

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.10.2017
PRONOUNCED ON : 31.10.2017
CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.469 of 2001

B.John Charles ... Appellant/Plaintiff

Vs.

M.Devasagayam ... Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.07.2000 made in A.S.No.93 of 1999, on the file of Principal District Court, Coimbatore, reversing the judgment and decree dated 04.12.1998 made in O.S.No.431 of 1995, on the file of Subordinate Court, Coimbatore.

For Appellant : Ms.A.Soundharya for
M/s. T.Selvakumar

For Respondent : Mr.A.J.Vijayaraghavan

JUDGMENT

This Second Appeal has been directed against the judgment and decree dated 23.07.2000 passed in A.S.No.93 of 1999, on the file of Principal District Court, Coimbatore, reversing the judgment and decree dated 04.12.1998, passed in O.S.No.431 of 1995 on the file of Subordinate Court, Coimbatore.

2. The parties are referred to as per their ranking in the Trial Court.

3. Suit for recovery of money.

4. The case of the plaintiff in brief is that the defendant borrowed a sum of Rs.45,000/- from the plaintiff on 23.03.1994 and in evidence, thereof, executed a promissory note on the same day, agreeing to repay the sum borrowed with interest at 36% per annum on demand and despite several demands, inasmuch as the defendant failed to pay the amount either towards principal or

interest, according to the plaintiff, he has been necessitated to lay the suit for recovery of money.

5. The case of the defendant in brief is that the suit is not maintainable either in law or on facts and the plaintiff has materially altered the date of the suit promissory note from 23.03.1991 to 23.03.1994 and the same is void and invalid and further, according to the defendant, the plaintiff and his father were doing money lending business and accordingly, at the time of the borrowal of the amount by the defendant from them, they used to obtain signature of the defendant, on the duly stamped printed forms, with only the amount mentioned in numbers and the date below his signature and according to the defendant, he borrowed Rs. 75,000/- from the company run by the plaintiff and his father, on 05.09.1982 with simple interest at 24% per annum and signed blank printed promissory note, with only the amount in numbers and sign with date below it and at the time of renewal of the same on 05.08.1985, the company charged higher rate of interest and obtained another stamped blank promissory note for Rs.1,30,000/- in the above manner and at the time of renewal, the previous promissory note for Rs.75,000/- had not been returned and when the defendant sold his property on 23.03.1988, the plaintiff and his father received a sum of Rs.2,00,000/- pending final settlement and further, they also demanded 24% compound interest per annum and accordingly, obtained his signature in the blank printed promissory note for a sum of Rs.45,000/- in the above manner and did not return the promissory note executed for Rs.1,30,000/- and the above said promissory note for Rs.45,000/- was cancelled on 23.3.91 and on the same date, the defendant obtained two other blank promissory notes, one for Rs.45,000/- and one for Rs.40,000/- both towards the principal and accrued interest and later on, the defendant sold another portion of his property and completely discharged the loan amount on 09.04.92. However, the plaintiff and his father did not return the promissory notes executed by the defendant and they being the relatives of the defendant, the defendant also reposed confidence on them and did not insist them to return the promissory notes. Subsequently, as the plaintiff and his father exerted pressure on the defendant and employed katta panchayat, the defendant's wife was constrained to give police complaint on 30.01.93, followed by the written complaint on 31.1.93, the defendant also made a complaint and the police enquired the matter and directed the parties to settle the matter through Court. Now, the plaintiff has filled up the blank promissory note for a sum of Rs.45,000/- executed by the defendant earlier, changing the date from 23.3.91 to 23.3.94 to save the limitation and hence, according to the defendant, he did not borrow a sum of Rs.45,000/- from the plaintiff on 23.3.94 and the suit promissory note is not supported by the consideration mentioned therein and there is no cause of action for the suit and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case PWS 1 to 3 were examined and Ex.A1 has been marked. On the side of the defendant DWs 1 and 2 were examined and Exs.B1 to B11 were examined. Exs.X1 to X3 were also marked.

7. On a consideration of the oral and documentary evidence placed by the parties, the Trial Court was pleased to decree the suit as prayed for. The defendant preferred the first appeal and the First Appellate Court, on an appreciation of the materials placed was pleased to set aside the judgment and decree of the Trial Court and allowed the appeal preferred by the defendant, resultantly, dismissed the suit laid by the plaintiff. Impugning the same, the second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

1. Whether the learned Principal District Judge was right in accepting the report of DW2, the fingerprint expert under Ex.X3 when he had not examined the suit promissory note as per the defence made to him by the order of the learned trial Judge?

2. Whether the learned Principal District Judge right in accepting the expert evidence as a sole criteria for rejecting the cogent and corroborative evidence of Pws 2 and 3 contrary to the well settled principle of evidence?

