

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2017

PRONOUNCED ON : 02.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.616 of 2001

H.Santhanam ... Appellant /Defendant

Vs.

S.Sampathkumar ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 24.01.2001 and made in A.S.No.94/99 on the file of the learned IV Additional City Civil Judge, Chennai, confirming the judgment and decree dated 29.01.1999 and made in OS.No.4343 of 1994 on the file of VIII Assistant City Civil Judge, Chennai.

For Appellant : Ms.C.Jayachitra for
M/s.T.Selvakumar

For Respondent : Mr.N.Sankara vadivel

JUDGMENT

This second appeal is directed against the judgment and decree dated 24.01.2001 passed in A.S.No.94/99 on the file of the IV Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 29.01.1999 passed in OS.No.4343 of 1994 on the file of VIII Assistant Judge, City Civil Court, Chennai.

2. The 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 defendant had borrowed a sum of Rs.40,000/- from him, on 16.7.1989 and executed two separate promissory notes for Rs.20,000/- each at

Chengalpattu, undertaking to repay the borrowed sum together with interest at the rate of 5% per annum, on demand, either to the plaintiff or his order. Despite repeated demands, the defendant has failed to pay any amount either towards principal or interest and at the time of borrowal, the defendant executed two promissory notes on the undertaking that a sum of Rs.20,000/- together with interest will be settled at the first instance and thereby, discharge one promissory note for Rs.20,000/- completely and that arrangement was agreed upon between the parties for the benefit of the defendant to discharge the loan easily. Towards the principal amount and interest, a sum of Rs.46,000/- was due and as the defendant failed to repay the amount, the plaintiff issued a notice through his Advocate, calling upon the defendant to pay the amount and to the same, a reply containing false allegations has been sent and hence, the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant in brief is that the suit is not maintainable either in law or on facts and it is false to state that the defendant borrowed a sum of Rs.40,000/- from the plaintiff, on 16.07.1989 and executed two separate promissory notes for Rs.20,000/- each at Chengalpattu, undertaking to repay the sum at the rate of interest at 5% per annum, on demand either to the plaintiff or his order and the defendant failed to pay the amount, despite repeated requests on the part of the plaintiff and that the above arrangement of the execution of two promissory notes was made for the benefit of the defendant is false and it is false to state that the defendant is due to pay a sum of Rs.46,000/- towards principal and interest. The defendant owes no money to the plaintiff, as the promissory notes were obtained from him on 16.07.1989 under duress, threat, coercion and using criminal intimidation, without passing any consideration on the date of alleged execution of the said promissory notes. In the Advocate notice dated 06.07.1992, the plaintiff has stated that the defendant has admitted his liability in the agreement dated 28.07.1989, but cleverly suppressed the background of the execution of the said agreement and the subsequent developments thereof and with regard to the aforesaid agreement/undertaking dated 28.07.1989, the defendant preferred the suit in O.S. No.9485/1989, on the file of the City Civil Court, seeking for the return of the alleged documents and promissory notes obtained under coercion and thereafter, on the compromise entered into between the parties, the suit was withdrawn and the alleged agreement was also cancelled and in the agreement dated 28.07.1989, the name of the plaintiff is found in the first place in the list of the creditors and the plaintiff, without complying the terms of the compromise, failed to return the promissory notes and hence, the defendant was constrained to send the Advocate notice dated 09.01.1990, which

on the plaintiff evading to receive the same, was sent by certificate of posting and hence, the present suit laid by the plaintiff for a false claim, is liable to be dismissed.

6. In support of the plaintiff's case P.W. 1 has been examined and Exs.A1 to A6 were marked. On the side of the defendant D.W.1 has been examined and Exs. B1 to B26 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties, the courts below was pleased to accept the case of the plaintiff and accordingly, decreed the suit in favour of the plaintiff 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 questions of law were formulated for consideration.

