IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2017
PRONOUNCED ON : 09.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.330 of 2001

Palaniammal ... Appellant/2nd Defendant

Vs.

1. Muthusamy ..1st Respondent/Plaintiff
2. Pakiavathi
3. Prema @Shobana ... Respondents 2 & 3/Defendants 1 & 3

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.54/96 dated 27.11.1998, on the file of the Sub Court, Namakkal, confirming the judgment and decree in O.S.No. 829/1993 dated 29.01.96, on the file of the Principal District Munsif, Namakkal.

For Appellant : Mr.R.Jagadeesan

For 1st Respondent : No representation

For 2nd Respondent : No appearance

For 3rd Respondent : Notice dispensed with

JUDGMENT

This second appeal is directed against the judgment and decree dated 27.11.1998, passed in A.S.No.54/96, on the file of the Sub Court, Namakkal, confirming the judgment and decree dated 29.01.96, in O.S.No. 829/1993, on the file of the Principal District Munsif Court, Namakkal.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of money.

4. The case of the plaintiff, in brief, is that the first defendant and her brother Mathiazhagan had borrowed a sum of Rs.10,000/- from the plaintiff towards family expenses and business needs on 05.01.1991 and accordingly, executed a

promissory note in evidence thereof, promising to repay the amount with interest as recited in the promissory note and thereafter, despite several demands, the first defendant and her brother had not repaid the borrowed sum and the first defendant's brother Mathiazhagan died two months ago, leaving behind the defendants 2 and 3 as his legal representatives and hence, the defendants are liable to pay the amount to the plaintiff.

5. The case of the 2nd defendant, in brief, is that the suit is not maintainable either in law or on facts. The second defendant's daughter i.e., the first defendant and her son had borrowed a sum of Rs.10,000/- from the plaintiff on 05.06.1990, agreeing to pay the sum with interest and in evidence thereof, the plaintiff had obtained their signatures and LTI in blank promissory note and thereafter, on 16.04.92, the borrowers had repaid the same to the plaintiff, with interest and despite their requests to the plaintiff, to return back the signed blank promissory note, the plaintiff had been evading to return the same on some pretext or the other and thereafter, the second defendant's son had died on 26.09.93 and subsequent thereto, though the second defendant had been requesting the plaintiff to return back the signed blank promissory note, the plaintiff had not return the same on some reasons or the other. On the other hand, had filled up the blank promissory note to suit his convenience and laid the false suit and hence, the suit is not maintainable and liable to be dismissed.

6. In support of the plaintiff's case Pws 1 and 2 were examined and Ex.A1 has been marked. On the side of the second defendant DW1 has been examined, no documentary proof has been adduced.

7. On a consideration of the oral and documentary evidence adduced by the respective parties the Courts below were pleased to decree the suit as prayed for. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following the substantial question of law was formulated for consideration:

> In the absence of finding by the Courts below that defendant No.2 is in possession and enjoyment of any property of Mathiazhagan, can defendant No.2 be made personally liable for the decree amount?

9. The plaintiff has laid the suit for recovery of money based on a promissory note. According to the plaintiff, the first defendant and her brother Mathiazhagan had borrowed a sum of Rs.10,000/- from him and in evidence thereof, executed the suit promissory note promising to repay the same with interest, as recited in the promissory note and inasmuch as they failed to return the borrowed sum despite several requests, according to the plaintiff, he had been necessitated to lay the suit for recovery of money. It is stated that the deceased Mathiazhagan had died leaving behind the defendants 2 and 3 as his legal representatives and as such, the legal representatives being the beneficiaries of the borrowed sum, are liable to pay the same and hence the suit.

10. According to the second defendant, who only is contesting the suit, her daughter namely the first defendant and her son, the deceased Mathiazhagan had borrowed a sum of Rs.10,000/- on 05.06.1990 and with reference to the same, the plaintiff had obtained a blank promissory note from them containing their signature and LTI and thereafter, they discharged the borrowed sum with interest and despite their requests to return back the signed blank promissory note, the plaintiff had been evading to return the same and even after the death of her son, though the second defendant had been requesting the plaintiff to return the signed blank promissory note, the plaintiff had failed to return the same and instead filled up the same and laid the false suit and hence, the suit is liable to be dismissed.

