

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.331 of 2001

Palaniammal ... Appellant/4th Defendant

Vs.

1. Subramaniam Finance,
(Registered Partnership Firm),
Rep. by its Managing Partner,
Subramaniam,
130, Main Road, Nammal Taluk. ...1st Respondent/Plaintiff

2. M.Ramesh

3. Shoba @ Prema ... Respondents 2 & 3/Defendants 2 & 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 is 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 of 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 defendants 1 and 2 borrowed a sum of Rs.5,000/- from the plaintiff on 30.08.1990, in connection with their business purpose, agreeing to repay same with interest and accordingly, executed the promissory note in evidence thereof and thereafter, they had paid the sum of Rs.850/- towards the principal and interest and not paid the remaining amount, despite several requests and the first defendant had died pending suit, leaving the defendants 3 and 4 as his legal representatives and the defendants 3 and 4 are enjoying the properties left behind by the deceased first defendant and hence, they are liable to discharge the debt dues of the deceased first defendant from and out of the deceased property lying in their hands and hence the suit.

5. The case of the fourth defendant, in brief, is that it is false to state that the defendants 1 and 2 borrowed a sum of Rs.5,000/- from the plaintiff and executed a suit promissory note on 30.08.90. The defendants have received a sum Rs.5,000/- from the plaintiff and discharged the same and at the time of the lending of the said amount, the plaintiff had obtained their signature and LTI in blank promissory note as per the practice and despite the discharge of the amount, had failed to return back the signed blank promissory note given by the defendants and thereafter, with a view to obtain unlawful enrichment, the plaintiff had filled up the blank promissory note and laid the false suit and hence, the plaintiff is not entitled to recover the amount from the defendants and the suit is liable to be dismissed.

6. In support of the plaintiff's case PW 1 has been examined and Exs.A1 and A2 were marked. On the side of the fourth 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 in the matter, the Courts below were pleased to accept the plaintiff's case and accordingly, decreed 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 substantial question of law was formulated for consideration:

In the absence of a finding by the Courts below that defendant No.4 is in possession and enjoyment of any property of the deceased/defendant No.1, can defendant No.4

be made personally liable for the decree amount?

9. The suit has been laid by the plaintiff for recovery of money alleging that the defendants 1 and 2 has received a sum of Rs.5,000/- from him on 30.08.1990 towards business purposes and executed the suit promissory note, agreeing to repay the same with interest as recited therein and thereafter, paid only a sum of Rs.850/- towards principal and interest and failed to pay the remaining amount, despite several requests and hence the suit.

10. Now, according to the fourth defendant, the defendants have not received the suit amount as put forth by the plaintiff on 30.08.90 and on the other hand, they had borrowed a sum of Rs.5,000/- from the plaintiff concern earlier and discharged the said debt. However, the plaintiff had failed to return back the signed blank promissory note obtained at the time of the said borrowal, despite several requests. Thereafter, filled up the same to suit his convenience and laid the false suit and hence, the suit is liable to be dismissed.

11. In the light of the above said defence, it is seen that, it is for the fourth defendant who has to establish the discharge as pleaded by her. As defended by her, there is no material to hold that prior to 30.08.90, the defendants 1 and 2 had borrowed any amount from the plaintiff and in such view of the matter, her plea that the defendants 1 and 2 had borrowed a sum of Rs.5,000/- from the plaintiff prior to 30.08.90 cannot be believed and accepted. Similarly, her plea that the said borrowal has been discharged, is also not borne out by any material and therefore, the plea of discharge also found to be untenable. It is also found that the fourth defendant also failed to establish that the plaintiff had obtained the signed blank promissory note at the time of the alleged borrowal as put forth by her. If really, as put forth by the fourth defendant, the borrowers had repaid the borrowed sum, they would have endeavoured to get back the signed blank promissory note given in favour of the plaintiff. However, till date no steps have been taken by them to retrieve the same, this would only go to show that inasmuch as, their above plea is false and accordingly, it is seen that the defendants have not taken any steps as per law, to retrieve the alleged signed blank promissory note said to have been obtained by the plaintiff, at the time of the borrowal as put forth by her.

12. On the other hand, it is found from the evidence of PW1, who is also the scribe of the promissory note, marked as Ex.A1, the defendants 1 and 2 had borrowed the suit amount from the plaintiff and accordingly, in evidence thereof had executed the suit promissory note agreeing to repay the same with interest, as recited thereunder and thereafter, had paid only

Rs.850/- which could be evidenced from Ex.A2, the ledger and subsequent thereto, not paid any amount towards the borrowed sum, accordingly, it is found that the plaintiff had been necessitated to lay the suit for recovery of money due to him on the suit promissory note.

13. In this connection, the evidence of the plaintiff seems acceptable as determined by the Courts below. Inasmuch as the fourth defendant has pleaded only discharge towards the borrowed sum and on the failure of the proof of the same, it is found that the Courts below have rightly accepted the plaintiff's case and further, it is found that the fourth defendant would not have any direct knowledge of the suit transaction as seen from the evidence tendered by her and therefore, it is seen that the Courts below have rightly accepted the plaintiff's case on the basis of the proper reasonings and conclusions and therefore, the same are not liable to be interfered with in any manner. It is also found that the Courts below have passed the judgment and decree against the legal representatives of the deceased first defendant, only in respect of the property lying in their hands, inherited by them from the deceased first defendant and in such view of the matter, the substantial question of law formulated in this second appeal is answered against the appellant/fourth defendant.

14. In conclusion the judgment and decree of the Courts below are confirmed and accordingly, the second appeal is dismissed. 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 Principal District Munsif, Namakkal.

Copy to

The Section officer

VR Section, High Court, Madras.

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

S. A.No. 331 of 2001

VD(CO)

SP(09/02/2018)