antony as DW2. It has been admitted that it is only DW2 who had prepared the document marked as Ex.A1. According to the defendant, the document, in which his signature had been obtained has been taken only at the residence of DW2 while he was hosting a party to the defendant.



9. Now, as regards the execution of Ex.A1, DW2 would state that when he hosted a party, both the defendant and the plaintiff attended and the plaintiff requested him to fill up the document marked as Ex.A1 which had already contained the signature of the defendant and further, according to DW2 when he filled up Ex.A1, the defendant was not present and he was in a drunken mood and he has also not stated that any attester had signed the document at the time of filling up of Ex.A1. Therefore, it could be seen that when the signature of the defendant was obtained in Ex.A1, it was not filled up and subsequently, it was filled up by DW2 and at that point of time, the defendant was not present and it is found that he was in an inebriated condition as put forth by the defendant. Further, it could be seen that the document has not been attested at the time of the execution of the same. Therefore, it could be seen, as rightly found by the first appellate court, that the evidence of the scribe does not advance the case of the plaintiff. Therefore, it could be seen that in such circumstances, as rightly found by the first appellate court, having found that the scribe viz., DW2 has not supported his case, the plaintiff should have endeavoured to examine the attestors to bring home the truth of the document marked as Ex.A2 at least to show that consideration has passed thereunder. However, even though the plaintiff has alleged that the document Ex.A1 has been attested by two attestors with reference to the witnessing of the passing of consideration, he has not cared to examine any of the attestors to establish his case. No reason has been put forth by the plaintiff for not examining attestors in support of his case.

10. In the light of the above circumstances, as rightly found by the first appellate Court, grave and suspicious circumstances beset the execution of the suit promissory note and when the defendant had shifted his burden by proving that his signature had been obtained by deceit, when he was in an inebriated condition and no consideration had passed thereunder and when the defendant's version had been amply corroborated by DW2, to dispel the above said suspicious circumstances, the plaintiff had not cared to place any sufficient proof, particularly by examining the attestors and also further proving that consideration had really passed thereunder. In such view of the matter, the findings of the courts below that the suit promissory note is an invalid instrument and no consideration passed thereunder and therefore, the suit laid by the plaintiff on the basis of such an instrument cannot be accepted do not call for any interference. Both the courts below have rightly negatived the relief sought for by the plaintiff upon the proper appreciation of the evidence on record and giving proper reasons. No exception could be taken to the same and accordingly, the same are confirmed.

At the end, no substantial question of law is found to be involved in this second appeal. The second appeal fails and accordingly, the same is dismissed. No costs. Consequently connected miscellaneous petition is closed.

s/d-  
Assistant Registrar(CS II)

//True Copy//

Sub-Assistant Registrar

To

1. The Subordinate Court,  
Tambaram.
2. The District Munsif Court,  
Alandur.

+1 CC to Mr. K. Thirumalai, Advocate sr 2163  
+1 CC to Mr. Amizhdu, Adovcate sr 2831

Pre-delivery order in  
S. A.No.550 of 2011  
and  
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