1. Whether the courts below were right in ignoring the admission of D.W.1 in his evidence as to the validity of Ex.B1 and his admission in Ex.B3 reply notice to decree the suit?
2. Whether the suit is not barred by limitation?

9. The suit has been laid by the plaintiff against the defendant for recovery of money, on the basis of the suit promissory notes. According to the plaintiff, the defendant had borrowed a sum of Rs.40,000/- from him, on 16.07.1989 and executed two promissory notes for Rs.20,000/- each marked as Exs.A1 and A2, undertaking to repay the borrowed sum with interest on demand. Inasmuch as the defendant failed to repay the borrowed sum as promised, despite several requests and also the issuance of the legal notice and on the other hand, as the defendant had set out a false case in the reply notice sent, according to the plaintiff, he has been necessitated to lay the suit for recovery of money.

10. Per contra, it is the defence of the defendant that the suit promissory notes projected by the plaintiff had been obtained from him, by way of exercising duress, threat, coercion and criminal intimidation on 16.07.1989, without payment of any consideration thereunder and the plaintiff had suppressed about the agreement/undertaking dated 28.07.1989, which had come into existence between the parties and as regards the above said agreement/undertaking dated 28.07.1989, the defendant has preferred the suit in O.S.No.9485/1989, for a direction to the creditors to return the documents and promissory notes obtained under coercion and following the compromise entered into between the parties, the agreement was cancelled and the suit was

withdrawn and contrary to the compromise entered into, the plaintiff had failed to return the promissory notes and on the other hand, laid a false suit and hence, the suit is liable to be dismissed.

11. As seen from the pleadings set out in the written statement, it is seen that according to the defendant in the written statement, the suit promissory notes were obtained from him on 16.07.1989, under duress, threat, coercion and criminal intimidation. Whereas, the defendant examined as DW1, during the course of his evidence has stated that using force and threat, jointly, Exs.A1 and A2 promissory notes were taken from him, by the plaintiff on 01.09.1989 and by compelling him, 19 promissory notes were obtained on 01.09.1989 and the plaintiff by the above said methods, obtained the promissory notes from him antedating the promissory notes as 16.07.1989 and as per the compromise entered into between the parties the plaintiff and the other creditors are bound to return the promissory notes obtained from him using compulsion and duress on 01.09.1989. Therefore, it is found as rightly determined by the Courts below, the defendant has set out a new defence, in the course of his evidence, contending that the plaintiff had obtained promissory notes from him using force and coercion only on 01.09.1989, whereas, in the written statement, according to him, the promissory notes involved in the suit were obtained on 16.07.1989, by the plaintiff using threat and coercion. It is not the case of the defendant in the written statement that the plaintiff had by obtaining promissory notes using force and coercion on 01.09.1989, antedated them as 16.7.1989, therefore, it is seen that as found by the Courts below, a new defence has been projected for the first time by the defendant during the course of his evidence.

12. According to the defendant, in respect of the certain mutual benefit fund run by him, for the amounts due to various persons, the said persons including the plaintiff, by using force and threat had obtained the promissory notes from him without any consideration passing thereunder. However, as regards the above defence set out by the defendant, there is no material worthwhile acceptance placed to hold that the defendant was running mutual benefit fund legally as pleaded by him. That apart, it has not been established in particular, that the plaintiff was a member/subscriber of the above said mutual benefit fund operated by the defendant and the defendant was due any sum, to the plaintiff with reference to such transactions. Though, the defendant during the course of chief examination would state that the plaintiff was the member of the mutual benefit fund, during the course of cross-examination has admitted that there is no proof to show that any amount had been

advanced to the plaintiff from the mutual benefit fund and he is not aware as to what amount was deposited by the plaintiff in the mutual benefit fund and how much was refunded to the plaintiff in connection with the same. It is therefore found that the plea of the defendant, in connection with the mutual benefit fund run by him, as certain amounts had become due to various persons, the said persons including the plaintiff had obtained the promissory notes from him using force and compulsion on 01.09.1989 as such cannot be accepted without any materials in support of the same.

