

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.131 of 2015
and M.P.No.1 of 2015

Vediappan

.. Appellant/Defendant

Vs.

Padmanaban

.. Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 17.11.2011, passed in A.S.No.13 of 2011 on the file of the Principal Subordinate Judge, Thiruvanamalai, modified the judgement and decree dated 05.01.2011, passed in O.S.No.76 of 2009 on the file of the Principal District Munsif, Chengam.

For Appellant : Mr.F.Terry Chellaraja
For Respondent : Mr.A.Srinivasan

J U D G E M E N T

This Second Appeal has been filed against the Judgement and Decree dated 17.11.2011, passed in A.S.No.13 of 2011 on the file of Principal Subordinate Judge, Thiruvanamalai, modifying the Judgement and Decree dated 05.01.2011, passed in O.S.No.76 of 2009 on the file of Principal District Munsif, Chengam.

2. The defendant in the suit for recovery of money based on promissory notes, has preferred the above second appeal. The respondent/plaintiff had laid the case based on two promissory notes marked as Exs.A.1 and A.2, dated 01.09.2006, for a sum of Rs.25,000/- each. As the money was not repaid, the suit has been laid.

3. Denying the averments leading to the cause of action in the suit, the appellant/defendant had stated that he has been cultivating the lands of the respondent/plaintiff based on an oral lease. As the lease was an oral one, the respondent/plaintiff had brought one Ranganathan on 01.09.2006 and wrote the two promissory notes, and the same were signed by the defendant as a token thereof. The defendant denied any passing of consideration based on the promissory notes.

4. The trial court decreed the suit in so far as only one of the promissory notes is concerned holding that though, two promissory notes were executed, the second one was only for the purpose of interest and held that only consideration passed under one promissory note.

5. Aggrieved by the same, the plaintiff had preferred an appeal in A.S.No.13 of 2011 before the Principal Subordinate Court, Thiruvananthapuram, and the defendant also had preferred a cross appeal in A.S.No.74 of 2011, challenging the decree passed. The Appellate Court decreed the suit, as prayed for and dismissed the cross appeal.

6. Before the Trial Court, the respondent/plaintiff, apart from examining himself as P.W.1, examined Mr.Devindiran and Mr.Appasamy as P.Ws.2 and 3, who are witnesses to the pronote, and the said Ranganathan as P.W.4, who is the scribe of Exs.A.1 and A.2. Exs.A.1 to 5 were marked on his side. The appellant/defendant, apart from depositing herself as D.W.1, also examined one Mr.Ramasamy as D.W.2, and he had chosen not to mark any documents his side.

7. At the time of admission, the following substantial questions of law were formulated by this Court for consideration :

"i. Whether the execution of two promissory notes on the same day each for Rs.25,000/- would create suspicion and whether said suspicion would rebut the legal presumption in favour of the plaintiff ?

ii. Whether the Courts below were right in simply ignoring the evidences of witnesses examined by the plaintiff wherein they have admitted during cross-examination that they did not see any amount being paid by the plaintiff to the defendant at the time when the two promissory notes have been executed ?"

8. It is the consistent case of the respondent/plaintiff that on 01.09.2006, the appellant/defendant borrowed a sum of Rs.25,000/- in the morning and on the same day, he borrowed another sum of Rs.25,000/- in the evening, agreeing to repay the same on the agreed interest rate and executed Exs.A.1 and A.2, promissory notes. The execution of Exs.A.1 and A.2 were not denied by the appellant/ defendant. In fact, the appellant/defendant has specifically admitted the execution of the suit promissory notes. However, he only denied that they were not supported by any consideration and the same were executed as a security for the oral lease taken by him from the respondent/plaintiff.

9. Admittedly, the promissory notes were written by one Ranganathan. Once, the execution is admitted by the appellant/defendant, the burden of proof on the respondent/plaintiff is discharged and the onus automatically shifts on the appellant/defendant to prove the passage of consideration. P.Ws.2 and 3 are the attestors of the documents and P.W.4 is the scribe of Exs.A.1 and A.2.

10. As stated earlier, since the appellant/defendant himself has admitted the execution of the promissory notes, the evidence of attestors need not be gone into. The only defence available to the appellant/defendant is there is no passing of consideration. To substantiate his case, the appellant/defendant had examined D.W.2, one Ramasamy. It is specifically found that the said Ramasamy was living in an old age home for about five years at the time of execution of pronote, and he had not been living in the village during the relevant point of time. Hence, the Courts below had discredited the evidence of D.W.2, as he has been brought in the interest of the appellant/defendant.

11. The next contention of the appellant/defendant is that he had been cultivating the lands belonging to the respondent/plaintiff based on an oral lease from year 1988. However, there is no piece of evidence produced by him to substantiate his case. Therefore, the contention of the appellant/defendant that the promissory notes were written only as a security for the lands in his possession and the consideration actually did not pass is not established in the manner known to law.

12. Once the execution of the promissory notes is admitted and proved, Section 118 of the Negotiable Instruments Act, 1881, comes into play. The presumption is one of law and thereunder, the Court shall presume that the promissory note was made only for a valid consideration. As the burden of proof on the respondent/plaintiff is discharged even by the admission made by the appellant/defendant, the burden automatically shifted on the appellant/defendant, who is duty bound to adduce sufficient evidence, both oral and documentary, to rebut the presumption that consideration has not been passed. In the instant case, excepting the interested testimony of D.W.2, the defendant has not produced any evidence to discharge the onus on him.

13. The learned counsel for the appellant/defendant placed reliance on the judgement of the Supreme Court in Bharat Barrel V. Amin chand Pyarelal, 1991 1 CTC 497. Even as per the said decision, to disprove the presumption, the appellant/defendant has to bring on record such facts and circumstances on the question of passing of consideration, which the Court, may either believe or disbelieve.

14. Admittedly, in this case, there is no other evidence that has been produced by the appellant/defendant. The presumption under Section 118 of the Negotiable Instruments Act, 1881, is a statutory one and unless it is rebutted, it has to be presumed that consideration had passed. Merely because the appellant/defendant had written two promissory notes on the same day for the same value, it will not create any suspicion to rebut the statutory presumption under Section 118 of the Negotiable Instruments Act, 1881.

15. Thus, the questions of law are answered in the negative against the appellant/defendant.

16. In the result, the second appeal is dismissed and the Judgment and decree of the lower appellate Court dated 17.11.2011 passed in A.S.No.13 of 2011 are confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition shall stand closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

gg

To

1. The Principal Subordinate Court,
Thiruvannamalai.

2. The Principal District Munsif,
Chengam.

+ 1 cc to Ms. M. Malar, Advocate sr.9309

+ 1 cc to Mr. A. srinivasan, Advocate Sr.10327

S.A.No.131 of 2015

GJII (CO)

EU 7.3.2018