

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated: 04.07.2017****Coram****WEB COPY****The HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA****S.A(MD)No.261 of 2017**

Logarani

.. Appellant/Appellant/Defendant

Vs.

Thavamani

.. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 21.04.2009 made in A.S.No.40 of 2006 on the file of the Additional District cum Fast Track Court, Periyakulam, confirming the Judgment and Decree, dated 21.04.2006 made in O.S.No.68 of 2004 on the file of the Sub Court, Uthamapalayam.

For Appellant : Mr.V.Ganesan

For Respondent : Mr.M.Karuppasamy Pandian

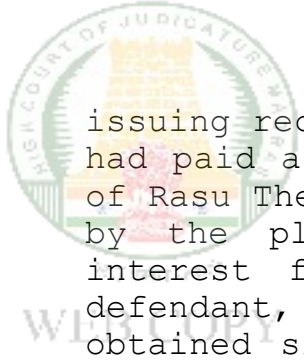
JUDGMENT

The above second appeal arises against the Judgment and Decree dated 21.04.2009 passed in A.S.No.40 of 2006 on the file of the Additional District cum Fast Track Court, Periyakulam, confirming the Judgment and Decree, dated 21.04.2006 passed in O.S.No.68 of 2004 on the file of the Sub Court, Uthamapalayam.

2.The appellant is the defendant and the respondent is the plaintiff in the suit. The plaintiff filed the suit in O.S.No.68 of 2004 on the file of the Sub Court, Uthamapalayam, for recovery of money.

3.The case of the plaintiff is that the defendant had borrowed a sum of Rs.1,50,000/- with interest at 1% for Rs.100/- per month and executed a promissory note under Ex.A.1, dated 12.10.1999. As there was no re-payment from the defendant, the plaintiff had issued a suit notice under Ex.A.2, dated 28.03.2002. Despite the legal notice, there was no response from the defendant. Hence, the suit has been filed for recovery for a sum of Rs.1,95,500/- and for payment of interest at 12% p.a on the principal amount of Rs.1,50,000/- from the date of suit till the date of realisation.

4.The defendant pleaded that he had not executed any promissory note in favour of the plaintiff. However, he had admitted that he borrowed a loan of Rs.1,00,000/- from the defendant and executed a Security Bond, dated 21.10.1999. It is the further case of the defendant that he had been paying the interest for the money borrowed by him, though the plaintiff was not in the habit of



issuing receipts for the same. The defendant has also stated that he had paid a sum of Rs.1,50,000/- in favour of one Anandhi, daughter of Rasu Thevar and her husband Jeyakumar, as per the direction given by the plaintiff. Admittedly, the defendant had not paid the interest from 2001. As the interest had not been paid by the defendant, the plaintiff, the said Rasu Thevar and his wife had obtained signatures on blank papers from the defendant, which has now been mis-used by the plaintiff as a promissory note. Hence, the defendant prayed for dismissal of the suit.

5.The trial Court as well as the Appellate Court had concurrently held that the defendant is liable to pay the amount, as claimed by the plaintiff. The trial Court had held that the defendant himself had categorically held that he signed on the promissory note. However, it is seen from Ex.A.1 that Ex.A.1 is not written on a blank paper, but it is a printed promissory note form. Therefore, the Courts below had held that, the case of the defendant that he signed on blank papers were disbelieved. Once the signature on Ex.A.1 is admitted by the defendant, the burden shifts on the defendant to prove that there was passage of valid consideration. However, the defendant failed to establish that there was no consideration passed under Ex.A.1 and on the said norms, the trial Court decreed the suit and the Appellate Court has also confirmed the same.

6.Heard the learned counsel for the appellant and the learned counsel for the respondent.

7.The learned counsel appearing for the appellant has contended that the suit itself is filed only at the instance of the said Rasu Thevar and the plaintiff had taken signatures from the defendant on blank papers, unfilled promissory notes and other papers. In this regard, it is relevant to consider the fact that a pro-note may be wholly blank or incomplete in any particular. The holder has the authority to make or complete the instrument as negotiable one. The defendant also has admitted the signatures in the pro-note though he would state that the contents were filled up subsequently by the plaintiff. However, it is seen from the records that the defendant has not given any complaint or made any efforts to recover those signed papers given by him to the plaintiff. Therefore drawing presumption available under Sections

8.The plaintiff having proved the execution of Ex.A.1-promissory note and passing of consideration on the same, the presumption is in favour of the plaintiff and the Courts below have rightly decreed the suit and there is no questions of law much less a substantial questions of law arising for consideration in the Second Appeal. Hence, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS-I)



To

1.The Additional District cum Fast Track Judge,
Periyakulam.

2.The Sub Judge,
Uthamapalayam.

Copy to : The Section Officer, V.R Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.J.GUNASEELAN MUTHIAH Advocate in SR. No.63370

PS

JS/SV/SAR.1/17.7.2017/3P-5C

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