



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.08.2017
CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

SECOND APPEAL (MD) No.689 of 2014

AND

M.P.(MD).No.1 of 2014

S.Krishnasamy

... Appellant /
Respondent/Defendant

Vs.

S.Rajappa (Died)

... Original Plaintiff

1.R.Thamilarasy

2.Silambu Selvi

3.Chithiraiselvi

4.Muthamilselvi

5.Gomathi

6.Soundara Nayagi

7.Karthiga

... Respondents /
Appellants / L.Rs. of the Plaintiff

PRAYER: Second appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 28.02.2014, made in A.S.No.63 of 2012 by the learned Principal District Judge, Thanjavur, reversing the judgment and decree, dated 03.04.2012, made in O.S.No.371 of 2010 by the learned Principal Subordinate Judge, Thanjavur.

For appellant

... Mr.P.Muthuvijayapandian

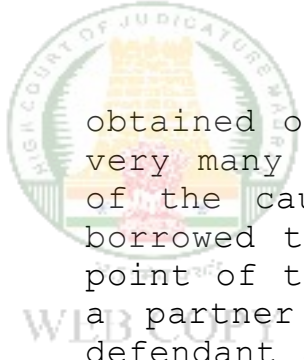
For respondents

... Mr.M.V.Venkataseshan

JUDGMENT

The defendant in the suit for recovery of money based on promissory note is the appellant. The plaintiff has filed the suit for recovery of a sum of Rs.6.69 lakhs from the defendant based on a suit promissory note, dated 28.08.2007. It is further stated that the defendant had agreed to hand over the possession and enjoyment of his house property and also not to encumber the property till the loan is discharged. It was further stated that the defendant had agreed to repay a sum of Rs.3 lakhs on or before 30.09.2007 and to pay the balance on or before 31.12.2007. As the plaintiff apprehended that the defendant may eliminate the property, the suit was filed.

<https://hcservices.courts.gov.in/hcservices/> The averments made in the plaint, in the written statement, the defendant had stated that the promissory notes obtained from him were not filled up and his signatures were

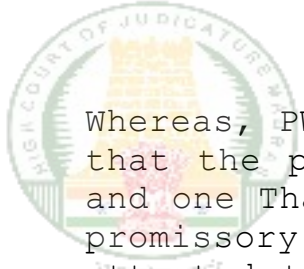


obtained only on blank papers. The defendant seems to have taken very many inconsistent pleas, while denying the facts in support of the cause of action. It is stated by him that he had not borrowed the said amount and executed any promissory note at any point of time. It is the contention of the defendant that he was a partner in finance business run jointly by the plaintiff, defendant and the plaintiff's son-in-law under the name and style of "Sri Vinayaka Nithiyagam". The defendant was used as a collection agent by the plaintiff. As he found it difficult to continue with collection of the amount after implementation of Kanduvatti Abolition Act, the defendant wanted to withdraw from the partnership firm. For the said purpose, the plaintiff had demanded Rs.1.5 lakhs per year to be paid by the defendant to him for six years. Accordingly, it is stated that the defendant paid Rs.4.5 lakhs to the plaintiff, for which the plaintiff agreed for reduction of Rs.3 lakhs. The balance amount of Rs.6 lakhs was calculated to be paid to the plaintiff with interest. The defendant further stated that he had agreed to pay Rs.6 lakhs and issued 6 cheques to the plaintiff. While issuing the cheques, it is alleged that the plaintiff obtained signatures of the defendant in blank printed promissory note forms, white papers, blank stamp papers, etc. It is alleged that the defendant was threatened to sign on all the above papers. The defendant also has paid a sum of Rs.2 lakhs on 06.01.2007, Rs.1 lakh on 24.01.2007 and Rs.3 lakhs on 06.11.2007 as per the undertaking given earlier. In this way, according to him, the entire amount viz., Rs.6 lakhs was paid. The blank signed cheques and stamp papers which were in the custody of the plaintiff have been misused by the plaintiff.

3. Before the trial Court, on the side of the plaintiff, PWs.1 to 4 were examined and Exs.A1 to A6 were marked and on the side of the defendant, the defendant himself was examined as DW1 and Exs.B1 to B21 were marked. On considering the oral and documentary evidence adduced on either side, the trial Court has dismissed the suit. But, on appeal by the plaintiff, the suit was decreed by the first appellate Court. Aggrieved by the same, the defendant has preferred the above appeal.

