

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.796 of 2017 and  
C.M.P.Nos-.19955 of 2017, 7539 and 7540 of 2018

|                                  |                                    |
|----------------------------------|------------------------------------|
| Orders reserved on<br>31.07.2018 | Orders pronounced on<br>29.08.2018 |
|----------------------------------|------------------------------------|

A.Venkatesan .. Appellant/Defendant

Vs.

B.Jareena .. Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 22.03.2011 made in A.S.No.305 of 2010 on the file of II Additional City Civil Court, Chennai, confirming the judgment and decree dated 26.03.2008 made in O.S.No.6230 of 2003 on the file of XVI Assistant City Civil Court, Chennai.

For Appellant : Mr.A.Venkatesan  
Party-in-person

For Respondent : Mr.J.Kamaraj

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 22.03.2011 made in A.S.No.305 of 2010 on the file of II Additional City Civil Court, Chennai, confirming the judgment and decree dated 26.03.2008 made in O.S.No.6230 of 2003 on the file of XVI Assistant City Civil Court, Chennai.

2.The defendant, who lost before both the Courts below, is the appellant herein and he appeared as party-in-person. The respondent filed O.S.No.6230 of 2003 for recovery of a sum of Rs.4,37,500/- together with interest at 12% per annum on the principal sum of Rs.3,50,000/- from the date of plaint till the date of realisation, on failure of appellant paying amounts to create a charge over the plaint schedule property and order sale of the suit property for realisation of decretal amounts and

costs.

3. According to the respondent, the appellant introduced himself as a film producer and borrowed a sum of Rs.3,50,000/- from the respondent on 17.05.2001. He executed three promissory notes for Rs.1,00,000/- each and promised to execute another promissory note for Rs.50,000/- later. The appellant created a mortgage by deposit of title deeds on 24.08.2001 with respect to his property described in the schedule to the plaint as security for the repayment of the amounts borrowed. The property is a vacant land with compound wall and gate. The appellant handed over key of the gate and respondent is in constructive possession of the said property.

3(i) The appellant entered into a separate letter of undertaking dated 24.05.2001 with the respondent for engaging her daughter as a Heroine in the movie to be produced by the appellant by name "Kadhal Poove". The appellant agreed to pay a sum of Rs.25,000/- as salary to the respondent's daughter to act as a Heroine in the said movie and paid a sum of Rs.5,000/- as advance. The appellant did not pay monthly interest for the amounts borrowed regularly as agreed upon and committed default from the beginning.

3(ii) The appellant attempted to enter into suit property and tried to put up construction in the suit property. The respondent apprehending that appellant is going to create encumbrance, demanded repayment of principal amount and interest. The appellant abused the respondent in filthy language and threatened with dire consequences. The respondent gave a complaint on 12.01.2003 to the Inspector of Police, R-3, Ashok Nagar Police Station. No action was taken by the Inspector of Police and he advised the respondent to approach the Civil Court. At the intervention of local Councilor by name S.M.Durairajan, the appellant agreed to pay a sum of Rs.2,00,000/- as full and final settlement within three months, failing which, entire amount would become due and payable together with interest and executed a letter of undertaking dated 10.02.2003. The appellant failed to pay the amounts and hence, respondent filed the suit for the reliefs as stated above.

4. The appellant filed written statement and denied all the averments made in the plaint and contended that he did not borrow a sum of Rs.3,50,000/- from the respondent on 17.05.2001 and did not execute three promissory notes for Rs.1,00,000/- each on the same day and agreed to execute another promissory note later for the balance amount of Rs.50,000/-. The respondent agreed to invest a sum of Rs.10,00,000/- for the production of the movie "Kadhal Poove" and respondent's daughter was to act as a Heroine. She gave only a sum of Rs.1,50,000/- and did not pay

