

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2018

PRONOUNCED ON: 09.02.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1262 of 2003

Singaram Appellant (Defendants)

Vs.

P.Tulasibai Ammal Respondent (Plaintiff)

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the learned Additional Subordinate Judge, Cuddalore dated 03.01.2003 made in A.S.No.2 of 1999 reversing that of the court of the Additional District Munsif, Cuddalore dated 28.10.1998 made in O.S.No.762 of 1996.

For Appellant : Ms.G.Sumitha

For Respondent : Mr.R.Venkatesulu
for M/s.Usha Raman

सत्यमेव जयते
J U D G M E N T

This second appeal is directed against the judgment and decree dated 03.01.2003 passed in A.S.No.2 of 1999 on the file of the Additional Subordinate Court, Cuddalore, reversing the judgment and decree dated 28.10.1998 passed in O.S.No.762 of 1996 on the file of the District Munsif Court, Cuddalore.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for recovery of money.

4.The case of the plaintiff in brief is that the defendant borrowed a sum of Rs.20,000/- from her on 01.09.1993 and in evidence thereof, executed the suit promissory note agreeing to repay the borrowed sum with interest at 12% per annum on demand and despite several requests thereafter and the issuance of notice on 03.06.1996, calling upon the defendant to pay the borrowed sum as promised, as the defendant failed to honour the promise, according to the plaintiff, she had been necessitated to lay the suit for recovery of money.

5.The case of the defendant in brief is that the suit is not maintainable either in law or on facts and the defendant has not executed the suit promissory note in favour of the plaintiff as alleged in the plaint in token of the receipt of the amount alleged to have been lent by the plaintiff and the suit promissory note is a fabricated document and the plaintiff's husband namely Pitchandy, was engaged in money lending and chit transactions and the defendant was one of the subscriber in the chit run by him and accordingly, at the time of joining the chit, Pitchandy obtained the signatures of the defendant in blank stamp papers and blank papers and retained them as additional security and after the chit transaction is over, sometimes used to destroy the blank stamp papers and sometimes he used to keep the same with him and the defendant reposing faith on him did not ask for the return of the stamp blank papers and meanwhile, the defendant introduced a new subscriber to the chit and the said subscriber bid in the chit, but his repayment was not satisfactory and accordingly the plaintiff's husband asked the defendant to undertake to repay the said amount and as the defendant refused to the same, the plaintiff's husband due to enmity, concocted the suit promissory note by utilizing the blank signed stamp papers taken from the defendant and hence the plaintiff is not entitled to recover the suit amount and the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.Ws 1 to 3 were examined. Exs.A1 to A3 were marked. On the side of the defendant, D.Ws1 and 2 were examined. No document has been marked.

7.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the suit and on appeal preferred by the plaintiff, the first appellate court, on an appreciation of the materials placed on record was pleased to set aside the judgment and decree of the trial court by way of allowing the appeal preferred by the plaintiff and decreed the suit as prayed for. Challenging the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

(1) Whether there is conflict of oral evidence and the decision hinges on the credibility of the witnesses whether the lower appellate court was justified in reversing the finding of the trial court that Exhibit A.1 is not supported by consideration especially when there is no improbability to displace the conclusion of the trial Court?

(2) Whether the learned subordinate Judge was justified in ignoring the admission of the P.W.1, plaintiff that she was not present when the appellant and witnesses signed Ex.A1 and as such P.W.1 cannot speak about passing of consideration under Exhibit A.1 and holding Exhibit A.1 is supported by consideration.

9. The suit has been laid by the plaintiff for recovery of money on the basis of a promissory note. Briefly stated, according to the plaintiff, the defendant borrowed a sum of Rs.20,000/- from her on 01.09.1993 and in evidence thereof, executed the suit promissory note marked as Ex.A1, promising to repay the same, on demand with interest as recited therein and according to the plaintiff inasmuch as the defendant failed to honour his promise, despite several requests, and also the issuance of the legal notice dated 03.06.1996 marked as Ex.A2 and on the other hand, as the defendant repudiated his liability to pay the suit amount by sending a false reply marked as Ex.A3, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

10. Per contra, it is the case of the defendant that he did not borrow the suit amount from the plaintiff as alleged and also not executed the suit promissory note, in evidence of the said borrowal and according to the defendant, the plaintiff's husband was running a chit and he was a member of the said chit transaction and the plaintiff's husband had obtained his signatures in blank stamp papers as security towards the chit transactions and after the said transactions are complete, sometimes, he used to keep the signed blank stamp papers with him and out of confidence, the defendant also not used to get back the same and further according to the defendant, inasmuch as he had refused to stand as a guarantor to a new subscriber introduced by him in the chit transactions, developing enmity, the plaintiff's husband in connivance with the plaintiff, had

concocted the suit promissory note by making use of the blank stamp signed papers entrusted by the defendant at the time of chit transactions and hence, according to the defendant, the suit promissory note is a forged document, devoid of any consideration and hence the suit claim is liable to be rejected.

