

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.02.2017

PRONOUNCED ON : 15.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.825 of 2011

and

M.P.No.1 of 2011

S.Seemoan

...

Appellant

Vs.

1. R.G.V.Selvaraj (Deceased)

2. Kribakar Raj

3. Lavanya

...

Respondents

(RR2 & 3 brought on record as Lrs
of the deceased Sole Respondent
vide order of this court dated 11.01.2017
made in CMP Nos.431 to 433/2016)

Second Appeal is filed under Section 100 of Civil Procedure Code,
against the judgment and decree dated 19.08.2010 in A.S.No.13 of
2009 on the file of the Principal District Judge, Namakkal, confirming
the judgment and decree dated 25.02.2009 in O.S.No.97 of 2008 on
the file of the subordinate Judge, Rasipuram.

For Appellant : Mr.D.Shivakumaran

For Respondents : Mr.S.Sounthar

JUDGMENT

In this second appeal, the defendant has impugned the judgment and decree dated 19.08.2010 made in A.S.No.13 of 2009 on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 25.02.2009 made in O.S.No.97 of 2008 on the file of the subordinate Court, Rasipuram.

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

3. According to the plaintiff, the defendant borrowed a sum of Rs.1,00,000/- from P.M.Sundaram on 16.06.2001 and in evidence thereof, executed a promissory note in his favour assuring that he would repay the amount with interest as and when demanded. It is further pleaded by the plaintiff that for a valid consideration, he had got the assignment of the suit promissory note in his favour from P.M.Sundaram on 07.05.2004 and further, it is pleaded that despite several demands and also even after the issuance of legal notices calling upon the defendant to pay the amount, inasmuch as the defendant had not come forward to abide by his promise, the suit has

come to be laid.

4. The defendant has disputed the receipt of Rs.1,00,000/- on the basis of the suit promissory note from P.M.Sundaram on 16.06.2001 and also disputed the case of the plaintiff, as regards the assignment obtained by him from P.M.Sundaram in respect of the suit promissory note.

5. According to the defendant, he, one Tirupathi examined as PW2 and others entered into a partnership business and in connection with the said business, when they ventured to purchase certain properties, at that point of time, as the defendant was not in a position to make his contribution to pay the advance amount, with reference to the same, it is stated that blank signed promissory note had been obtained by Tirupathi from the defendant and later on, dispute arose between the defendant and Tirupathi and others in respect of the partnership business and therefore, according to the defendant, on account of the said enmity, Tirupathi, the plaintiff and others in collusion had fabricated the suit promissory note falsely and hence, the suit is liable to be dismissed.

6. In the light of the defence set out by the defendant, it is evident that he has admitted his signature in the suit promissory note and according to him, he had executed the blank promissory note and handed over to PW2 Tirupathi only in connection with the business venture that he had entered into with Tirupathi and others. In this connection, the agreement stated to have been executed between the defendant and Tirupathi has been projected, which has been marked as Ex.B1. A perusal of Ex.B1 would go to show that an assurance had been given to the defendant that the signed blank promissory note would be returned to him within three months. However, according to the defendant, subsequently in the partnership business, dispute arose between the partners. Therefore, it could be seen that when the agreement Ex.B1, as such, could not be proceeded further and also the partnership business could not be continued on account of the difference of opinion between the partners, if really, the defendant had given a signed blank promissory note and had not retrieved the same, subsequently, as a prudent person, he would have taken appropriate steps in the manner known to law to get back the same from Tirupathi. However, till date, no steps seem to have been taken by the defendant to retrieve the said signed blank promissory note. No acceptable

reason has been given by the defendant for the same. Therefore, it could be seen that the case of the defendant that the plaintiff, making use of the said signed blank promissory note, had fabricated the suit promissory note, as such, cannot be accepted in any manner. Merely because, PW2 Tirupathi has admitted Ex.B1 that by itself would not lead to the conclusion that he and the plaintiff and others would have colluded and created the suit promissory note.

7. It is found that both P.M.Sundaram and also the plaintiff had issued legal notices to the defendant calling upon him to pay the suit amount. Admittedly, the defendant had received the said notices, the same is evidenced by Exs.A3 to 6 and the defendant has not responded to the same. No reason, whatsoever, has been placed by the defendant for the same. If really, the defendant had not borrowed the suit amount from P.M.Sundaram and if, according to the defendant, the plaintiff had fabricated the suit promissory note, the defendant would have, in the normal course, given his response to the legal notices issued to him by P.M.Sundaram and the plaintiff. However, not responding to the same and also, not assigning any valid reason for the same and further, not placing any material to hold that the plaintiff had fabricated the suit promissory note, as rightly argued

by the plaintiff's counsel, the Court should take adverse inference against the defendant. Accordingly, it is found that the Courts below have rightly taken an adverse inference against the defendant. No warrant of interference is called for with reference to the same.

8. As regards the case of the plaintiff, it is found that the plaintiff has examined himself as PW1, the scribe Tirupathi as PW2, one of the attestors of the suit promissory note Rajendran as PW2 and as regards the proof of assignment/made over, PWs4 & 5 have been examined. All of them have clearly deposed without any ambiguity or doubt about the passing of consideration under the promissory note to the defendant and in recognition of the same, the execution of the suit promissory note by the defendant in favour of P.M.Sundaram and further, the assignment has also been established by the plaintiff without any doubt. Therefore, from the evidence of PWs1 to 5, the plaintiff has established beyond reasonable doubt that the defendant had borrowed the suit amount and executed the suit promissory note in favour of the plaintiff. As the plaintiff has taken the valid assignment of the suit promissory note, it is found that he is entitled to recover the suit amount from the defendant.

9. The defendant has failed to establish that no consideration has passed on under the suit promissory note and the defence set out by him is found to be unacceptable and not established. It could be seen that the defendant has not discharged the burden placed upon him under Section 118 of the Negotiable Instrument Act. Per contra, the plaintiff, by placing acceptable oral and documentary evidence, has established his case.

10. The conduct of the defendant as discussed would only go to show that as he had received the amount under the suit promissory note, unable to resist the plaintiff's case, it is found that no acceptable proof is able to be placed by him in support of his defence.

11. The defendant's counsel, in support of his case, relied upon the following decisions reported in **2006 (3) CTC 730 (M.S.Narayana Menon @ Mani V. State of Kerala and another), 1999 (1) CTC 497 (Bharat Barrel V. Amn Chand Pyarelal), (2013) (4) CTC 545 (Chitrakala V. P.Mahesh & others) and 2007 INDLAW AP 747 (Somisetty Subbarao V. Mynampati**

Ramakrishna Rao). The Principles of Law enunciated in the same are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

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

Index : Yes/No
Internet: Yes/No
sms

15.02.2017

To

1. The Principal District Court, Namakkal.
2. The Sub Court, Rasipuram.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
S. A.No.825 of 2011
and
M.P.No.1 of 2011

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