9. The suit has been laid by the plaintiff for recovery of money based on a promissory note. According to the plaintiff, the defendant borrowed a sum of Rs.45,000/- from him on 23.3.1994 and in evidence thereof executed the suit promissory note marked as Ex.A1, agreeing to repay the same on demand with interest and as the defendant has failed to pay the same, despite repeated requests, according to the plaintiff, he has been necessitated to lay the suit for recovery of the amount.

10. As seen from the pleadings set out in the written statement, it is found that the defendant as such, has not disputed the signature found in the promissory notes marked as Ex.A1 and what he would state is that the plaintiff has merely altered the date of the suit promissory note from 23.3.91 to 23.3.94 to save the point of limitation and thus, according to the defendant, on 23.3.94 he has not borrowed a sum of Rs.45,000/- from the plaintiff and executed the suit promissory note and hence, the suit is liable to be dismissed. Further, as seen from the pleadings set out in the written statement, it is noted that it has been admitted by the defendant that he had

borrowed amounts from the finance company run by the plaintiff and his father for a sum of Rs.75,000/- on 05.9.82 and it is also noted that in respect of the said borrowal, as the defendant had not paid the amount either towards the principal or interest, it is seen that the defendant had renewed the promissory note executed by him now and then and even, as per the case of the defendant, at one stage of the matter i.e. on 23.3.91, he has signed two blank promissory notes, one for Rs.45,000/- and another for a sum of Rs.40,000/- towards the pending principal amount and interest. Therefore, even as per the case of the defendant, he has admitted the execution of the promissory note for a sum of Rs.45,000/- on 23.3.91. Thus, it is seen that as per the case of the defendant, only towards the earlier borrowal made by him, it is stated that he has executed two promissory notes, as above stated. No doubt, according to the defendant, the same were executed only on 23.3.91. It is pleaded by the defendant that by alienating his property, he has discharged the loan amount borrowed by him from the plaintiff and his father and it is seen that, according to him, he had completely discharged the loan amount on 9.4.92 and if that be so and as a prudent person, the defendant would have endeavoured to get back the blank promissory notes said to have been executed by him, in favour of the plaintiff and his father earlier, as narrated in the written statement. However, the defendant would only state that he had been repeatedly renewing the promissory note as requested by the plaintiff and his father. According to him, he had not obtained the earlier blank promissory notes executed by him, as according to him, they had not been returned to him by the plaintiff and his father. However, the above case of the defendant cannot be accepted straight away. When, even as per the defendant's case, he has not discharged the entire amount borrowed by him, it could be seen that the plaintiff or his father, assuming that the case of the defendant is true, would not have chosen to return the earlier promissory note executed by him in their favour. However, when it is pleaded by the defendant that subsequently, he had discharged the entire loan amount on 9.4.92, it is seen that he should have taken all the endeavours to get back the earlier promissory notes said to have been executed by him, in favour of the plaintiff and his father. However, his defence that on account of the trust reposed on them, he has not chosen to get back the earlier promissory note executed by him as such cannot be rightly accepted.

11. That apart, according to the defendant, as the plaintiff and his father, further exerted pressure on him to pay further amount, it is pleaded that complaints had been made to police against them and the police had enquired the matter and directed the parties to resolve their problem by approaching the Civil Court. It is stated that the police complaint had been made on 31.1.93, therefore, according to the defendant, on the basis of the above said defence taken by him, cumulatively, it is pleaded that as there is no good relationship between the plaintiff and

the defendant after the lodging of the police complaint i.e. On 31.1.93, there would have been no opportunity to the defendant to again make borrowal on 23.3.94 as put forth by the plaintiff and plaintiff would also not have advanced Rs.45,000/- to him on 23.3.94, as pleaded by the plaintiff and so, according to the defendant, taking into consideration of the above facts, it is his defence that the plaintiff taking advantage of the blank promissory note executed by him on 23.3.91 for a sum of Rs.45,000/- had altered the date from 23.3.91 to 23.3.94 to save the point of limitation and hence, according to the defendant, there is material alteration in the suit promissory note and hence, as such the defendant did not borrow the sum of Rs.45,000/- from the plaintiff on 23.3.94 and executed the suit promissory note on the said date. It is his case that the suit laid by the plaintiff, on the basis of the promissory note dated 23.3.94, is without cause of action and hence, liable to be dismissed.

