

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2017

PRONOUNCED ON : 31.01.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.747 of 2011

and

M.P.No.1 of 2011

Chellappan ... Appellant/Plaintiff

Vs.

Poongavanam Pillai ... Respondent/Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 01.11.2010 passed in A.S.No.47 of 2009 on the file of the Sub Court, Madurantagam, reversing the judgment and decree dated 21.11.2008 passed in O.S.No.184 of 2005 on the file of the District Munsif Court, Madurantagam.

For Appellant : Mr.K.Goviganesan

For Respondent : Mr.S.Raghunathan

JUDGMENT

Challenge in this second appeal is made by the defendant against the judgment and decree dated 01.11.2010 passed in A.S.No.47 of 2009 on the file of the Sub Court, Madhuranthagam, reversing the judgment and decree dated 21.11.2008 passed in O.S.No.184 of 2005 on the file of the District Munsif Court, Madhuranthagam.

2. The second appeal has been admitted and the following substantial question of law is formulated for consideration in this second appeal.

"Whether the judgment and decree of the first appellate Court in decreeing the suit filed by the plaintiff are misdirected against the evidence on record and based upon the perverse findings?"

3. The suit has been laid by the plaintiff for recovery of money on the basis of a promissory note.

4. According to the plaintiff, the defendant borrowed a sum of Rs.30,000/- from the plaintiff on 09.01.2003 agreeing to repay the same with interest at the rate of 12% per annum and despite several demands and also after the issuance of legal notice calling upon the defendant to pay the borrowed sum, inasmuch as the defendant had sent a reply containing false allegations repudiating his liability, it is stated that the suit has come to be instituted.

5. The defence put up by the defendant in short is that there has been a land dispute between the plaintiff and his brother Perumal Pillai and with reference to the same, the defendant and others did mediation and as per the decision of the panchayatars, it had been agreed that Perumal Pillai should pay a sum of Rs.30,000/- to the plaintiff and that in acceptance of the same, Perumal Pillai should execute a document to the plaintiff and inasmuch as Perumal Pillai declined to execute the document as aforesaid, according to the defendant, as insisted by the plaintiff, he had executed a document as per the decision of the panchayatars and it is the case of the defendant that it had been decided to record that Perumal Pillai should pay Rs.30,000/- to the plaintiff and in connection with the same, the defendant should execute the document and on the above said premise and also with a good intention to purchase peace, it is stated by the defendant that he had signed the document dated 09.01.2003 under the bonafide belief that only the above recitals are written therein and it is also admitted by the defendant that document was attested by one of the panchayatars viz., Ezhumalai and had been written by Venkatesan S/o. Gopal Pillai and such being the position, according to the defendant, only after the receipt of the legal notice he had come to know that the plaintiff had misused the signature of the defendant in the document taken by him on 09.01.2003 and created the promissory note as if the defendant had borrowed the suit sum from the plaintiff and therefore, according to the defendant, he had sent a suitable reply denying the payment of any amount under the suit promissory note and in such circumstances, according to the defendant, no consideration passed under the suit promissory note and hence, the suit is liable to be dismissed.

6. The above defence is stoutly denied by the plaintiff. In view of the above defence put up by the defendant, it could be seen that as rightly found by the courts below, the defendant having admitted his signature in the suit promissory note, the presumption under Section 118 of the Negotiable instruments Act

comes into play and accordingly, it is for the defendant to establish that he had subscribed his signature in the document dated 09.01.2003 as put forth by him and that, no consideration passed thereunder as pleaded by the plaintiff by acceptable and reliable evidence. However, as rightly found by the first appellate court, it could be seen that the defendant has failed to establish and discharge the burden put up on him that the plaintiff did not advance any consideration under the suit promissory note.

7. At the foremost, according to the defendant, in connection with the mediation conducted as regards the land dispute between the plaintiff and his brother Perumal Pillai, the document dated 09.01.2003 had come to be taken from him and believing that the document contains only the decision of the Panchayatars, as aforementioned, he had, without reading the contents of the document had subscribed his signature to the same. The above defence, as seen above, has been completely denied by the plaintiff. In such circumstances, as rightly found by the first appellate court, the defendant has to establish that a land dispute as put forth by him had existed between the plaintiff and his brother Perumal Pillai and with reference to the said dispute a mediation was conducted by the defendant and others and the decision had been taken by the panchayatars therein that Perumal Pillai should pay a sum of Rs.30,000/- to the plaintiff and that he should execute a document with reference to the same in favour of the plaintiff. However, the defendant has failed to establish that such a dispute had existed between the plaintiff and his brother Perumal Pillai. It is not the case of the defendant that Perumal Pillai is ill-disposed of towards him and therefore, he is unable to examine him as a witness in support of his defence. Hence, to establish his defence, as rightly observed by the first appellate court, the defendant should have endeavoured to examine Perumal Pillai to prove that a land dispute had existed between the plaintiff and Perumal Pillai as pleaded by him. However, for the reasons best known to the defendant, he had not chosen to examine Perumal Pilla in support of his defence. Further, no document, as such, has also been marked on the side of the defendant to hold that a land dispute had existed between the plaintiff and his brother Perumal Pillai. The document marked as Exs.B1 and B2 do not in any manner support the case of the defendant. As rightly seen from the evidence of the defendant examined as DW1 and the document marked as Ex.B2, the complaint has not been shown to be issued by Perumal Pillai, the brother of the plaintiff. It only recites as if a complaint had been lodged by one Anthony S/o. Perumal. Further, it does not recite as to against whom the said complaint has been lodged and whether in particular the plaintiff is involved in the said complaint. Similarly, the document marked as Ex.B1 also do not