11. As seen from the defence raised by the second defendant in the suit, it is seen that the second defendant has admitted the borrowal of the sum of Rs.10,000/- from the plaintiff. However, would state that the first defendant and her son had borrowed the said sum from the plaintiff on 05.06.1990 and in evidence thereof, the plaintiff had taken a signed blank promissory note from them and further according to the second defendant, the borrowers had discharged the same with interest. However, as rightly found by the Courts below, there is no material placed worthwhile acceptance, on behalf of the second defendant that the first defendant and the deceased Mathiazhagan had discharged the borrowed sum from the plaintiff as putforth in the written statement. If really they had borrowed the above sum from the plaintiff, on 05.06.1990 and in evidence thereof, the plaintiff had taken the signed blank promissory note from the borrowers, as rightly found by the Courts below, on the discharge of the same, the borrowers would have endeavoured to retrieve the signed blank promissory note from the plaintiff. The plea of the second defendant that despite several requests, the plaintiff did not return the blank signed promissory note to them as such cannot be accepted. Similarly, the plea of the

second defendant that her requests to return the signed blank promissory note to the plaintiff after the death of her son was also not acceded to by the plaintiff also cannot be accepted. If really the plaintiff had obtained the blank promissory note, as putforth by the second defendant, if the plaintiff had been evading to return the same, either the borrowers or the second defendant would have endeavoured to retrieve the same, in the manner known to law. On the other hand, it is found that they did not move their little finger to get the signed blank promissory note from the plaintiff as pleaded by them. All this would only go to show that inasmuch as the plaintiff did not obtain any blank promissory note from the borrowers and further as the borrowers did not discharge the debt, as pleaded by the second defendant, it is seen that the borrowers nor the second defendant had evinced interest or endeavoured to retrieve the signed blank promissory note from the plaintiff as now pleaded. On the other hand, it is seen from the evidence of the plaintiff, examined as PW1 and the attestor of the suit promissory note, examined as PW2, that the borrowers had borrowed the sum of Rs.10,000/- from the plaintiff on 05.01.1991 and accordingly, in evidence thereof had executed the suit promissory note marked as Ex.A1, agreeing to repay the same with interest as recited therein. In such view of the matter, considering the false defence projected by the second defendant as above stated, the evidence of the PWs1 and 2 being found to be convincing, trustworthy and accordingly, the Courts below have placed reliance upon their testimony and further finding that the second defendant had failed to prove her plea and accordingly accepted the plaintiff's case and in such view of the matter, it is found that that there is no material worthwhile on record to dislodge the well considered findings of the Courts below in accepting the plaintiff's case.

12. A reading of the judgment and decree of the Courts below would go to show that the Courts below have passed a personal decree as against the defendants 2 and 3 who are impleaded as parties to the suit, as the legal representatives of the deceased Mathiazhagan. Therefore, as rightly argued, the Courts below should not have passed a personal decree against the defendants 2 and 3. To that extent, it could be seen that the judgment and decree of the Courts below are liable to be set-aside. At the most, the defendants 2and 3 would be liable to pay the suit amount, only to the extent of the property of the deceased mathiazhagan, which has come to their hands. In view of the above position, the substantial question of law formulated in this second appeal is accordingly answered.

13. In the light of the above discussions, the judgment and decree of the Courts below are modified to the extent that the defendants 2 and 3 are liable to pay the suit amount only to the

extent of the property of the deceased Mathiazhagan, which has come to their hands and not fully disposed of and in other aspects, the judgment and decree of the Courts below are confirmed and the second appeal is accordingly disposed of. No costs. Consequently, connected miscellaneous petition, if any is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge, Namakkal.
2. The Additional District Munsif, Namakkal.

Copy to
The Section officer
VR Section,High Court, Madras.(2 copies)

+1 CC to Mr.P. Jagadeesan, Advocate sr 79417.

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VD(CO)
SP(09/02/2018)