12. As adverted above, it is not the case of the defendant that his signature is not found in the promissory note. It is admitted that his signature is available in the suit promissory note. However, only pleaded, the date has been altered i.e, the year has been altered from 1991 to 1994. To evidence that the defendant had borrowed the suit amount from the plaintiff and executed the suit promissory note in favour of the plaintiff, the plaintiff has chosen to examine PWs 2 and 3, the attestors to the suit promissory note and it is found that both PWs 2 and 3, in their evidence have clearly deposed that the defendant on 23.03.1994 borrowed a sum of Rs.45,000/- from the plaintiff and executed the suit promissory note and that they had witnessed the said transaction while they had visited the plaintiff's house at that point of time and accordingly, they had also attested the suit promissory note for witnessing the said transaction and that their signature is available in the suit promissory note Ex.A1. It is found that as rightly determined by the trial Court, despite cross-examination of PWs 1 and 3, nothing has been extracted from them to disbelieve their version given in support of the plaintiff's case. Now, it is found that PW3 is the relative of the plaintiff and PW2 is a close friend of the plaintiff, however that alone would not render their evidence unacceptable and unreliable, when their evidence is otherwise found to be sound, cogent and trust worthy. Therefore, as rightly put forth by the plaintiff's counsel, normally the plaintiff, advancing money would endeavour to call for witness who are acquainted with him and accordingly, he had chosen to seek the attestation of PWs 2 and 3, who are known to him, who were present at that time and accordingly, it is found that PWs 2 and 3 had witnessed the suit transaction on the relevant date and it is thus found that they had attested the suit promissory note and accordingly, deposed the said facts in favour of the plaintiff. In such view of the matter, it would not be proper to brush aside their evidence merely on the footing that they are known/related to the plaintiff, when it is

found that their evidence is otherwise convincing and acceptable. As earlier noted, it is not the case of the defendant that his signature is not found in Ex.A1. However, according to the defendant, he has executed the suit promissory note only on 23.01.1991, in continuation of the earlier borrowal received by him from the plaintiff and his father on 05.09.1982. However, as regards the above pleadings of the defendant, we have no acceptable and reliable evidence, other than ipse dixit evidence of the defendant. In this connection, the documents placed by the defendant and marked as EXs.B1 to B11 also would not establish his above version that he had executed promissory note only on 23.03.1991 in continuation of the earlier borrowal received by him from the plaintiff and his father on 05.09.1982. In this connection, the two entries regarding the payment of interest marked on the side of the defendant as Exs.B4 and B5 and even a cursory reference to the same, would go to show that there is no indication contained therein that the defendant had executed the blank promissory note only on 23.03.1991 in continuation of the earlier borrowal received by him on 05.08.1982 as putforth by him.

13. Be that as it may, now according to the defendant, following the lodging of the police complaint on 31.01.1993, as the relationship between the parties had got strained, there was no possibility for the plaintiff, advancing the suit amount to the defendant on 23.03.1994. However, the above case of the defendant gets belied on the entries found in Exs.B4 and B5. There is a reference that the interest had been calculated even after the date of lodging of the complaint by the defendant and this would only go to show that the parties had endeavoured to sort out their difference by calculating the amount pending settlement between them and accordingly, had chosen to calculate the interest even after the lodging of the police complaint. Therefore, the case of the defendant that on account of police complaint, the relationship between the parties got strained and therefore there would have been no scope or possibility of the plaintiff to advance the sum of Rs.45,000/- to the defendant on 23.03.1994, as such cannot be readily accepted.

14. In any event, it is found that inasmuch as the defendant has admitted his signature in the suit promissory note and the only plea taken by him is that the suit promissory note is altered materially, as above stated and when the plaintiff has established through PWs 2 and 3 that only on 23.03.1994, the defendant had borrowed the suit amount and executed suit promissory note in evidence thereof, it is found that it is for the defendant to establish that the suit promissory notes has been materially altered by the plaintiff to save the point of limitation from 23.03.1991 to 23.03.1994. In this connection, it is seen that at the instance of the defendant the suit promissory note was subjected to the examination of the expert examined as DW2 and DW2 after the examination of the suit promissory note, is found to have adduced evidence by submitting

his report marked as Ex.X3 and he has stated that in the year found in Ex.A1, the digit one has been altered as digit 4. In other words, he has stated that the year has been altered as 1994 from 1991. Based upon the above said report of DW2 and his evidence, it is the contention of the defendant's counsel that the suit promissory note has been materially altered and the plaintiff is not entitled to obtain the relief sought for. On the other hand, it is contended by the counsel for plaintiff that the expert has not chosen to examine the document in question, as per the warrant issued to him and in such view of the matter, his report or his evidence could not be relied upon and hence the plaintiff's case should be accepted.