the balance amount for producing the movie. The appellant incurred a loss of Rs.12,00,000/-. The respondent used to come to office of the appellant with regard to production of movie. During that time, the respondent has stolen the title deeds of the suit property. The suit property is not a vacant land and it is with the building. The respondent did not deposit the title deeds and did not create any mortgage and did not hand over the possession of the suit property. The respondent issued a notice dated 12.06.2002 to the appellant claiming that the appellant executed two promissory notes for Rs.2,00,000/- and Rs.1,50,000/-. The appellant sent a reply dated 18.06.2002. The respondent collected Rs.1,50,000/- from the appellant through her henchmen. The respondent lodged a private complaint against the appellant before XIV Metropolitan Magistrate Court, Egmore. In the complaint, the respondent has stated that appellant borrowed a sum of Rs.2,00,000/- and executed a promissory note dated 17.05.2001. This clearly shows that the suit promissory notes are forged ones. The respondent gave a complaint to the Inspector of Police, Ashok Nagar Police Station on 12.01.2003 without there being any jurisdiction. In the acknowledgment dated 14.01.2003, it is stated that title deeds were handed over on that date, while in the plaint, she has stated that documents were handed over to her on 24.08.2001. The appellant did not execute any promissory note for Rs.50,000/- on 13.01.2003. In view of various criminal proceedings initiated by the respondent, the respondent would not have lent money on 13.01.2003 and appellant would not have executed promissory note on that date.

5. Based on the above pleadings, the learned Trial Judge framed necessary issues. Before the trial Court, the respondent examined herself as P.W.1, one Anwar Basha was examined as P.W.2 and marked eight documents as Exs.A1 to A8. The appellant did not let in any oral and documentary evidence.

6. The learned trial Judge, considering the pleadings and oral and documentary evidence, decreed the suit.

7. Against the said judgment and decree dated 26.03.2008 made in O.S.No.6230 of 2003, the defendant/appellant filed A.S.No.305 of 2010.

8. The learned First Appellate Judge framed necessary points for consideration and considering the materials on record, judgment of the Trial Court and arguments, dismissed the First Appeal.

9. Against the said judgment and decree dated 22.03.2011 made in A.S.No.305 of 2010, confirming the judgment and decree dated 26.03.2008 made in O.S.No.6230 of 2003, the defendant/appellant

has come out with the present Second Appeal.

10.The following Substantial Questions of Law were framed in Second Appeal at the time of admission:

"(a) Whether the Courts below right in making departure in granting decree under Order XXXIV Rule 10 C.P.C.?

(b) Whether Ex.A1 to Ex.A4 in view of the material alteration under Negotiable Instrument Act in enforceable?

(c ) Is the burden enjoined on the respondent to substantiate the case relying Ex.A7 and Ex.A8 which according to the appellant brought into existence by way of coercion and duress?

(d) Is the said Ex.A1 to Ex.A3 according to the respondent was executed on 17.05.2011 but the plea that after receiving consideration under Ex.A4 for Rs.50,000/- the date mentioned as 2003 is proper and believable?"

11.The appellant appeared as party-in-person and filed written arguments and also made the following submissions:

(i) The appellant did not borrow money from the respondent and did not execute any promissory notes. The respondent's daughter was engaged to act as a Heroine in the movie produced and directed by appellant. During that time, the respondent used to come to the office of the appellant and with the help of office boy, she has stolen original documents of title of the suit property belonging to the appellant. The respondent agreed to invest a sum of Rs.10,00,000/- for the production of the movie, but paid only Rs.1,50,000/-. In view of the same, production was stopped and respondent suffered a loss of Rs.12,00,000/-.

(ii) The respondent gave a false complaint on 12.01.2003 to the Inspector of Police, Ashok Nagar Police Station. The respondent with the help of police and local Councilor S.M.Durairajan threatened and forced the appellant to execute promissory notes as well as letter of acknowledgment and deposit of title deeds. It is clear from the fact that promissory note for Rs.50,000/- is dated 13.01.2003, while complaint to the police is dated 12.01.2003. The respondent did not mention the date of promissory note for Rs.50,000/- in the plaint. The respondent has mentioned only three promissory notes for Rs.1,00,000/- each. All the promissory notes were executed on 12.01.2003 in the Police Station. This can be seen that in the second promissory note for Rs.1,00,000/-, the date was mentioned as 17.05.2003 and the year is corrected as 2001 instead of 2003. In view of such manipulation, the respondent is not entitled to any amount as claimed in the suit.

