

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1690 of 2000

G.Purushothaman

... Appellant/Plaintiff

Vs.

Selvaraj

... Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 23.09.1999 passed by the learned Subordinate Judge, Vridhachalam in A.S.No.17 of 1998 confirming the decree and judgment passed in O.S.No.516 of 1996 dated 28.11.1997 on the file of the District Munsif Court, Vridhachalam.

For Appellant : Mr.S.J.Jagadev
For Respondent : Ms.AL.Gandhimathi

J U D G M E N T

The un-successful plaintiff who lost the case before the Courts below has filed the second appeal before this Court.

2.The case of the plaintiff is as follows:The defendant borrowed a sum of Rs.15,000/- on 09.10.1989 with interest at the rate of 12%. After receipt of the said amount, the defendant executed a promissory note with appropriate witnesses. Thereafter, the defendant refused to pay the amount. The appellant caused legal notice and thereafter filed a suit for recovery before the lower Court.

3.To establish his case, the plaintiff marked four exhibits and examined two witnesses. The plaintiff examined himself as P.W.1 and deposed evidence in order to substantiate the money advanced by him to the defendant. In support of his claim he examined P.W.2. P.W.2 is none other than the father-in-law of the elder brother of the plaintiff. However, the lower Court dis-believed the words of the plaintiff and dismissed the suit. As against the dismissal, he filed appeal before the lower Appellate Court. The lower Appellate Court also confirmed the

order of the lower Court.

4.The case of the defendant is as follows: The respondent/ defendant denied the money borrowed from the plaintiff. However, he admitted the signature in the pro-note. The said pro-note was executed by the defendant for security purpose. Since the plaintiff and the defendant's father were running a financial company in Trichy by name 'People's Finance Company', in order to obtain loan, the defendant issued a security letter which was subsequently utilized as pro-note for filing a suit before the lower court in order to wreak vengeance against his father. Infact, there was a dispute in between the plaintiff and the father of the defendant and in order to wreak vengeance the plaintiff filed a false case before the lower court. After examination, the lower Court rightly dismissed the suit and the same was confirmed by the lower Appellate Court.

5.The substantial questions of law that were framed at the time of admission of the second appeal are as follows:

"1) Whether the lower Courts have properly considered the principles of law invoked in interpretation of Section 118 of Negotiable Instruments Act when applying it to the facts of this case?

2) Whether the lower Courts committed grave error in giving perverse finding of facts which are opposed to evidence on record?

3) Whether the lower Courts committed error in giving findings opposed to rule of evidence prescribed in the Evidence Act?"

6.The learned counsel appearing for the appellant would submit that the respondent/ defendant borrowed a sum of Rs.15,000/- and executed a pro-note. In his examination as D.W.1, the defendant admitted his signature. However, after admitting the signature, the presumption will lie under Section 118 of the Negotiable Instruments Act. The document is a valid one. It is for the defendant to prove that the pro-note obtained by the plaintiff is fraud. In the absence of any material to show the said pro-note was mis-used by the plaintiff, the plaintiff is entitled for decree. However, without considering the evidence of P.W.2 and other documents, the lower Court erroneously arrived at a conclusion as if the document was mis-used by the plaintiff. Accordingly, the lower Court dismissed the suit and the same was also erroneously confirmed by the lower appellate Court. Hence, the substantial question of law has to be answered in favour of the plaintiff. Accordingly, he prayed for allowing the second appeal.

7. Per contra, the learned counsel appearing for the respondent/ defendant would submit that the plaintiff acted as a guarantor and executed the letter of guarantee in favour of the defendant. His father was a partner in the finance company run by the plaintiff. There was a dispute in between them for which a case was filed before the Trichy Sub Court in O.S.No.480 of 1990. Interestingly the plaintiff examined one Narayanansamy as witness P.W.2 who in his witness said the document is for Rs.17,000/-. However, the pro-note is only for Rs.15,000/-. Apart from that, P.W.2 said that the said pro-note is written by one pen one ink. However, on a perusal of pro-note Ex.A1 discloses that it was written by different ink and different person used the signature by different ink. That itself shows that the plaintiff has not filed a suit with clean hands and only in order to wreak vengeance, the above said case was filed.

8. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent.

9. On a perusal of the judgment of the Courts below, the plaintiff examined himself and also examined as P.W.2 who is none other than the father-in-law of his own brother. P.W.2 deposed that the defendant borrowed only Rs.17,000/- and he categorically stated that in order to write the pro-note, the plaintiff used one ink and all the persons signed with the same ink. However, on the perusal of the pro-note, the Court below arrived at a conclusion that it was signed by different person with different ink. Apart from it, there is no dispute with regard to the running of Financial Company by the defendant's father and the plaintiff and there are some evidences to show that the plaintiff advanced money for obtaining pro-note from different persons. In view of the above, the plaintiff utilizing signature of the defendant and filed suit in order to achieve something which was not succeeded against his father.

10. Section 118 of the Negotiable Instruments Act, 1881, provides for a statutory presumption for consideration of every Negotiable Instruments, which include the promissory note. It has been stated on record that the defendant had borrowed loan from the plaintiff and the said amount is outstanding against him.

11. In the present case the plaintiff filed a suit as if the defendant has borrowed a sum of Rs.15,000/-. However, he examined one Narayanasamy as his witness P.W.2. He deposed that the plaintiff borrowed a sum of Rs.17,000/- and he demolished the plaintiff version, that the pro-note was written by one ink and all the persons signed with the same ink. However, the lower Court as well as the lower Appellate Court on perusal of the pro-note arrived at a conclusion that the pro-note was signed by

different person with different ink.

12. Accordingly, the presumption under Section 118 of the Negotiable Instruments Act goes in favour of the defendant, since the plaintiff did not establish the case that the defendant borrowed money from the appellant/plaintiff and other circumstantial evidence shows with ulterior motive the plaintiff filed the suit against the defendant. Accordingly, the substantial questions of law framed at the time of admission are answered against the appellant.

13. The second appeal fails and the same is dismissed. The judgment and decree of the learned Subordinate Judge, Vridhachalam in A.S.No.17 of 1998, dated 23.09.1999, confirming the decree and judgment passed in O.S.No.516 of 1996, dated 28.11.1997, on the file of the District Munsif Court, Vridhachalam is confirmed. No costs.

s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge, Vridhachalam.

2. The District Munsif, Vridhachalam.

Copy to

The Section officer
VR Section, High Court, Madras. (2 copies)

+1 CC to Mr. S.J. Jagadev, Advocate sr 1308.

+1 CC to Ms. A.L. Gandhimathi, Advocate sr 1221.

S.A.No.1690 of 2000

VD (CO)
SP (17/02/2018)