11.As far as the claim of the plaintiff sought for in the suit, to establish the same, the plaintiff has tendered evidence as P.W.1 and she has also examined the scribe cum attestor K.R.Mani as P.W.2 and another scribe Durai as P.W.3. From the evidence of P.Ws1 to 3 in toto it is found that, the defendant had borrowed the sum of Rs.20,000/- from the plaintiff on 01.09.1993 and in evidence thereof had executed the suit promissory note in favour of the plaintiff promising to repay the said sum, on demand, in favour of the plaintiff. In this connection, both P.Ws.2 and 3 have clearly deposed that they have witnessed the above said transactions between the plaintiff and the defendant and had also deposed that they had attested the suit promissory note and the defendant had executed the same, after receiving the consideration recited therein and further P.Ws.2 and 3 have clearly deposed that the contents of the suit promissory note Ex.A1, were read over to the defendant and admitting them to correct, the defendant, on receipt of the consideration mentioned therein, executed the suit promissory note and that they had witnessed the same and attested the suit promissory note and as rightly found by the Courts below, despite cross examination, nothing has been elicited from P.W.2 and 3 as well as the plaintiff examined as P.W.1, to discredit their testimony on the above aspects of the matter. Accordingly, it is found that the plaintiff has established her claim made in the suit through the evidence of P.Ws.2 and 3 as well as her own evidence. No doubt, as rightly found by the first appellate court, considering the long gap between the execution of the suit promissory note and the time at which the witnesses had deposed about the same, naturally, certain discrepancies are bound to occur and by way of the same, ipso-facto, we cannot disown or disbelieve the evidence of P.Ws2 and 3, particularly, when it is noted that the discrepancies projected in their evidence are found to be not material enough to discard their version together. On the other hand, as rightly determined by the first appellate court, a reading of the evidence of P.Ws.1 to 3 cumulatively would go to show that they had clearly averred about the borrowal of the suit amount by the defendant from the plaintiff as alleged in the plaint and accordingly, it is found that no infirmity could be attached to the approach of the first appellate court in placing reliance upon the evidence of P.Ws.1 to 3. It is however contended by the defendant's counsel that P.W.1 has deposed that she was not present at the time of the execution of the promissory note by the defendant and so according to her, the plaintiff's case should be discountenanced. However, when the evidence of P.W.1,

the plaintiff is examined thoroughly, it is seen that she has asserted that she was present at the time of the suit transaction and witnessed the execution of the promissory note by the defendant and also it is further seen that she had advanced the sum of Rs.20,000/- to the defendant and accordingly, the defendant on receipt of the same, had executed the suit promissory note in her favour. Thus, being the situation, the contention now put forth that the plaintiff was not present at the time of the execution of the suit promissory note, as such, cannot be accepted in any manner. Even though the trial court has appreciated the evidence of P.Ws.1 to 3 in toto proceeded to dismiss the plaintiff's suit on footing that the plaintiff has failed to establish the passing of consideration under the suit promissory note. When, it is noted through the evidence of P.Ws.1 to 3 that the defendant had executed the suit promissory note, on receipt of the consideration, and accordingly when the trial court has also determined that through the evidence of P.Ws.1 to 3, the plaintiff has established the factum of the execution of the promissory note by the defendant, accordingly, when it is determined that the defendant's signature is available in the promissory note as well as established by the plaintiff, without any iota of doubt, as rightly argued, the presumption u/s.118 of the Negotiable Instrument Act would come into play and in such view of the matter, it is now for the defendant to rebate the presumption that no consideration had passed under the promissory note.

12.The defendant has taken a plea that the plaintiff's husband had concocted the suit promissory note based upon the signed stamp papers entrusted by him at the time of the chit transactions. However, when there is no material placed on the part of the defendant that the plaintiff's husband was running the chit transactions and that the defendant was a member in respect of the said chit transactions and that the plaintiff's husband had obtained the signatures of the defendant in blank stamp papers as security, towards the alleged chit transactions, as put forth by him, and when with reference to the above case of the defendant, there is nil material placed, accordingly, it is seen that the first appellate court has disbelieved the above version of the defendant's case and even the trial court has also disbelieved the above aspect of the defendant's case. If really, as pleaded by the defendant he had entrusted signed, stamped blank papers to the plaintiff's husband towards the chit transactions, when according to the defendant the said chit transactions are over, on the discharge of the amount in respect of the chit transactions, as a prudent person, the defendant would have taken all the steps to retrieve the signed stamp blank papers said to have been given by him to the plaintiff's husband, in the manner known to law. However, it is found that according to the defendant, reposing confidence on the