(iii) One of the alleged witnesses to the alleged promissory notes was examined as P.W.2 and he deposed in his cross-examination that he did not see the writing of promissory notes and did not sign as witness. The fourth promissory note for Rs.50,000/- was alleged to have been executed by the appellant on 13.01.2003 the very next day of the complaint given by the respondent in the Police Station. The same was not executed on 13.01.2003. On the other hand, all the promissory notes were executed in the Police Station under threat and coercion by police and local Councilor. The letter of acknowledgment and letter of deposit of title deeds were also executed on 14.01.2003 in the police Station. There is contradiction in the averments made in the plaint and in the letter of deposit of title deeds. The appellant was prevented from giving oral and documentary evidence. The appellant had filed documents along with the written statement were not considered by the Courts below.

12.Per contra, the learned counsel for the respondent contended that appellant borrowed a sum of Rs.3,50,000/- and executed promissory notes and agreed to repay the said amount together with interest at 12% per annum. The appellant also created a charge over the suit property as evidenced by depositing title deeds relating to the suit property. The appellant also admitted his liability. At his request, the respondent agreed to receive a sum of Rs.2,00,000/- as full and final settlement, if the appellant pays the said amount within three months from that date. If the appellant failed to pay Rs.2,00,000/- within three months, the entire sum of Rs.3,00,000/- will become due and payable by the appellant. The appellant failed to comply with the said compromise. The respondent as P.W.1 proved her case and also produced documents substantiating her case. She also examined one of the witnesses of the promissory notes. The appellant did not let in any oral and documentary evidence before the trial Court. The contention of the appellant that he was prevented from letting in evidence before the trial Court is not substantiated. The appellant has not filed any application to reopen the case to let in evidence. In the First Appeal also, he has not taken any steps for letting in evidence. The appellant admitted his signature in the promissory notes as well as letter of acknowledgment. The appellant has come out with the contention that the suit promissory notes and other documents were obtained from him in the Police Station on 12.01.2003 by threat and coercion by police and local Councilor S.M.Durairajan. There is no evidence let in by the appellant to substantiate the said contention and prayed for dismissal of the Second Appeal.

13.Heard the appellant/party-in-person and the learned counsel for the respondent and perused the materials available

on record.

14.Substantial Questions of Law (a) to (d):

The respondent has claimed a sum of Rs.3,50,000/- together with interest at 12% per annum from 17.05.2001 and also for a charge over the suit property. According to the respondent, the appellant borrowed a sum of Rs.3,50,000/- on 17.05.2001 and executed three promissory notes for Rs.1,00,000/- each and agreed to execute another promissory note later. Subsequently, the appellant created a mortgage on 24.08.2001 by depositing his title deeds with respect to his property, which is a vacant land with compound wall and gate, as security for the repayment of the amounts borrowed. The respondent is claiming the said amounts based on the promissory notes and letter of acknowledgment. On the other hand, it is the case of the appellant that he did not borrow any amount from the respondent. Earlier, according to the respondent, both the appellant and respondent entered into an agreement on 24.05.2001 engaging the daughter of the respondent as a Heroine in the movie namely "Kadhal Poove" to be produced and directed by the appellant and agreed to pay Rs.25,000/- as her salary. According to the appellant, during that time, the respondent used to come to the office of the appellant and with the help of office boy, she had stolen the documents of title of the suit property. The respondent's daughter came late to the shooting of the movie and when the appellant questioned the same, the respondent with the help of police and local Councilor S.M.Duraiarajan threatened the appellant and got the documents executed by the appellant by coercion in the police Station. All the documents were written in the police Station on 12.01.2003.

15.To decide the rival contentions, it is necessary to consider the promissory notes executed by the appellant. According to the respondents, she has paid a sum of Rs.3,50,000/- on 17.05.2001 to the appellant in the presence of the witnesses. The appellant executed three promissory notes for Rs.1,00,000/- each and agreed to execute another promissory note for Rs.50,000/- later. The respondent has not explained as to why she agreed for execution of the promissory note for Rs.50,000/- later, when she has paid a total sum of Rs.3,50,000/- on 17.05.2001 itself. However, in para-3 of the plaint, the respondent has mentioned that the third promissory note is for Rs.1,50,000/-. The respondent has not explained this discrepancy. According to the respondent, the appellant deposited title deeds on 24.08.2001 and created a mortgage over the suit property as security for the repayment of the amount he borrowed. On that date, the respondent has not paid any amounts and it is not her case that the appellant deposited title deeds requesting time for payment of the amounts already borrowed.

