

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1513 of 2000

K.S.Palanisami

...Defendant/Appellant/ Appellant

Vs.

S.Karumana Gounder

... Plaintiff/Respondent/Respondent

Prayer: The Second Appeal has been filed under Section 100 of C.P.C. against the Judgment and decree dated 10.07.1998 of the learned Second Additional District Judge of Erode in A.S.No.283/97 confirming the decree and judgment dated 20.11.1995 of the learned Principal Subordinate Judge of Erode, decreeing the suit, O.S.No.269/92.

For Appellant : Mr.V.Raghupathy

For Respondent : Mr.Jeevagiridharan

J U D G M E N T

The defendant is the appellant before this court who had lost the case before the Courts below. The sum and substance of the plaint is as follows:

The defendant borrowed a sum of Rs.27,000/- from the plaintiff on 27.02.1991 for his urgent business expenses and executed a promissory note in favour of the plaintiff to repay the said sum with interest at Rs.2/- per hundred per month on demand of the plaintiff or his order. The said promissory note has been marked as document on the plaintiff's side.

2.In spite of repeated personal demands made by the plaintiff and notice of demand, the defendant failed and neglected to pay the said amount. Hence, the suit has been filed before the Trial Court for recovery of the principal and interest due on the said promissory note.

3.The defendant was doing road contracting and maintaining business and is assessed to Sales Tax and Income Tax. Hence, he is not entitled to the benefits of the Tamil Nadu Debt Relief Acts.

4.The defendant's written statement states as follows:

The defendant denied that he had borrowed a sum of Rs.27,000/- for his urgent business expenses and he never executed any promissory note in favour of the plaintiff to repay the amount with interest thereon at Rs.2/- per hundred per month.

5.The fact remains that the defendant in the year 1990 was in need of a sum of Rs.7,000/- for his contract work for which he approached one of his friends who was also doing contract work namely Ammaiappa Gounder of Noyyal for his financial crisis. However his friend who was not in a position to help him assured him that the money would be arranged from the Finance company.

6.Accordingly, his friend took this defendant to the plaintiff who was running a Finance company in the name and style of Sri. Periya Ponnathi Amman Finance, Noyyal. At the time of granting loan on 27.07.1990, the Finance company requested this defendant to put his signature in an empty printed promissory note and some empty stamp papers to the value of Rs.5/- as done by the other financiers as a security for the said amount. On 27.07.1990, the finance company has also obtained this defendant's signature in an empty white paper and also demanded a sum of Rs.3/- per hundred per month towards interest. Subsequently, this defendant has paid a sum of Rs.210/- on 25.08.1990, on 25.09.1990, Rs.210/- and on 25.03.1991 a sum of Rs.1580/- towards the interest to the said finance company but they did not issue any receipt to that effect.

7.In the mean time, the defendant stopped his contract work from the month of January 1991. On knowing this fact, the said Finance company insisted this defendant to discharge the entire debt. This defendant assured the finance company that the same would be settled in the month of May 1992.

8.When the financier met the defendant in the defendant's house, he paid a sum of Rs.2,480/- as interest along with a sum of Rs.7,000/- towards the principal. At that time, this defendant insisted the Finance company to return all the papers in which he has signed at the time of borrowing the loan, but, the same was not returned to him.

9.Again on 18.05.1992, this defendant met one Thangavel at the finance office to get back the signed papers. The said Thangavel told this defendant that there is a balance amount of Rs.1,200/- pending towards the interest. If the same paid, the signed papers would be returned.

10.Finally, this defendant issued a notice to the said Finance company to return all the signed papers but they refused to receive the notice. So, this defendant submits that the

printed empty promissory note in which he has signed and handed over to the Finance company has been manipulated. This defendant had neither seen the plaintiff nor borrowed money from him.

11. At the time of admitting this second appeal, this court framed the substantial question of Law as follows:

"Whether the courts below are justified in overlooking the admitted fact in respect of material contradictions in the promissory note which has vitally affected the execution of promissory note on which the suit was filed within two days from the date of demand notice which was not also received by the defendant before the institution of the suit?"

12. Heard the counsel on either side. It is submitted by the learned counsel by the appellant that the appellant / defendant borrowed a sum of Rs.7,000/- and he repaid the entire amount to the finance company run by the plaintiff. Thereafter, the defendant repeatedly demanded the Finance company to return all his signed papers which was refused by the Finance company. Even though the entire loan settled much earlier, thereafter, they demanded a huge amount from the defendant.

13. The suit promissory note was executed to the Finance company in the year 1990 which has been fabricated as if the defendant has borrowed a sum of Rs.27,000/- instead of Rs.7,000/- from the plaintiff on 27.02.1991. The impugned promissory note date in English and Tamil do not coincide, which was raised before the Trial Court and the First Appellate Court, but, the Courts below refused to believe the defendant's allegation and the decree has been passed against the defendant and the same was confirmed by the First Appellate Court, which is a perverse and unsustainable one.

