

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.04.2018
CORAM :
THE HONOURABLE MS. JUSTICE V.M.VELUMANI
Second Appeal No.373 of 2015

Murali

... Appellant/Respondent/
Defendant

Vs.

Selvi

... Respondent/Appellant/
Plaintiff

PRAYER:- Second Appeal has been filed under Section 100 of C.P.C to set aside the judgment and decree dated 03.06.2014 made in A.S.No.13 of 2013 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 05.09.2012 in O.S.No.190 of 2010 on the file of the District Munsif Court, Jeyankondam.

For Appellant : Mr.M.V.Krishnan

For Respondent : Mr.Bharatha Chakravarthy
for M/s.Sai Bharath and Ilan

J U D G M E N T

This Second Appeal has been filed to set aside the judgment and decree dated 03.06.2014 made in A.S.No.13 of 2013 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 05.09.2012 in O.S.No.190 of 2010 on the file of the District Munsif Court, Jeyankondam.

2.The appellant is defendant and respondent is the plaintiff in O.S.No.190 of 2010 on the file of the District Munsif Court, Jeyankondam. The respondent filed said suit for recovery of a sum of Rs.63,500/- together with interest on 50,000/- at 12% per annum. According to the respondent, the appellant borrowed a sum of Rs.50,000/- on 15.06.2007 from the respondent agreeing to repay the same together with interest at 12% and executed a promissory note. The appellant did not pay the principal and interest inspite of demand in person and by two notices. In the circumstances, the respondent filed the above suit.

3.The appellant filed written statement and denied having borrowed a sum of Rs.50,000/- on 15.06.2007 from the respondent and execution of promissory note. According to the appellant, he sold his land to the respondent on condition that the same must be reconveyed to the appellant on payment of amounts. On the date of execution of the sale deed, the respondent took blank promissory note from the appellant. The

appellant repaid the amounts and requested the respondent to reconvey the property. The respondent with a view to fraudulently grab the property of the appellant, fabricated the suit promissory note. The appellant settled the account with respondent and even after that, the respondent is using the promissory note. After the payment of amounts due and settlement of accounts, she has filed the present suit only to take revenge on the appellant. The respondent issued notice dated 15.06.2010 through her Advocate. On receipt of the said notice, the appellant contended that the respondent came with a witness and informed about the settlement of accounts. The respondent informed the appellant that by mistake the said notice was issued and she will not take any action based on the said notice. In view of the same, the appellant did not send any reply and prayed for dismissal of the suit.

4. Based on the pleadings, the learned Trial Judge framed necessary issues. Before the learned Trial Judge, the respondent examined herself as P.W1 and marked 4 documents as Exs.A1 to A4. The appellant examined himself as D.W.1 and two other witnesses were examined as D.Ws.2 and 3 and marked 1 document as Ex.B1.

5. The learned Trial Judge, considering the pleadings, oral and documentary evidence, dismissed the suit, holding that the appellant has proved that suit promissory note was not supported by consideration and respondent has failed to prove that on the date of promissory note, she had money, she has accepted to lend the amounts and failed to produce the accounts.

6. Against the said judgment and decree dated 05.09.2012 made in O.S.No.190 of 2010, the respondent filed A.S.No.13 of 2013. The learned First Appellate Judge framed necessary points for consideration. The learned First Appellate Judge considering the pleadings, oral and documentary evidence, materials available on record and judgments of the Trial Court, allowed the appeal, reversing the judgment and decree of the learned Trial Judge and decreed the suit.

7. Against the said judgment and decree dated 03.06.2014 made in A.S.No.13 of 2013, the present Second Appeal has been filed by the defendant.

8. At the time of admission, the following Substantial Questions of law were framed:

"1. Whether the judgment of the Lower Appellate Court reversing the finding of the trial Court that the Plaintiff did not pay any money to the defendant under the suit promissory note is perverse?

2. Whether the Lower Appellate Court ought to have followed the ruling reported in (2012) 3 MLJ 658 holding that admission of having signed on a blank paper is no admission of execution of a

document and confirmed the trial court's judgment?"

9. The learned counsel for the appellant contended that the First Appellate Court failed to follow the provision of Order XLI Rule 31 of C.P.C in not framing the points for consideration and the decisions thereon. The appellant has denied execution of promissory note as alleged by the respondent. The learned Judge erred in holding that the respondent can succeed under the Negotiable Instruments Act and failed to see that presumption under the said Act will not apply to the facts of the case. When the appellant denied execution of the promissory note, it is for the respondent to prove that no amount was paid in the said promissory note by examining D.Ws 2 and 3. The appellant has proved that he had entered into an agreement to repurchase the sale of his property and respondent has made use of blank promissory note to file false case claiming suit amounts from the appellant. The presumption under Section 118 of Negotiable Instruments Act and Sections 101 to 103 of Indian Evidence Act will not apply to the facts of the present case.