15. It is seen that it is not in dispute that DW2 had been directed by the Court to examine the variation in ink if any, with reference to the digit 4, in the year of the suit promissory note and the said fact has been admitted by DW2 in his evidence. In this connection, DW2 has admitted as per the directions of this Court, he has to examine the variation in ink, with reference to the digit 4, found in the year of the suit promissory note. Further, he has also admitted that as regards the above directions he has not examined the document in question using the chemical process. Further, according to him, the purpose of chemical examination is to understand and ensure, whether there is ink variation in the concerned document. Further, he has also admitted that for ascertaining the correct position as to whether there is variation in ink, in the concerned document, the proper test would be only chemical process. However, he would deny that Ex.X3 is not a correct report. He has also admitted that in Ex.X3, he has not stated that whether there is ink variation in the digit 4 of the year 1994 specifically, as directed by the Court and he has also admitted that the style of the digit would vary depending upon the pressure given by the person writing the digit and he has also admitted that without conducting the test through chemical process, it is correct to state that the ink variation could not be determined and admitted that he has not stated in Ex.X3 that the digit 4 has been altered, on account of the writing of the same using different pens. During the re-examination he would state that he has not resorted to examine the document in question through chemical process, as he thought that by resorting to the same, the document in question would get destroyed. In the light of the above admission of DW2, it is found that when he had been directed to study about the variation of ink in the digit 4, in the year mentioned in the suit promissory note and when he has not endeavoured to do the same through chemical process and when he has admitted that only through chemical process the said examination could be completed, correctly studied and determined, his evidence that without resorting to the chemical process examination, he had come to the conclusion that there is an alteration of the digit 1 as 4 as such cannot be accepted. If according to the expert, the chemical process examination if done, would have destroyed

the document, as rightly contended, he should have reported the same to the Court and endeavoured to get necessary directions from the Court with reference to the same. When he has been directed by the Court only to state the ink variation of the year found in suit promissory note and this has not been done by the best method and the only proper method namely the chemical process, his evidence that there is alteration of digit 1 as 4, based on the ordinary examination as such cannot be accepted and in such view of the matter, as rightly contended by the plaintiff's counsel the report of DW2 marked as Ex.X3 is unworthy of acceptance and as rightly argued, the opinion of DW2, with reference to the digit or numeral cannot be rightly accepted as that of his opinion as to the handwriting and therefore, it is seen that the evidence of DW2 cannot be accepted.

16. In view of the above said facts to hold that digit 1 has been altered as 4 in the year mentioned in the suit promissory notes, when the above said conclusion had not been derived by DW2 based upon the proper examination of the document scientifically as required to be done and when only through scientific chemical process the best result could be obtained and on the failure of DW2 to resort to the said examination, it is seen that his report cannot be accepted and on account of the above said intrinsic loop holes and defects, neither his report marked as Ex.X3 nor his testimony could be relied upon safely to uphold the defence version. Excepting the evidence of DW2 and the report Ex.X3, it is found that there is no material placed on the part of the defendant to hold that the suit promissory note has been materially altered by the plaintiff from 23.01.1991 to 23.01.1994. When it has been admitted by the plaintiff that his signature is available in Ex.A1 and when the defendant has failed to establish his version as to the material alteration in the suit promissory note as pleaded by him and on the other hand, the plaintiff has established that the defendant had executed the suit promissory note only on 23.01.1994, for the borrowal of Rs.45,000/- from him on the said date through PWs 2 and 3, it is found that the defendant has failed to discharge the onus resting upon him that the suit promissory note is bad for support of consideration mentioned therein and therefore, it is seen that the first appellate court has, without proper analysis of the matter, erred in dislodging the acceptable reasonings and conclusions of the trial Court for upholding the plaintiff's case.

17. In the light of the above discussions, it is seen that the first appellate court is not right in accepting the report of DW2 marked as Ex.X3, when DW2 has admittedly not examined the suit promissory note as per the reference made to him by the Trial Court and further the first appellate court has also erred in accepting the evidence of DW2, as the sole evidence for rejecting the cogent and corroborative evidence of PWs 2 and 3 and in this view of the matter, the substantial questions of law

formulated in the second appeal are answered in favour of the plaintiff and against the defendant.

18. The counsel for the plaintiff in support of her submission placed reliance upon the decision reported in 2003 - 3 - LW.649 (1. Palaniammal and 2 others Vs. Palaniswami and 4 others) and 2002 - 4 - L.W. 252 (Marappa Gounder and 5 others Vs. Kandasamy). The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

19. In conclusion, the judgment and decree dated 23.07.2000 passed in A.S.No.93 of 1999 on the file of Principal District Court, Coimbatore are set aside and the judgment and decree dated 04.12.1998 made in O.S.No.431 of 1995 on the file of Subordinate Court, Coimbatore are confirmed and accordingly the second appeal is allowed with costs. Consequently, connected miscellaneous petitions, if any is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Court, Coimbatore,
2. The Subordinate Court, Coimbatore.
3. The Section Officer, VR Section,
High Court, Madras. (2copies)

+1cc to Mr.A.S.Vijayaragavan, Advocate Sr.No.77800

Judgment in

S. A.No. 469 of 2001

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