

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

S.A.No.473 of 2018
and C.M.P.No.12737 of 2018

Ravi .. Appellant/Defendant

Vs.

Rangaraj .. Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree in A.S.No.22 of 2017 dated 13.03.2018 passed by the learned III Additional District Judge, Gobichettipalayam, reversing the judgement and decree in O.S.No.214 of 2015 dated 30.08.2017 passed by the learned Sub Judge, Sathiyamangalam.

For Appellant : Mr.S.Parthasarathy
For Respondent : Mr.Roshan Atiq

JUDGMENT

The defendant is the appellant in this appeal. The respondent filed O.S.No.214 of 2015 on the file of the Subordinate Court, Sathiyamangalam, for recovery of a sum of Rs.1,81,650/- with interest.

2. The case of the respondent/plaintiff is that the appellant/ defendant had borrowed a sum of Rs.1,50,000/- as hand-loan on 25.06.2013 and agreed to repay the same with interest at the rate of 1% p.a., and executed a promissory note. The respondent/plaintiff's further case is that in spite of legal notice dated 06.10.2015, the amount borrowed was not returned along with interest, on the contrary, a reply notice dated 22.10.2015 was sent with distorted facts and hence, the suit was filed.

3. The appellant/defendant in his written statement, while denying the plaint averments, stated that the promissory note was executed for the purpose of security, as he did not contribute any capital in doing tree cutting contract business for a sum of Rs.70,000/-. It is the further case of the appellant/defendant that the respondent/plaintiff agreed to return the promissory note, but without doing so, filed the suit.

4. The trial Court framed three issues for consideration, namely, (i) Whether the promissory note dated 25.06.2013 was executed only for the purpose of security ?; (ii) What is the relief the plaintiff is entitled to ? ; and (iii) What are the other reliefs, the plaintiff is entitled to ?

5. Before the Trial Court, the plaintiff examined himself as P.W.1 and examined one Shanmugam as P.W.2 and marked four documents, namely, promissory note as Ex.A.1; legal notice as Ex.A.2; postal acknowledgement card as Ex.A.3; and reply notice as Ex.A.4. The defendant examined himself as D.W.1 and two other witnesses as D.Ws.2 and 3.

6. The Trial Court, by judgment and decree dated 30.08.2017, dismissed the suit. Aggrieved by the same, the respondent/plaintiff filed appeal before the III Additional District Court, Gopichettipalayam, in A.S.No.22 of 2017. The lower Appellate Court, by the judgment and decree dated 13.03.2018, allowed the appeal.

7. Aggrieved by the said judgment of the Lower Appellate Court reversing the judgment and decree of the Trial Court, the appellant/defendant has preferred this second appeal.

8. The following substantial questions of law have been framed for consideration in this appeal :

"1. Whether the Lower Appellate Court is right in coming to the conclusion that the burden of proof lies on the appellant, when he had denied the receipt of consideration and the promissory note was given only as a security ?

2. Whether the Lower Appellate Court is right in shifting the burden of proof on the appellant that the respondent had not proved the execution through proper evidence ?"

9. Heard Mr.S.Parthsarathy, learned counsel for the appellant and Mr.M.Roshan Atiq, learned counsel for the respondent.

10. The case of the appellant/defendant is that the promissory note was executed only for the purpose of security as he did not make any contribution towards the tree cutting business, for which, the respondent/plaintiff had spent Rs.70,000/- of his own funds. Thus, it is clear that the execution of the said promissory note has not been denied by the appellant/defendant. In such circumstances, it has to be seen as to whether the Lower Appellate Court was right in reversing the judgment and decree of the Trial Court.

11. The Lower Appellate Court noted that the appellant/defendant admitted that the signature in the suit promissory note is his signature. Further, the Lower Appellate Court considered the status of the appellant and the family circumstances and held that he had sufficient funds with himself, by producing any oral or documentary evidence before the Trial Court. Furthermore, the appellant did not lodge any complaint with the police authorities alleging that the respondent/plaintiff had filled up the suit promissory note in a fraudulent manner and based on the said document, had filed the suit. Further, the Lower Appellate Court pointed out that the appellant, having admitted the signature in the suit promissory note, failed to give any evidence on his side by way of rebuttal.

12. Having noted the above, the Lower Appellate Court, in my considered view, rightly held that the onus is on the appellant/defendant to establish that the suit promissory note was executed for the purpose of security and no consideration was passed on. Furthermore, there was no acceptable evidence produced by the appellant to establish that a sum of Rs.70,000/- was incurred for tree cutting business and that the appellant did not contribute the requisite funds to work as a partner along with the respondent in the said business and in such circumstances, the Lower Appellate Court rightly held that the appellant/defendant has not discharged the burden of proof cast upon him to establish that no consideration was passed on the suit promissory note. In this regard, learned counsel for the respondent/plaintiff rightly referred to Section 118 of the Negotiable Instruments Act, 1880, with regard to the presumption.

13. For the above reasons, I find no ground to interfere with the judgment of the Lower Appellate Court. Accordingly, the appeal fails and is dismissed confirming the judgment and decree of the Lower Appellate Court. The substantial questions of law are answered in favour of the respondent/plaintiff and against the appellant/defendant. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District Judge,
Gobichettipalayam.

2. The Sub Judge, Sathiyamangalam.

+ 1 cc to Mr. S. Parthasarathy, Advocate Sr.65680

+ 1 cc to Mr.M. Roshan, Advocate SR.65653

S.A.No.473 of 2018

SJ(CO)
EU(14/11/2018)



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