4. Heard the learned counsel appearing for both sides and perused the record carefully.

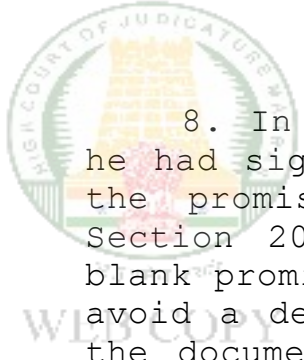
5. The learned counsel appearing for the appellant / defendant contended that the appellate Court had not properly considered the evidence of PW1 to PW4, wherein each of them have stated differently about the execution of Ex.A1. It was further contended that when the marriage of the appellant's daughter was performed in the year 2000 and the construction of his house building was over in the year 2004, there was no necessity for the defendant to borrow money from the plaintiff in the year 2007. The learned counsel pointed out that PW1, who was the plaintiff himself, has stated that the promissory note was written on twenty rupees stamp paper and it was typewritten by the Document Writer.



Whereas, PW2, one of the arrestors to the promissory note, deposed that the promissory note was executed in the presence of himself and one Thangapandiyan. PW2 has specifically stated that the suit promissory was written in hand and that one Thangapandiyan had attested the same. Another attester of the suit promissory note was examined as PW3. He has stated that the suit promissory note was executed on twenty rupees stamp paper and the same was typewritten. The scribe of the document was examined as PW4. He has stated that the document was typed in a computer. Thus, the learned counsel for the defendant pointed out that PWs.1 to 4 have stated differently about the execution of the document and their evidences are totally inconsistent and mutually contradictory to each other. Therefore, Ex.A1 has to be rejected as not proved.

6. The learned counsel for the respondent, per contra, pointed out that in the evidence of DW1, it has been specifically admitted by him that he had agreed to pay Rs.6 lakhs to the plaintiff on or before December, 2007. Further, he had deposed that besides the cheques mentioned earlier, the plaintiff had obtained his signatures in printed pro-note forms, on white papers and on stamp papers. The said signatures were obtained from the defendant by coercion and undue influence. Besides the above, the defendant had also stated that he had paid Rs.2 lakhs on 06.01.2007, Rs.1 lakh on 24.07.2007 and Rs.3 lakhs on 06.11.2007. After paying the said amount, the plaintiff, instead of returning all the cheques issued by him, retained three of them with him. It is his specific case that he had signed in those documents only under coercion. Even assuming that it was under coercion or undue influence, it was specifically admitted by the defendant that he had put his signatures in the blank papers to settle the business dispute. Surprisingly, the defendant has not preferred any complaint to the Police or taken any action in this regard. He has also not filed any evidence on record even to remotely challenge the correctness of the same. It is the rule of evidence that admitted facts need not be proved. Even after realizing the fact that he had executed blank promissory notes and signed on blank cheques and papers, the defendant has not taken any efforts to lodge a complaint or take recourse of any civil remedy.

7. The collective reading of the facts would reveal that the defendant himself has admitted his liability and also the alleged discharge of a portion of the amount. However, no document was produced even for the alleged discharge of the amount on three occasions. When the appellant/defendant had admitted his signature on the suit promissory note and his own oral testimony supporting the passing of consideration, it has to be taken that the execution of the promissory note is proved. When the defendant has stated that he had put his signature in unfilled promissory note and that no consideration was paid, the burden is on the defendant to prove the same.



8. In this case, admittedly, the defendant had conceded that he had signed in the document and hence, the presumption is that the promissory note was supported by consideration. As per Section 20 of the Negotiable Instruments Act, 1881, even if a blank promissory note is given, it cannot be taken as a defence to avoid a decree based on such instrument. Once it is found that the document produced satisfies the requirements of a promissory note within the meaning of a 'Negotiable Instrument', the drawer is liable to pay the amount intended by him to be paid thereunder. In the instant case, the documents filed by the plaintiff coupled with the admission made by DW1 would go to show that there was an outstanding amount payable to the plaintiff. Once the execution of promissory note is admitted or proved, the presumption, under Section 118(a) of the Negotiable Instruments Act, would be that it is supported by consideration.

9. In the light of the above discussions and in the absence of any rebuttal evidence by the defendant, the promissory note is admitted to be proved. The first appellate Court has rightly held that the execution of the promissory note is proved and the same is supported by consideration. This Court does not find any infirmity or illegality in the judgment passed by the first appellate Court.

10. In the result, this second appeal fails and the same is, accordingly, dismissed, confirming the judgment and decree passed by the first appellate Court. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal District Judge, Thanjavur.
- 2.The Principal Subordinate Judge, Thanjavur.
3. VR Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.M.V.Venkateshan, Advocate, SR.No.69982

gcb

RL/5C/4P/KP/SAR1/16/8/2017

S.A.(MD) No.689 of 2014

03.08.2017