relate to the alleged land dispute between the plaintiff and his brother Perumal Pillai. In such circumstances, it could be seen that Exs.B1 and 2 do not in any manner advance the case of the defendant to establish that there had been a land dispute between the plaintiff and his brother Perumal Pillai as pleaded.

8. As seen from the evidence adduced by the respective parties particularly, the evidence adduced on the side of the defendant, it could be seen that the other brothers of the plaintiff and Perumal Pillai had also participated in the alleged Panchayat. According to the defendant, the decision of the panchayat is that Perumal Pillai should pay a sum of Rs.30,000/-to the plaintiff and that he should execute a document with reference to the same in favour of the plaintiff. In such circumstances, it does not stand to reason as to why the defendant should volunteer himself to execute a document with reference to the liability of Perumal Pillai in favour of the plaintiff by executing a document as per the decision of the Panchayatars. It is found that even though the defendant is related both to Perumal Pillai and plaintiff, when the other brothers had also participated in the panchayatars, nothing prevented the other brothers from taking up the responsibility of Perumal Pillai to pay the amount to the plaintiff and accordingly execute a document in favour of the plaintiff as decided by the panchayat. On the other hand, it is found that when nothing concrete had warranted the plaintiff to subscribe to the above said document and further, the defendant not being a direct or close relative to Perumal Pillai and also the fact that the other brothers of Perumal Pillai had also taken part in the Panchayat, the case of the defendant that he had suo motu volunteered to execute such a document to purchase peace as such cannot be believed and accepted. It is found that the defence pleading put forth by the defendant appears to be highly unbelievable and also preposterous and therefore, no safe credence could be attached to the same in the absence of any reliable and acceptable evidence to substantiate the same.

9. It is found that according to the defendant, only after the receipt of the legal notice, he had come to know about the deceit played by the plaintiff in creating the suit promissory note by making use of the signature obtained on 09.01.2003, pursuant to the decision of the panahcyat. So it could be seen that the defendant has admitted that his signature had been obtained on 09.01.2003. According to the defendant, believing that only the decision of the panchayatars had been incorporated in the document, without reading the same and the same also having come to be prepared during late night hours, he had simply subscribed his signature to the same. However, the plea

of the defendant that he had subscribed his signature to the document without reading the contents of the same as such cannot be believed and accepted.

10. The defendant examined as DW1 in his evidence has admitted that he knows to read and write and that he would not subscribe his signature on merely being asked for it by any one and only after verifying the true nature of the document, he would subscribe his signature. Therefore, when according to the defendant, he would not subscribe the signature to a document without reading the contents of the same, his present pleading that believing that the document in which his signature had been obtained on 09.01.2003 would contain only the decision of panchayatars, he had subscribed the signature to the same without reading the contents as such cannot be believed in any manner. The defendant in support of his version has examined one of the attestors to the document viz., Ezhumalai as DW2. However, even the evidence of DW2 is found to be unreliable and unacceptable. According to the defendant, at the time of subscribing the signature to the document only Ezhumalai had attested the same and according to him, the names and signatures of the other attestors have been subsequently obtained by the plaintiff with a view to buttress his case. However, the above version of the defendant is found to be a false one considering the admission of DW2. DW2 in his evidence has admitted that he had attested the document Ex.A1 and when he had attested the same Gopal Pillai, Ramachandiran, Govindasamy and Chellappan had also attested the same and the same was written by Venkatesan. However, as stated by the defendant, DW2 has also testified that without reading the contents of the document, he had attested the same despite admitting the fact that he knows to read and write. Therefore, it could be seen that DW2 has also towed the false theory of the defendant and in tune with his defence, has deposed falsely that he has attested the document without reading contents of the same. However, during cross examination of DW2, he has admitted that he would not attest any false document and therefore, it could be seen that only for the purpose of helping the defendant, it could be seen that DW2 has deposed falsely that he had attested the document without reading the contents of the same. In such view of the matter, the evidence of DW2 cannot be safely accepted to uphold the version of the defendant.

