

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2018

PRONOUNCED ON : 16.02.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1389 of 2003

P.M.Govindan

...

Appellant/Defendant

Vs.

S.R.Mariappan

...

Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Principal Subordinate Judge, Gobichettipalayam in A.S.No.23/2000 dated 29.04.2002 preferred against the judgment and decree of the Learned District Munsif of Gobichettipalayam in O.S.No.210/1997 dated 28.01.1999

For Appellant : Mr.S.Kaithamalai kumaran

For Respondent : Mr.N.Manokaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 29.04.2002 passed in A.S.No.23/2000 on the file of the the Principal Subordinate Court, Gobichettipalayam confirming the judgment and decree dated 28.01.1999 passed in O.S.No.210/1997 on the file of the District Munsif Court, Gobichettipalayam.

2. Parties are referred to as per their 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.15,000/- from him on 05.06.1994

and in evidence thereof, executed a promissory note in his favour agreeing to repay with interest as recited therein and despite several demands thereafter, the defendant did not make any payment either towards principal or towards interest and the plaintiff issued a Lawyer's notice on 28.05.1997 and inasmuch as the defendant failed to pay the amount, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit is not maintainable either in law or on facts and it is false to state that the defendant borrowed a sum of Rs.15,000/- from the plaintiff and executed a promissory note in his favour on 05.06.1994, agreeing to repay the same with interest as recited therein and failed to repay the amount despite the several demands made by the plaintiff and the issuance of the lawyer's notice. According to the defendant, he did not borrow any sum from the plaintiff as claimed in the plaint and on the other hand, it is stated that the plaintiff conducted a chit transaction and the defendant is one of the members of the chit and in the eighth auction, the defendant became the successful bidder and accordingly, at that point of time, gave a blank promissory note to the plaintiff for security purpose for the remaining chit amount and thereafter, the defendant fully paid the Chit amount and asked the plaintiff for the return of the blank promissory note, but, the plaintiff did not return the same, and on the other hand, threatened the defendant that he would fabricate and forge the same, and file the suit against the defendant and hence, the defendant lodged a complaint against the plaintiff with the police and the plaintiff reported to the police that the promissory note has been misplaced and would search for the same and return it back to the defendant. However, the plaintiff failed to keep up his promise and instead, laid the suit against the defendant, on the basis of the above said promissory note. Further, according to the defendant, the blank promissory note given by him as security above stated bore only 20 paise Stamp and the defendant had written the date also below the signature on the stamp while signing and as the stamp was insufficient, the plaintiff had created another promissory note, affixing sufficient stamp and forging the defendant's signature and hence the signature in the promissory note is not that of the defendant and the defendant denies the execution of the promissory note in toto and the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 and 2 were examined, Exs.A1 to A3 were marked. On the side of the defendant, DW1 was examined, Exs.B1 to B10 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the

Courts below were pleased to accept the plaintiff's case and decreed the suit as prayed for. Impugning the same, the present second appeal has come to be laid.

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

1. Whether the Courts below are justified in holding that a defendant is not entitled to plead an inconsistent case overlooking that the said principle is applicable only to a plaintiff in a suit?
2. Whether the Courts below having found that the signatures of the executant differs from the other admitted signatures are justified in holding that the execution of the suit promissory note is proved?

9. The suit had been laid by the plaintiff for recovery of money on the basis of the promissory note. According to the plaintiff, the defendant borrowed a sum of Rs.15,000/- from him on 05.06.1994 and executed the suit promissory note marked as Ex.A1 in his favour agreeing to repay the same on demand with interest as recited therein and inasmuch as the defendant failed to pay the amount as promised, despite several demands and the issuance of the lawyer's notice marked as Ex.A2, according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate reliefs.