plaintiff's husband, he had not taken steps to retrieve the same. But, that plea of the defendant, as such, cannot be accepted when, it is found that, the plaintiff has stoutly repudiated the claims of the plaintiff that the defendant's signature had been obtained by her husband in blank stamp papers at the time of the alleged chit transactions. Now, according to the defendant, at the time of the said chit transactions, he had entrusted only signed stamp blank papers to the plaintiff's husband. Now, the suit promissory note is found to be a printed note and in such view of the matter, it is found that the case of the defendant that the plaintiff's husband had concocted the suit promissory note based upon the signed stamp blank papers entrusted by him at the time of chit transactions, falls to the ground and cannot be believed in any manner. Accordingly, as rightly determined by the first appellate court, inasmuch as the defendant had borrowed the suit amount from the plaintiff and executed the suit promissory note without any demur, it is found that accordingly signature had been obtained in the suit promissory note, in evidence of the borrowal and therefore the plea of the defendant that suit promissory note is a fabricated document and devoid of consideration as such cannot be accepted in any manner.

13. Further, the plea of the defendant that the plaintiff's husband requested him to stand as a guarantor for another subscriber introduced by the defendant and as the defendant had refused to the same, it is stated by the defendant, that the plaintiff's husband developing enmity had fabricated the suit promissory note, however, when with reference to the same, there is no reliable material placed by the defendant, in such view of the matter, all the above pleas set out by the defendant had been rightly discarded by the Courts below.

14. The trial court having coming to the conclusion that it is only the defendant, who had executed the suit promissory note has however proceeded to hold that the plaintiff has failed to establish the passing of consideration under the promissory note. However, as rightly determined by the first appellate court, when it is found that the plaintiff has established that it is only the defendant who had executed the suit promissory note as projected in the matter and when the defence version as regards the fabrication of the suit promissory note has not been proved in any manner, it is found that the trial court having come to the above said conclusion should have invoked the presumption u/s.118 of the Negotiable Instrument Act and accordingly, placed the burden only upon the defendant to establish or rebut the presumption that no consideration passed under the suit promissory note. On the other hand, the trial court has erroneously placed the burden of proof on the plaintiff to prove the passing of consideration, despite having determined that it is only the defendant, who had executed the

promissory note on the basis of the evidence adduced by the plaintiff in the matter. It is found that the trial court has misplaced the burden of proof on the plaintiff by failing to raise the presumption in favour of the plaintiff as per law above stated and thereby erroneously dismissed the plaintiff's claim. On the other hand, it is found that the first appellate court has rightly noted that once the plaintiff has established that it is only the defendant who has executed the suit promissory note as pleaded by her and further when the defence plea with reference to the suit promissory note is found to be untenable and not established in any manner, accordingly, it is seen that the presumption u/s.118 of the Negotiable Instrument Act had been rightly invoked by the first appellate court and finding that the defendant having failed to establish the non-passing of consideration under the note, accordingly, rightly set aside the judgment and decree of the trial court and decreed the suit in favour of the plaintiff. In the light of the above discussion, I do not find any error, infirmity or mistake in the determination of the first appellate court that the plaintiff has established her claim beyond all doubt and that the defendant has failed to establish or rebut the presumption that the suit promissory note is not supported by consideration as projected by him.

15. In view of the above position there is no conflict in the evidence of P.Ws.1 to 3 and the character projected in the evidence of P.Ws.2 and 3 being of minor character due to efflux of time and not bearing on the main aspects of the plaintiff's case, accordingly, the first appellate court was right in dislodging the conclusions of the trial court by holding that the trial court had erred in shifting the burden of proof on the plaintiff to establish the passing of consideration, despite holding that the plaintiff has established that it is only the defendant who had executed the suit promissory note and further holding that the defence plea as regards the fabrication of the suit promissory note is false and untenable. It is also found that the first appellate court has rightly determined that the evidence of the plaintiff examined as P.W.1, does not suffer from any infirmity or error and rightly found that she was also present at the time of execution of the promissory note by the defendant and accordingly the evidence of P.Ws.1 to 3 seen cumulatively would go to show that consideration had passed under the promissory note as put forth by the plaintiff and the same has been received by the defendant and accordingly, only thereafter, the defendant had executed the suit promissory note which had been witnessed by P.W.s2 and 3. Such being the position, the substantial questions of law formulated in the second appeal are answered against the defendant and in favour of the plaintiff.

16.In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

mfa

To

1.The Additional Subordinate Judge,
Cuddalore

2.The Additional District Munsif,
Cuddalore.

3.The Section Officer,
VR Section,
High Court, Madras.

+ 1 cc to M/s.Usha Raman Advocate,SR.10341

+ 1 cc to Ms.G.Sumitha Advocate,SR.10219

Pre-delivery judgment made in
S.A.No.1262 of 2003

nm(co)
nr 13/04/2018

सत्यमेव जयते
WEB COPY