



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2017

CORAM :

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A. (MD) No.679 of 2015
and
M.P. (MD) .No.2 of 2015

Malayandi ... Appellant / Appellant /
defendant
Vs.

Gurusamy ... Respondent / Respondent /
Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the Judgement and Decree, dated 22.01.2015, made in A.S.No.31 of 2014 on the file of Sub Court, Uthamapalayam, confirming the Judgement and Decree of the District Munsif Court, Uthamapalayam, in O.S.No.218 of 2011, dated 28.02.2014.

For appellant : Mr.K.Guhan
For respondent : Mr.P.Santhosh Kumar

JUDGMENT

The unsuccessful defendant has filed the above second appeal, challenging the decree granted for recovery of money in a suit based on the pro-note.

2.The case of the plaintiff is that the defendant had borrowed a sum of Rs.60,000/- on 10.08.2008 from the plaintiff to meet his family expenses and executed pro-note in favour of the plaintiff agreeing to repay the same with interest at 12% per annum. The pro-note was also attested by the brother and mother of the defendant. The defendant had repaid Rs.20,000/- to the plaintiff on 26.11.2009. The said repayment was also endorsed on the back side of the pro-note. Thereafter, there was no repayment made by the defendant. Hence the suit was filed by the plaintiff.

3.Denying the averments made in the plaint, the defendant had
<https://hcservices.courts.gov.in/hcservices/> statement. It is admitted by the defendant that after receiving a sum of Rs.10,000/-, a blank pro-note was executed by him. Even after receipt of Rs.20,000/- i.e.,



Rs.10,000/- for principal and Rs.10,000/- for interest, the plaintiff did not return the said pro-note. Based on the same, he had filed the suit.

4. Before the trial Court, on the side of the plaintiff, the plaintiff himself was examined as PW1 and Exs.A1 to A6 were marked. On the side of the defendant, D.W.1 to D.W.3 were examined. However, no document was produced on the side of the defendant.

5. The Courts below had concurrently held that the execution of the pro-note is proved and passing of consideration under the same is also established by the plaintiff and thus, decreed the suit. Aggrieved over the same, the appeal has been preferred by the defendant.

6. At the time of admission, only notice was ordered to the respondent.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

8. The learned counsel for the appellant/defendant contended that Ex.A1 is not proved in the manner known to law and the presumption under Section 118 of the Negotiable Instruments Act cannot be drawn in this case.

9. A perusal of oral and documentary evidence would clearly establish that the appellant herein as D.W.1 had admitted the signature found on Ex.A1 - Pro-note. Even in the written statement, though it is alleged that it was a blank pro-note, the signature on the same is admitted. Once the signature is admitted, the burden would shift on the defendant and he has to establish his case. However, it is not done so by the defendant. Hence, the Courts below had drawn presumption that as the signature is admitted, the pro-note is proved. Once the execution is proved, the onus would be shifted on the defendant. The defendant had examined two witnesses, who are mother and brother of the defendant and attestors of Ex.A1. The Courts below had disbelieved the evidences of D.W.2 and D.W.3 as their evidences are not credible. Therefore, the factum of passing of consideration, the defendant had failed to establish his case. As the plaintiff had proved the execution of pro-note as well as passing of consideration, based on Ex.A.2, the Courts below had decreed the suit concurrently.

10. In the light of the above facts, there is no question of law arising for consideration. The concurrent findings of the Courts below do not warrant interference by this Court.

<https://hseervices.courts.gov.in/hseervices/>

11. In the result, this second appeal fails and the same is,



accordingly, dismissed, confirming the judgment and decree passed by the Courts below. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

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/True copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Uthamapalayam.

2. The District Munsif,
Uthamapalayam.

+ 1 CC TO MR.P.Santhosh Kumar, ADVOCATE IN SR No. 80203

+ 1 CC TO MR.K.Guhan, ADVOCATE IN SR No. 80750

msa

MK/KK/SAR-1/06.10.2017/3P/5C

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