

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.891 of 2011

Pattammal

.. Appellant/Plaintiff

Vs.

Aruldoss Kounder

.. Respondent/Defendant

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 12.02.2010 in A.S.No.33 of 2009 on the file of the Principal Sub-Court, Villupuram, against the judgment and decree dated 17.11.2008 in O.S.No.98 of 2006 on the file of the Principal District Munsif Court, Ulundurpet.

For appellant : Mr.T.Gandhi
For respondent : No appearance

JUDGMENT

The Second Appeal is filed by the unsuccessful plaintiff, against the judgment and decree dated 12.02.2010 in A.S.No.33 of 2009 on the file of the Principal Sub-Court, Villupuram, reversing the judgment and decree dated 17.11.2008 in O.S.No.98 of 2006 on the file of the Principal District Munsif Court, Ulundurpet.

2. It is the case of the plaintiff that the defendant had executed two promissory notes on 14.04.2003 for Rs.15,000/- and on 22.04.2003 for Rs.15,500/-, totalling Rs.30,500/- for repaying with interest at the rate of 12%. In spite of repeated demands and notice, the defendant failed to repay the amount. Since the defendant is an agriculturist, the plaintiff restricted the interest at 9%. Thus, the plaintiff has filed the suit for recovery of Rs.38,480/- and also for future interest.

3. It is the case of the defendant that he is not disputing the promissory notes executed by him and that he had repaid the amount on 19.12.2005 and receipt has also been issued by the plaintiff for the same. Therefore, the defendant is not liable to pay the suit amount and he prayed for dismissal of the suit.

4. On an analysis of the oral and documentary evidence, the trial Court decreed the suit with future interest at 6%. On appeal by the defendant, the first appellate Court reversed the findings of the trial Court and allowed the appeal. Challenging the same, the plaintiff is before this Court.

5. At the time of admission of the Second Appeal on 26.08.2011, this Court framed the following substantial question of law:

"Whether the lower appellate Court is right in holding that the respondent proved the discharge of amount borrowed under the promissory note, i.e. under Ex.B-2 "

6. Though the respondent/defendant had been served with notice and his name is also printed in the cause list, there is no representation for the respondent either in person or through counsel. Heard the learned counsel for the appellant/plaintiff and perused the materials available on record.

7. It is a matter pertaining to the money suit. It is admitted case that the defendant executed two promissory notes on 14.04.2003 and 22.04.2003, vide Exs.A-1 and A-2 for a sum of Rs.15,000/- and Rs.15,500/- respectively. As the amounts had not been paid, the plaintiff has caused lawyer's notice on 24.09.2005 stating that the amounts have to be paid with interest as agreed. The respondent/defendant has stated that the entire amount has been paid and the lawyer's notice dated 24.09.2005, has been refuted by the defendant by sending reply notice, for which, the plaintiff issued Ex.A-6 rejoinder on 09.10.2005. Admittedly, the document Ex.B-2, dated 19.12.2005 was filed, stating that the entire amount has already been paid. The trial Court granted the relief in favour of the plaintiff with future interest, holding that the defendant has not proved the discharge of the suit debit amount by means of Ex.B-2 discharge receipt. The first appellate Court allowed the First Appeal.

8. It is to be noted that the defendant has admitted that he has received the amounts from the plaintiff, vide two promissory notes mentioned supra. But however, he has also stated that the amounts have been repaid. A cursory glance of Exs.A-5, A-6 and B-2 would make it clear that the respondent herein (defendant) has stated that he has discharged the obligation by paying the amounts. In Ex.A-5 reply notice of the defendant, even though it has been undated, it has been mentioned that the entire amount had been paid. This reply notice is said to have been received by the plaintiff, for which, on 09.10.2005, the plaintiff filed detailed reply (rejoinder) Ex.A-6, in which, it has been clearly stated by the plaintiff that the so-called amounts said to have been repaid, is incorrect, and the records have been fabricated