13. It is mainly contended by the defendant counsel that the plaintiff, during the course of his evidence has admitted about his name being found in the agreement/undertaking marked as Ex.B1 and also the plaintiff has made reference about the said document in his legal notice and therefore, the plaintiff cannot feign ignorance about the Ex.B1 and inasmuch as the defendant has laid the suit in OS. No.9485/1989, in respect of the said agreement/undertaking and following the same, as the parties to the same had entered into the compromise arrangement marked as Ex.B3 dated 02.11.1989, it is contended that the plaintiff without complying with the terms of the compromise arrangement marked as Ex.B3, had, without surrendering the promissory notes obtained from the defendant by using force and threat, falsely laid the suit, as if the defendant had borrowed the consideration recited thereunder and hence, according to the defendant's counsel, the suit laid by the plaintiff is to be dismissed. However, the above contention as rightly determined by the Courts below does not merit acceptance. Merely because the name of the plaintiff has been mentioned in the list of the creditors marked as Ex.B1, that by itself would not lead to the conclusion that the plaintiff was a party to the above said arrangement. Even assuming that the plaintiff has knowledge about the same, still when according to the defendant, the plaintiff was a party to the above said arrangement at least to show that the plaintiff was a willing party to the above said arrangement, his signature should have been obtained in Ex.B1. However, it is seen that the signature of the plaintiff has not been obtained in Ex.B1. Now, further according to the plaintiff, based on Ex.B1, he had laid the suit in O.S. No.9485/1989. Admittedly, the plaintiff is not a party to the above said suit proceedings. In such view of the matter, when it is seen that the plaintiff is not a party to O.S.No.9485/89, the outcome of the said suit would not in any manner bind the plaintiff. Further, the case of the defendant that following the above said suit, the parties had entered into the compromise arrangement marked as Ex.B3, dated 02.11.1989, also would not buttress the case against the plaintiff. Admittedly, the plaintiff is not a party to the compromise arrangement marked as Ex.B3 and in such view of the matter, when the plaintiff has not

signed in Ex.B1 and not a party in O.S. No. 9485/1989 and also not in any manner associated with Ex.B3, it is seen that the case of the defendant that the plaintiff should have surrendered the suit promissory notes following Ex.B3, as such cannot be countenanced in any manner. That apart, as rightly determined by the Courts below, when as per the case of the plaintiff the defendant borrowed the suit amount on 16.07.1989 and executed the suit promissory notes, it is found that the plaintiff is not at all concerned as regards the alleged agreement/undertaking marked as Ex.B1. Accordingly, it is found that the defendant, without knowing as to what is his case, in an improper manner has taken a plea, during the course of evidence that the plaintiff had obtained his signature using threat and force on 1.09.1989 and in such view of the matter, it is found that the defendant himself is not sure as to what is his defence in the proceedings. In any event, when admittedly, the plaintiff is neither a party to the suit proceedings nor to the compromise arrangement Ex.B3, it is found that the contention of the defendant that he is bound by the compromise arrangement Ex.B3 or the outcome of the suit proceedings in O.S. No.9485/1989 as such cannot be accepted in any manner.

14. As per the case of the defendant, the promissory notes and other connected documents had been returned following Ex.B3. However, it is found that the documents marked as Exs.B6 to B21 are found to be incomplete in various aspects, as determined by the Courts below and also not shown to be entrusted to the defendant following Ex.B3 compromise arrangement. In such view of the matter, the documents marked as Exs.B6 to B21 by themselves would not lead to the conclusion that the plaintiff had also agreed by way of Ex.B3, to return the suit promissory notes to the defendant as such and hence they cannot be believed and accepted in any manner.