10. The defendant has taken the defence at the first instance that he has not executed the suit promissory note as recited therein in favour of the plaintiff and on the other hand, it is stated by the defendant that in the chit transaction conducted by the plaintiff, he being a member, at the time of bidding in the chit transaction, he had entrusted a blank promissory note as security and though he had paid the chit amount in full, the plaintiff failed to return the promissory note given by him, despite the lodging of the police complaint and instead utilised the said promissory note and laid the suit falsely against him. Later, the defendant has also taken a plea that as the signed promissory note entrusted by him to the plaintiff during the chit transaction abovestated bore only 20 paise stamp and as the said stamp was insufficient for the suit amount, it is the case of the defendant that the plaintiff created another promissory note, forging his signature with the aid of his signature available in the blank promissory note and hence, according to the defendant, the suit promissory note is a

forged document and therefore, the suit laid by the plaintiff is liable to be dismissed.

11. The twin defence putforth by the defendant as above seen are found to be mutually contradictory to each other and at the first instance, the defendant seems to have admitted his signature in the suit promissory note and all that he would state is that the plaintiff has made use of the signed blank promissory note entrusted to him at the time of the chit transaction and laid the false suit against him, as if he had borrowed the amount recited in the suit promissory note. Accordingly, as far as the abovesaid first defence projected by the defendant is concerned, it is seen that he has admitted the signature available in the suit promissory note. All that he would state is that the plaintiff had made use of the signed blank promissory note given by him as security at the time of the chit transaction. However, there is no material placed by the defendant worth acceptance that the plaintiff had been running a chit transaction and that the defendant was a member of the said chit transaction and that he had bid in the said chit transaction and entrusted a signed blank promissory note as security to the plaintiff with reference to the same. The plaintiff has totally disputed the plea of chit transaction projected by the defendant and accordingly, the plaintiff had also disputed the so called letters stated to have been written by him to the defendant marked as Exs.B1 to B8. The defendant has failed to establish that the plaintiff had written the said letters to him in connection with the chit transaction. Therefore, it is found that Exs.B1 to B8 would not in any manner be helpful to sustain the defence projected by the defendant. In such view of the matter, when there is no material placed on record by the defendant to hold that the plaintiff was running a chit transaction and that the defendant was a member with reference to the same, the further case of the defendant that he had entrusted a signed blank promissory note in connection with the same as security purpose falls to the ground and therefore, it is found that the further case of the defendant that the plaintiff had made use of the said promissory note for the present suit transaction does not merit acceptance. By way of the above said defence, indirectly the defendant had admitted his signature in the suit promissory note and such being the position, it is found that the presumption under Section 118 of the Negotiable Instruments Act would come into operation and the defendant having failed to discharge the said presumption by letting in any acceptable and reliable evidence, it is found that, as putforth by the plaintiff, only on the passing of the consideration as claimed in the plaint, it is found that the defendant has executed the suit promissory note Ex.A1 in favour of the plaintiff and inasmuch as he has failed to pay the said amount as promised, it is seen that the plaintiff has been necessitated to lay the suit for appropriate reliefs.

12. The lodging of the complaint by the defendant against the plaintiff marked as Ex.B9 by itself would not buttress the defendant's version, particularly, when it is found that other than the lodging of the complaint, there is no other material projected by the defendant as to what further course of action had been made by the police with reference to the same. Therefore, merely on the lodging of the complaint marked as Ex.B9, we cannot hold that the defendant had entrusted a blank promissory note to the plaintiff at the time of the alleged chit transaction.

13. The plaintiff has examined himself as PW1 and also has examined the attesor cum scribe of the suit promissory note Rajamani as PW2. Both PWs 1 and 2 have clearly deposed in their evidence that the defendant borrowed a sum of Rs.15,000/- on 05.06.1994, towards his family necessities and accordingly, executed the said note in favour of the plaintiff promising to repay the sum with interest as recited therein and despite cross examination nothing has been culled out from them to disbelieve their version. The defendant had admitted that he has no enmity with the scribe cum attesor PW2. It is therefore seen that PW2 has no axe to grind against the defendant and the evidence of PW2 seems natural, cogent, and acceptable and he has clearly testified in support of the plaintiff's case that the defendant had executed the suit promissory note only on the receipt of the consideration mentioned therein and by way of the evidence of PW2 coupled with his own evidence, it is seen that the plaintiff has established the genuineness of the suit promissory note as well as the passing of the consideration thereunder.