10. Per contra, the learned counsel for the respondent contended that the appellant admitted his signature in the promissory note. In view of such admission, as per the Negotiable Instruments Act, it is presumed that the said promissory note is supported by the consideration. The appellant failed to rebut the said presumption by acceptable evidence. The witness examined the appellants as D.Ws 2 and 3 had admitted the execution of promissory note and payment of amounts. The learned First Appellate Judge has properly appreciated all the materials available on record, judgment relied on by the parties and allowed the appeal by giving valid reason and prayed for dismissal of the Second Appeal.

11. Heard the learned counsel for the appellant as well as respondent and perused the materials available on record.

Substantial Questions of Law 1 and 2:

12. The respondent has filed suit for recovery of money based on the promissory note. According to the respondent, the appellant borrowed a sum of Rs.50,000/- on 15.06.2007, agreeing to repay the said sum together with interest at 12% per annum, but failed to pay the amounts inspite of repeated demands. The respondent has sent notice through his Advocate to the appellant on 04.06.2014. The appellant did not send any reply. In the circumstances, the respondent filed suit. The appellant filed written statement and submitted that he did not borrow any money from the respondent and contended that he sold his land to the respondent without superstructure with a condition that when the appellant pays amount, the respondent must reconvey the property to the appellant. The appellant repaid the amounts and when he requested the respondent to reconvey the property, the respondent fabricated the suit promissory note in order to grab the property of the appellant

and caused mental agony to the appellant. Further, he submitted that the suit is barred by limitation. The appellant admitted his signature in the suit promissory note.

12(a).According to the appellant, he executed the promissory note in blank when he executed the sale deed, Ex.B1. In view of the admission of his signature in the suit promissory note, it is presumed under Section 118 of Negotiable Instruments Act that suit promissory note is supported by consideration. The said presumption is rebuttable by letting in acceptable evidence. The appellant examined himself as D.W.1 and also examined two other witnesses as D.Ws 2 and 3, who are the witnesses in Ex.B1, the sale deed executed by the appellant in favour of the respondent's husband. D.W.3 is witness in both Ex.A1 as well as Ex.B1. Both the witnesses have deposed that at the time of execution of Ex.B1, the appellant executed blank promissory note and no amount was paid as consideration and appellant did not borrow any money on the date of execution of promissory note.

12(b).According to D.Ws 2 and 3, the promissory note was taken as security when appellant executed Ex.B1. The learned Trial Judge accepted evidence of D.Ws 2 and 3 and held that appellant did not receive any consideration for the suit promissory note. The respondent in her evidence has stated that one Poomalai Govindasamy and D.W 3 came to her house and received the amounts. She also admitted that she has not met the appellant and she does not know him and only her husband knows the appellant. Based on these evidences, the learned Trial Judge dismissed the suit on the ground that the respondent failed to examine Poomalai Govindasamy to prove her capacity to lend amounts mentioned in the suit promissory note.

12(c).The learned First Appellate Judge did not properly appreciate the evidence of D.Ws 2 and 3, who have stated that respondent did not lend any amount as consideration for the suit promissory note to the appellant and D.W.3 signed blank promissory note. D.Ws 2 and 3 have stated that they arranged loan of Rs.1,50,000/- from the husband of the respondent and who insisted execution of Ex.B1, sale deed and blank promissory note. The learned First Appellate Judge, on misconception of this part of evidence, held that these witnesses admitted that D.Ws 2 and 3 arranged loan from the respondent and appellant executed promissory note after receiving the sum of Rs.50,000/-. The finding of the learned First Appellate Judge is not based on evidence. The learned First Appellate Judge on misinterpretation of the evidence, allowed the appeal. In the judgment reported in 2012 (3) MLJ 658(Thangarasu Vs. Arumugam), this Court has held that when a promissory note is executed in blank, the presumption under Section 118 of the Negotiable Instruments Act does not arise. The learned First Appellate Judge failed to consider the judgment of this Court. Further in evidence, the appellant

rebutted the presumption under Section 118 of the Negotiable Instruments Act and proved that suit promissory note is not supported by consideration.

13.For the above reason, the Substantial Questions of Law are answered in favour of the appellant. The judgment and decree 03.06.2014 passed by the learned Subordinate Judge, Ariyalur in A.S.No.13 of 2013 is set aside. The judgment and decree dated 05.09.2012 passed by the learned District Munsif, Jeyankondam in O.S.No.190 of 2010 is restored.

14.In the result, the Second Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Subordinate Judge,
Ariyalur.

2.The District Munsif,
Jeyankondam.

3.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.M.V.Krishnan, Advocate Sr.No.29311

+1cc to M/s.Sai Bharath & Ilan, Advocate Sr.No.29321

GJ(CO)

sm:31.5.2018

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