16.Further, according to the respondent, as per Ex.A5 dated 14.01.2003, the appellant admitted that he borrowed Rs.3,50,000/- and agreed to repay the same. In the said letter, it has been mentioned that he is handing over the documents of title to the respondent on that date and will take back the said documents after discharging the amounts borrowed by him. This discrepancy, whether the documents were handed over to the respondent on 24.08.2001 as mentioned in para-4 of the plaint or deposited with the respondent on 14.01.2003, is not explained by the respondent.

17.According to the respondent, on 10.02.2003, the appellant executed a letter of compromise promising to pay a sum of Rs.2,00,000/- as full and final settlement on or before 10.05.2003, failing which, entire amounts of Rs.3,50,000/- together with interest would become due and payable by the appellant. In the letter, it has been mentioned that this settlement has arrived at by the intervention of local Councilor S.M.Durairajan. According to the appellant, all the promissory notes, stamped letter of acknowledgment and letter of compromise were all executed by the appellant on 12.01.2003 in the Police Station by threat and coercion by police and local Councilor S.M.Durairajan. This contention of the appellant is acceptable, in view of the fact that Ex.A2 second promissory note for Rs.1,00,000/- was dated as 17.05.2003, the year 2003 was struck off and the year 2001 was written. There is no authentication by the appellant for the said correction. In view of the year 2003 is mentioned in the promissory note Ex.A2 and subsequently, the same was corrected as 2001, the contention of the appellant that all the documents were written in the Police Station on 12.01.2003 and appellant was threatened to sign the said documents is acceptable. Further, the date of promissory note for Rs.50,000/- is 13.01.2003, the very next day the complaint given by the respondent to the police against the appellant on 12.01.2003. When the complaint is being enquired, it is unbelievable that the appellant had executed the said promissory note voluntarily. On the date of said promissory note, the respondent did not pay the sum of Rs.50,000/- to the appellant. The said promissory note is not supported by consideration and there is no evidence to show that appellant had executed the said promissory note acknowledging the amount borrowed by him earlier on 17.05.2001.

18.In the promissory note dated 13.01.2003 for Rs.50,000/- also, the very same two persons who are witnesses for the three promissory notes dated 17.05.2001 are witnesses to the promissory note dated 13.01.2003. This also creates a suspicion about the veracity of the two witnesses. They seem to be stock witnesses always available to support the case of the

respondent. The respondent has not examined the scribe of promissory notes. In respect of three promissory notes for Rs.1,00,000/- each, P.W.2 one of the witnesses of the said three promissory notes, in his cross-examination admitted that he did not know who wrote the promissory notes and when he was in the house of the respondent on 17.05.2001, no promissory note was written and executed by the appellant. This evidence of P.W.2 coupled with material alteration in the promissory note by correcting the date as 17.05.2001 from 17.05.2003 and the statement of the appellant for the acknowledgment letter dated 14.01.2003 that he deposited the title deeds with the respondent on that date would show that all the four promissory notes, letter of acknowledgment and letter of compromise were executed by the appellant by threat and coercion by the police and local Councilor.

19.The Courts below have failed to consider the material alteration in second promissory note on the year of execution and discrepancy of the averment made in the plaint, evidence, promissory notes and acknowledgment. The trial Court erroneously decreed the suit and First Appellate Court dismissed the First Appeal. When the Courts below have failed to properly appreciate the pleadings, evidence on record and erroneous application of materials on record and decreed the suit and dismissed the First Appeal, this Court has power to interfere with the said findings and reverse the same on consideration of the materials in proper perspective. The concurrent findings of the facts can be interfered by this Court in the Second Appeal, when the Courts below erroneously passed the judgments without appreciating the facts in proper perspective. For the above reasons, all the Substantial Questions of law are answered in favour of the appellant.

20.In the result, the Second Appeal is allowed with cost through out to be paid by respondent in first and second appeal, setting aside the judgments and decrees of both the Courts below. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

kj

To

1.II Additional City Civil Court, Chennai.

2.XVI Assistant City Civil Court, Chennai.

3. The Section officer  
VR Section, High Court, Madras 104.

+4 CCS to Mr.A.Venkatesan, Advocate sr 59621.

+1 CC to Mr.J.Kamaraj, Advocate sr 59717.

S.A.No.796 of 2017 and  
C.M.P.Nos-.19955 of 2017, 7539 and 7540 of 2018

NM(CO)  
GSP(06/02/2019)



WEB COPY