14. It is contended by the defendant that he has also taken a plea by way of amending the written statement that the suit promissory note is a fabricated document. The defendant at a later stage amended the written statement and by way of the amendment has also pleaded that inasmuch as the blank promissory note entrusted by him at the time of the alleged chit transaction bore only 20 paise stamp and the said stamp was insufficient for the consideration mentioned in the suit promissory note, it is his case that the suit promissory note had been fabricated by the plaintiff by making use of his signature available in the blank promissory note and therefore, it is the contention of the defendant that the suit promissory note is a forged promissory note. However, when the plea of the defendant that he had entrusted the blank promissory note to the plaintiff as security at the time of the alleged chit transaction has not been established by the defendant in any manner as above discussed, his further case that the plaintiff had forged the suit promissory note by making use of his signature available in the said blank promissory note as such cannot be accepted in any manner. On the other hand, as above seen, in the light of the clear, acceptable and reliable

evidence of PWs 1 and 2, the plaintiff has amply established without any doubt, that it is only the defendant who had executed the suit promissory note on the receipt of the consideration recited therein.

15. The defendant though would claim that the suit promissory note is a forged document, admitted that, till date he has not seen the suit promissory note and also not seen the contents thereof. However, would proceed to defend the suit by contending that the suit promissory note had been created by utilising the blank promissory note given by him at the time of the chit transaction. Subsequently also taken a plea that the suit promissory note had been fabricated by making use of the signatures available in the blank promissory note given at the time of the chit transaction. However, when the very basis of the defendant's version that the plaintiff was running the chit transaction and the defendant was a member of the same has not been established by the defendant in any manner, his plea of fabrication based on the above said blank promissory note cannot be accepted in any manner.

16. Further it is seen that from the evidence of the defendant examined as DW1, that the defendant is not used to sign in the same fashion at all times and on the other hand, it is found that even as per the admission of the defendant, his signature varies at every point of time and accordingly, it is seen that the defendant's signature is not uniform at all times and differs. Such being the position, as rightly put forth by the plaintiff's counsel, with view to defraud the plaintiff's action, the defendant has taken inconsistent and mutually contradictory pleas as above discussed. However, failing to establish the basis for the said pleas i.e., running of the chit transaction by the plaintiff, such being the position, it is found that the contention of the defendant's counsel that the Courts below did not properly appreciate the amended pleas contained in the written statement does not merit acceptance. It is found that the Courts below had held that the plaintiff has clearly established his case through the testimony of PWs 1 and 2 and it is the defendant who had failed to establish his defence version and further held that the defendant's pleas being mutually contradictory to each other, accordingly, the Courts below had rightly held that the above pleas had been taken by the defendant falsely only to stifle the plaintiff's case one way or the other to reap unjust enrichment.

17. In the light of the above discussions, the Courts below are justified in holding that the defendant is not entitled to plead mutually contradictory pleas striking each other and the Courts below are further justified in holding that it is only the defendant who had executed the suit promissory note after the receipt of the consideration recited therein by accepting

the reliable and trustworthy evidence of PWs 1 and 2 in the proper perspective and further finding that the defendant is a person who use to sign in different ways, to suit his convenience and accordingly, rightly held that the suit promissory note is a genuine document and the substantial questions of law formulated in this second appeal are accordingly answered.

18. The counsel for the plaintiff in support of his contentions placed reliance upon the decision reported in 1999 (I) CTC 497 (Bharat Barrel Vs. Amin Chand Pyarelal). The defendant's counsel in support of his contentions placed reliance upon the decision reported in AIR 1976 Allahabad 399 (Brij Kishore Vs. Smt. Mushtari Khatoon). The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the case at hand.

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

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To

1. The Principal Subordinate Judge, Gobichettipalayam.
2. The District Munsif, Gobichettipalayam.

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

+1cc to Mr.S.Kaithamalai kumaran, Advocate sr.no.12039

+1cc to Mr.N.Manokaran, Advocate sr.no.12354(12/06/2018)

Pre-delivery Judgment in
S. A.No.1389 of 2003

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nr 19/04/2018