11. Further, if really, the defendant had come to know about the alleged fraud played by the plaintiff in creating the suit promissory note by making use of his signature obtained on 09.01.2003, on receipt of the legal notice, though the defendant had sent a reply repudiating the claim of the plaintiff, till date the defendant has not taken any steps to call upon the plaintiff to return the document in which his signature had been

fraudulently obtained. No suit has been laid by the defendant against the plaintiff seeking for a declaration that the document in which his signature had been obtained is null and void for the reasons stated by him and also not called upon the plaintiff to return the document in the manner known to law. Therefore, it could be seen that without taking any further course of action, other than sending a reply, the defendant has not cared to initiate any legal steps to retrieve the document in which his signature had been thus stated to be obtained fraudulently by the plaintiff. This attitude of the defendant would only go to show that inasmuch he had subscribed the signature to the document only on receiving the consideration from the plaintiff as pleaded by the plaintiff, it could be seen that he had not taken any legal redressal available to him with reference to the same, against the plaintiff.

12. The plaintiff on the other hand has examined the other attester in support of his case, viz., Ramachandran who is admittedly an attester to the document Ex.A1 as PW2. PW2 in his evidence has clearly deposed that only on the receipt of the consideration from the plaintiff, as pleaded, the defendant had executed the suit promissory note wherein he (PW2) and others had attested. The evidence of PW2 seems cogent and acceptable and reliable and nothing has been pointed out during the cross examination of PW2 to disbelieve his testimony. Therefore, it could be seen that the plaintiff in addition to his evidence as PW1 has also examined PW2, the attester to the promissory note to establish his case that consideration had been received by the defendant under the suit promissory note.

13. It is contended by the defendant's counsel that the suit promissory note has come to be written a stamp paper which is not normally done, therefore, according to him, inasmuch as a document had come to be executed following the decision of the panchayatars, non Judicial stamp papers came to be utilised and therefore, according to him, the very fact that the suit promissory note had been incorporated in non judicial stamp paper, would only lead to the inference that the document has come to be executed pursuant to the decision of the panchayatars. However, countering the above argument put forth by the defendant's counsel, the plaintiff's counsel contended that there is nothing wrong in writing a promissory note on a stamp paper and the court has to verify whether the promissory note had been written on a stamp paper of proper value and that if the said condition satisfied whether the promissory note is written on a stamp paper or other wise does not matter and in this connection, he palced reliance upon the decisions reported in AIR 1978 MADRAS 412 (1) (P.Moorthy Vs. A.R.Koth andaraman) and (2005) 1 ALT 659 (Gurana Asirinaidu Vs. Lenka Suryanarayana). A perusal of the above said decisions would go

to reveal that a promissory note can be stamped with adhesive stamps or be engrossed on a stamp paper of proper value and therefore, no exception could be taken that merely because, the suit promissory note had been engrossed on a stamp paper, the same would have been obtained only pursuant to the decision of the panchayat as put forth by the defendant. Now, as regards the passing of consideration from the plaintiff to the defendant as put forth by the plaintiff it is not the case of the defendant that the promissory note has not been engrossed on a stamp paper of improper value. Therefore, in the light of the above decision, the mere fact that the suit promissory note had been engrossed in a stamp paper and not in a white paper with adhesive stamps as done normally, by itself, would not lead to the conclusion that the case of the plaintiff is a false one and that the defendant's version is a genuine one.

14. It is argued by the defendant counsel that the plaintiff has not established the means to pay the suit amount to the defendant. According to the defendant, the plaintiff is depending fully upon his children and in such circumstances, he would not have been in a position to advance the suit amount to the plaintiff under the promissory note. Firstly, the defendant having admitted his signature in the promissory note and having failed to establish his version to discharge the burden cast upon him as stipulated under law, it could be seen that there is no need for the plaintiff to establish his case as such. On the other hand as discussed above, the plaintiff has established his case by tendering his evidence as well as the evidence of the attester PW2. According to the plaintiff, out of savings, he had advanced the suit amount to the defendant. No exception could be taken to the above case of the plaintiff when at the foremost, the defendant has not established his version to discharge the burden resting upon him. The question of calling upon the plaintiff to establish his case does not arise in this case. Therefore, as rightly found by the first appellate court, the defendant having failed to establish his plea that his signature had come to be obtained pursuant to the decision of the panchayat as pleaded and secondly, the defendant having failed to discharge his burden i.e. the onus of proof, the plaintiff's case has to be accepted based upon the evidence adduced on his behalf and in such view of the matter, it is found that the first appellate court has rightly held that the defendant version is a false one and that the plaintiff has advanced the suit amount to the defendant and thereafter, the defendant has executed the promissory note in favour of the plaintiff and accordingly, the suit promissory note is supported by consideration.

15. In view of the above discussions, it is found that the first appellate has upon proper appreciation of the evidence adduced in the matter in the right perspective and giving cogent and proper reasons as per law found that the defendant case is a false one and accordingly, rightly decreed the suit in favour of the plaintiff . Nothing is projected to warrant any interference in the findings of the first appellate court in support of the plaintiff's case.

The substantial question of law formulated for consideration in the second appeal is answered in favour of the plaintiff and against the defendant. At the end, the second appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Subordinate Judge,
Madurantagam.
2. The District Munsif,
Madurantagam.

Copy to

The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.Govi Ganesan, Advocate Sr.6085
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S. A.No.747 of 2011
and
M.P.No.1 of 2011

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