15. It is further contended by the defendant's counsel that in connection with the illegal acts committed by the plaintiff, i.e., the obtainment of the suit promissory notes, he has also preferred a police complaint and the same is also to be considered to sustain his defence. However, the mere lodging of the police complaint by itself would not automatically lead to the conclusion that the plaintiff had employed illegal methods to secure the suit promissory notes from the defendant. If really the case of the defendant projected in the police complaint is true, as rightly put forth, further action would have been initiated on the police complaint initiated by the defendant. However, it is seen that no further action has been taken on the alleged police complaint and this itself would go to show that inasmuch as the police complaint does not entitle any further action, no further action has been initiated thereupon and in such view of the matter, the mere lodgement of

the police complaint would by itself not be sufficient to conclude that the plaintiff had employed unlawful methods to secure the suit promissory notes from the defendant, as pleaded by the defendant. As seen from the defendant's evidence examined as DW1, it is found that there is clear admission on his part that no amount was due to the plaintiff, as on 01.09.1989 as well as 16.07.1989, in connection with the mutual benefit fund transaction and when it has not been established that the plaintiff was in any manner associated with the alleged mutual benefit fund transaction conducted by the defendant, it is seen that the contention of the defendant that the plaintiff had secured the suit promissory notes with reference to the same, by using threat and force cannot be accepted in any manner. Accordingly, it is found that the defendant has also admitted during the course of cross examination that he has not lodged the police complaint against the plaintiff that he has obtained the promissory notes using force or threat and that apart it is further seen that the defendant has not lodged any Civil action against the plaintiff for the retrieval of the promissory notes said to have been entrusted by him to the plaintiff as pleaded in the case. All these facts would only go to show that as put forth by the plaintiff, in as much as the defendant had borrowed the suit amount and accordingly, in evidence thereof had executed promissory notes in favour of the plaintiff is found to be not in a position, to place any materials satisfactorily to hold that the suit promissory notes had been obtained by the plaintiff using unlawful methods as projected by him. Accordingly, it is found that the plaintiff was also not made a party to the suit proceedings in O.S. No.9485/89 by the defendant and admittedly, when the plaintiff is also not a party to the Ex.B3, compromise arrangement, it is found that the case of the defendant that the suit promissory notes had been obtained using force, threat and criminal intimidation etc. by the plaintiff and therefore, the suit promissory notes are bad for want of consideration, as rightly determined by the Courts below, does not merit acceptance in any manner.

16. In the light of the above discussions, the contention that the Courts below have ignored the admission of the plaintiff, as regards Ex.B1 and as to his reference to the same in Ex.B3, in the right perspective, as such cannot be countenanced and on the other hand, the Courts below have rightly appreciated the materials on record in the right perspective and accordingly, accepted the plaintiff's case and decreed the suit as prayed for. In such view of the matter, the first substantial question of law formulated for consideration in the second appeal is answered against the defendant and in favour of the plaintiff.

17. The second substantial question of law is, as to whether the suit is barred by limitation. However, during the course of arguments, no contention has been put forth that the suit is barred by limitation. Further, it is found that on a perusal of the materials placed, it is found that the suit has been laid within the time allowed by law and in such view of the matter, it is seen that the plea of limitation has not been taken even before the Courts below, by the defendant either in the written statement as well as during the course of arguments. Accordingly, it is found that during the course of arguments in the second appeal, no contention has been raised that the suit is barred by limitation and also not established that the suit is barred by limitation. In such view of the matter, it is found that the suit is not barred by limitation and accordingly, the second substantial question of law is answered in favour of the plaintiff and against the defendant.

18. In conclusion the second appeal fails and accordingly dismissed with costs. Consequently, connected miscellaneous petitions, if any is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The IV Additional City Civil Judge,
City Civil Court, Chennai.

2. The VIII Assistant City Civil Judge,
City Civil Court, Chennai.

3. The Section Officer,
VR Section, High Court,
Madras. (2 Copies)

+1cc to Mr.T.Selvakumaran, Advocate SR.No.77552

S. A.No.616 of 2001

NM(CO)
GN(26/12/2017)