

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.11.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.351 of 2018
and
C.M.P.No.9785 of 2018

R. Prasana Naraynan,
S/o.T.Ravi,
Rep. by its Power of Attorney
Mrs. Malarvizhi ...Appellant/Defendant

-vs-

R.Mini,
W/o.K.Raas ... Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Decree and Judgment in A.S.No.74 of 2017 dated 09.01.2018 passed by the Learned Principal District Judge, Krishnagiri confirming the Decree and Judgment in O.S.No.187 of 2014 dated 28.02.2017 passed by the Learned Additional Special Judge at Krishnagiri.

For Petitioner : Mr.C.Samivel

O R D E R

The above appeal arises against the concurrent Judgment in A.S.No.74 of 2017 on file of the learned Principal District Judge, Krishnagiri, confirming the Judgment and Decree of the learned Additional Special Judge, Krishnagiri in O.S.No.187 of 2014.

2. The suit in O.S.No.187 of 2014 has been filed by the respondent herein for recovery of a sum of Rs.2,85,000/-lakhs (Rupees Two lakhs and eighty five thousand only) due on the promissory note dated 08.04.2014. It is the case of the respondent/plaintiff that the sum has been borrowed by the appellant herein, for his business purpose and as security for the loan has executed a Promissory Note in favour of the respondent on the said date. Despite requests made several

times on the side of the respondent, the appellant had not come forward to clear the loan and hence, the plaintiff issued a Legal Notice to the defendants on 29.10.2014, for which there was no response. Therefore, left with no other alternative, the respondent had come forward to file the above suit.

3. The defendant in the said suit is the appellant herein. It was his case that he had only borrowed a sum of Rs. 3 lakhs (Rupees Three lakhs only) from the respondent's husband one K. Raas (who is the plaintiff in the other suit O.S.No.188 of 2014) and for which the promissory note dated 9.07.2011, was executed. The appellant would further contend that in addition to the promissory note, the respondent had asked the appellant to give three blank cheques and the particulars of those cheques were also mentioned in the promissory note. The appellant would further contend that when he approached the said Raas to settle the loan, he demanded a higher sum and consequently a quarrel arose between the appellant and the said Raas, who in a fit of anger tore the promissory note, threw the same on the face of the appellant. When the appellant had demanded for return of the three cheques, he was told that the same were kept in safe custody and it would be given at the earliest. Thereafter, when the appellant had approached the said Raas to handover the cheques, he did not return the same. It was also the case of the defendant in the suit that the promissory note was obtained by him under threat. Therefore he sought for a dismissal of the said suit.

4. The respondent had examined herself as PW1 and one Selvam as PW2 and marked three documents as exhibits A1 to A3 on her side. Likewise the mother of the appellant had examined herself as DW1 and marked three documents on the side of the side of the appellants as exhibits D1 and D3. The Trial Court had raised an issue as to whether the appellant had borrowed a sum of Rs.3 lakhs from the said Raas and whether he had forged the cheques to cheat the defendant. The Trial Court has returned a finding that the appellant had not proved the discharge of the loan borrowed under the promissory note dated 9.7.2011. Further, having accepted the signature in the suit promissory note, the onus is upon the appellant to prove otherwise. The Trial Court also found fault with the appellant for not sending the suit promissory note for comparing the signature of the executor in the promissory note. Relying upon the admission by DW1 regarding the execution of the suit promissory note, the trial court had come to the conclusion that the suit promissory note has been executed by the appellant and that amount has not been cleared. Therefore, the suit was decreed as prayed for.

5. The appellant took up this judgment and decree in appeal in A.S.No.74 of 2017 and the Lower Appellate Court had also arrived at the same conclusion. Challenging these concurrent judgments and decree, the appellant had filed the second appeal, Where he has contented that the suit promissory notes have been forged by the respondent/plaintiff and that no amount had been paid under the said promissory notes.

6. From the perusal of the pleadings and judgment, it is clearly evident that the execution of promissory notes had been accepted by the appellant, who claims that the same had been done under threat and coercion. However to show that the signature had been obtained by coercion no objection, no evidence, whatsoever, either in the form of a complaint or in the form of any letter was shown by the appellant. Both the Courts have concurrently examined the evidence, both oral and documentary and come to the conclusion that the respondent/plaintiff is entitled to the decree as prayed for. This Court, sitting in second appeal, can interfere with the Judgment and Decree of the courts below only if there is a substantial question of law. In the instant case, there is no question of law much less a substantial question of law.

7. In the result the second appeal is dismissed. No costs. Consequently connected Civil Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

jrs

To

1. The Additional Special Judge, Krishnagiri.
2. The principal District Judge, Krishnagiri.
3. The Section Officer, VR Section, High Court, Madras.

+lcc to M/s.C.Samivel, Advocate SR.No.76697

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AK(CO)
GMY(09/01/2019)