14. The learned counsel appearing for the appellant/defendant further contended that it is for the plaintiff to establish his case and not the defendant. However, the Courts below concurrently committed errors and shifted the burden of proof on the defendant, which is unsustainable in the eye of law.

15. The learned counsel appearing for the respondent would submit that the appellant / defendant had admitted that he borrowed money from the plaintiff and also executed the promissory note in favour of the plaintiff. Further, the defendant himself established that the payment of amount has been settled to the plaintiff. In the absence of any material to substantiate the case, the Courts below have rightly arrived to a conclusion that the defendant did not pay back the loan borrowed from the plaintiff. Accordingly, the concurrent findings of the Courts below need not be interfered with.

16. On a perusal of the material records, it is found that the defendant was introduced by his friend to the plaintiff and borrowed a loan from the plaintiff. However, no documents were produced before the Courts below, in order to prove that the same was settled in favour of the plaintiff. In the absence of any materials, the Trial Court as well as the First Appellate Court, after an elaborate trial have arrived to a conclusion that the defendant did not discharge the loan amount borrowed from the plaintiff.

17. Interestingly, the defendant in his written statement has clearly stated that the amount was settled in the year 1992. Thereafter, he was repeatedly demanding the signed papers and he has also sent a notice to the plaintiff for the same. Even that notice has not been marked before the Courts below to establish his case that he had made continuous demand to get back his signed stamp papers.

Only the reply notice alone has been marked before the Courts below, itself is sufficient to discharge the burden on the defendant.

18. In view of the above, I do not find any error or infirmity in the order passed by the Trial Court and the First Appellate Court. Hence, the substantial question of law has been answered as against the appellant/defendant.

19. In the result, this second appeal is dismissed. The decree and judgment dated 10.07.1998 of the Learned Second Additional District Judge of Erode in A.S. No.283 of 1997 confirming the decree and judgment dated 20.11.1995 of the Learned Principal Subordinate Judge of Erode, decreeing the suit in O.S. No.269 of 1982 is confirmed. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS VIII)

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Sub Assistant Registrar

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To.

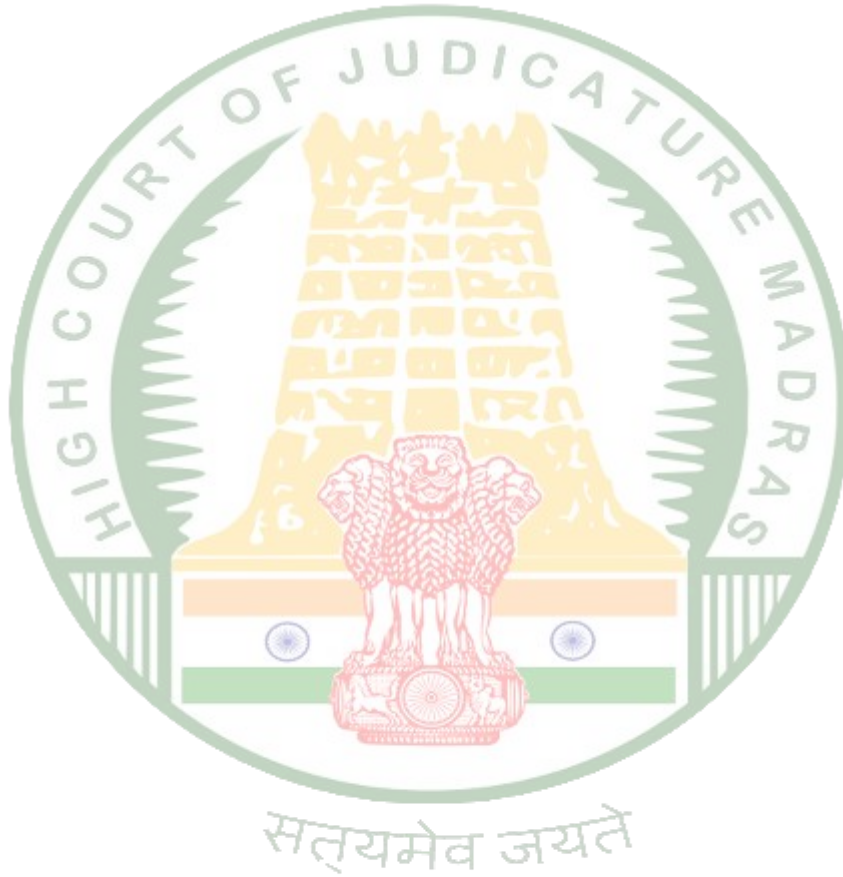
1. The II Addl. District Judge
Erode

2.The Principal Subordinate Judge
Erode

+1cc to Mr.V.Jeevagiridharan, Advocate SR.No.9465
+1cc to Mr.V.Raghupathi, Advocate SR.No.9649

S.A.No.1513 of 2000

AD(CO)
GN(06/03/2018)



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