in order to deprive the amounts due. It is to be noticed that if no reply is received from the defendant from the date of receipt of plaintiff's rejoinder Ex.A-6, dated 09.10.2005, appropriate action would have been initiated by the defendant in accordance with law. As the said amounts have not been paid, the suit has been filed by the plaintiff and ultimately, now it has come up to the Second Appeal stage. On a cursory glance of Ex.B-2 discharge receipt, it is clear that it is dated 19.12.2005. In the defendant's reply notice, undated / Ex.A-5, it has not been mentioned as to when the amounts have been repaid, even though it has been stated that the defendant has got a receipt with him. In Ex.A-6, rejoinder of the plaintiff, dated 09.10.2005, it has been categorically replied by the plaintiff that the demand notice, dated 24.09.2005 had been received by the defendant. That being the case, the amount should have been paid prior to 09.10.2005. The so-called discharge receipt Ex.B-2 is dated 19.12.2005, which had been prepared only for the purpose of the case, as it is dated subsequent to the rejoinder of the plaintiff's notice Ex.A-6, dated 09.10.2005. The first appellate Court committed error and that the burden is on the respondent/defendant to establish the said document, dated 19.12.2005 (Ex.B-2 receipt).

9. The trial Court is correct in holding that the respondent/defendant failed to prove the discharge of the amounts borrowed under the promissory notes, as the amounts could not have been paid on 19.12.2005, when the rejoinder itself issued by the plaintiff, is dated 09.10.2005. That apart, from the plaint, it is clear that the amounts borrowed totally is Rs.30,500/-, but the suit amount is Rs.38,480/-, whereas in Ex.B-2 discharge receipt, the total amount including interest is mentioned as Rs.59,780/-. Admittedly, Ex.B-2 discharge receipt was produced only at the time of trial. In any event, no amount could have been paid prior to the communication between the parties till October 2005 when the rejoinder was issued by the plaintiff on 09.10.2005 (Ex.A-6). Therefore, this Court is not inclined to believe Ex.B-2 receipt.

10. For the reasons stated supra, the substantial question of law is answered in favour of the appellant/plaintiff. The Second Appeal is allowed. No costs.

-s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

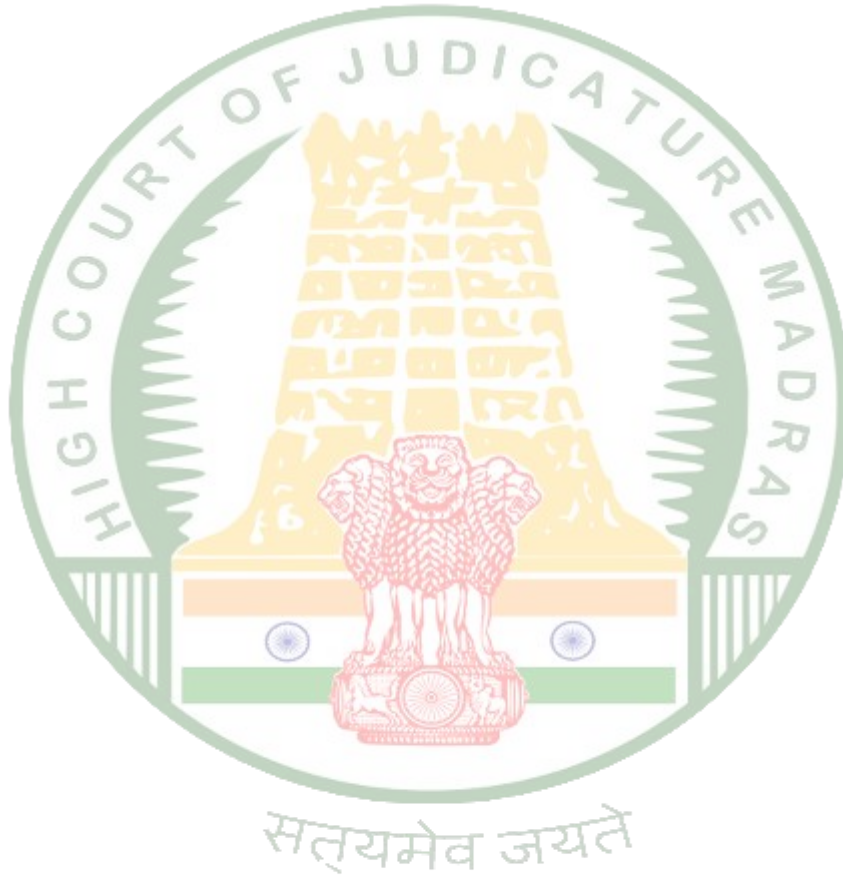
Copy to

1. The Principal Subordinate Judge, Villupuram.
2. The Principal District Munsif, Ulundurpet.

+1 CC to Mr. T. Gandhi, Advocate sr 17239

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