

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :27.02.2018

PRONOUNCED ON:08.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1794 of 2003
and
C.M.P.No.16376 of 2003

1.A.Govindan
2.Chandran
3.Sundaram

...Appellants/Defendants

Vs.

1.Govinda gounder (Deceased)
2.Selvaraj
3.Ramachandran

[RR2 and R3 brought on record as
L.R's of the deceased sole respondent
vide order of the Court dated 14.02.2018
made in CMP.Nos.430 to 432 of 2015
in S.A.No.1794 of 2003]

..Respondents/Plaintiffs
& LRS of Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree made in A.S.No.35 of 2003 dated 07.08.2003 on the file of the Principal District Judge, (Additional Charge), Salem reversing the judgment and decree made in O.S.No.375 of 1993 dated 11.02.2002 on the file of Principal Subordinate Judge, Salem.

For Appellants : Mr.D.Rajagopal

For RR2 and R3 : Mr.R.Nallaiyappan

R1 : Died(Steps taken)

J U D G M E N T

This second appeal is directed against the judgment and decree dated 07.08.2003 passed in A.S.No.35 of 2003 on the file of the Principal District Court, Salem reversing the judgment and decree dated 11.02.2002 passed in O.S.No.375 of 1993 on the file of Principal Subordinate Court, Salem.

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 on 15.10.1991 the defendants jointly borrowed a sum of Rs.15,000/- from the plaintiff for family and other urgent expenses and jointly executed the suit "A" promissory note in favour of the plaintiff, agreeing to repay the same with interest as recited therein on demand and on the same day the defendants again borrowed a sum of Rs.15,000/- from the plaintiff for family and other urgent expenses and jointly executed the suit "B" promissory note in favour of the plaintiff agreeing to repay the same with interest as recited therein on demand and thereafter the defendants have not paid any amount either towards the principal or the interest despite the repeated demands made by the plaintiff. Hence, the plaintiff issued a notice dated 07.06.1993 calling upon the defendants to pay the borrowed sum and the defendants had sent a reply containing false allegations and to the same, the plaintiff sent a rejoinder and hence the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants in brief is that the suit is not maintainable either in law or on facts and it is false to state that the defendants borrowed a sum of Rs.15,000/- each from the plaintiff on 15.10.1991 and executed the suit "A" and "B" promissory notes in favour of the plaintiff agreeing to repay the same with interest as recited therein on demand and on the other hand, the first defendant borrowed a sum of Rs.20,000/- from the plaintiff on 20.07.1989 and executed the promissory note for Rs.30,000/- and paid interest with reference to the same for 27 months amounting to Rs.16,200/- and at that point of time, the plaintiff asked the defendants to execute the two promissory notes each for Rs.15,000/- and as demanded by the plaintiff, the defendants signed in the promissory notes but, no amount had been received by them from the plaintiff by way of the same and hence the suit promissory notes are not supported by consideration and the defendants are agriculturists and not liable to pay interest as put forth in the plaint and hence the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A12 were marked. On the side of the defendant, D.Ws.1 to 3 were examined. Ex.B1 was 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. On appeal, the first appellate court, on an appreciation of the materials placed on record was pleased to set aside the judgment and decree and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Aggrieved over the same, the present second appeal has been laid.

8. At the time of admission of the second appeal the following substantial question of law was formulated for consideration.

"Whether the finding of the Lower Appellate Court that Exs.A1 and A2 is supported by consideration is opposed to oral as well as documentary evidence on record?"

9. From the pleadings set out in the matter, it is found that the defendants have admitted the execution of the suit "A" and "B" promissory notes marked as Exs.A1 and A2. Inasmuch as the defendants have admitted the execution of the same, as rightly determined by the first appellate court, the presumption u/s.118 of the Negotiable Instruments Act would come into operation and it is for the defendants to establish that no consideration had passed on under the suit promissory notes. The defendants miserably failed to rebut the presumption raised u/s.118 of the Negotiable Instruments Act. From the evidence adduced in the matter, it is found that the defendants had money transactions with the plaintiff even prior to Exs.A1 and A2 and accordingly it is thus found that on the discharge of the earlier debt, accordingly, the suit promissory notes had been executed by them. With reference to the same, the returned promissory note on discharge had come to be marked as Ex.B1. It is found that as admitted by the defendants themselves they had executed suit promissory notes in favour of the plaintiff. The plaintiff has tendered evidence with reference to the same in a clear and acceptable manner. Despite cross examination, nothing has been culled out from the plaintiff with reference to the same. To prove the above aspects of his case, the plaintiff has also examined the attessor Periyasamy as P.W.2. The evidence of P.W.2 seems to be prevaricative and though he would state that the plaintiff had paid Rs.30,000/- to the defendants and

obtained two promissory notes separately and that he had attested the said documents, during the cross examination he would state that he does not know the name of the scribe and also the other attester who had signed the documents and accordingly, it is his version that he left the place after signing the documents. He would however assert about the passing of consideration under Exs.A1 and A2. It is thus found that the first appellate court had rightly appreciated the evidence of P.W.2 in the correct perceptive and accordingly chosen not to discard his evidence in toto and accordingly it is thus found that there is no infirmity in the appreciation of the evidence of P.W.2 by the first appellate court in support of the plaintiff's case.

10.The scribe of the suit promissory note has been examined as D.W.3. He has admitted that he has written Exs.A1 and A2 and also the calculation found on the reverse side of Ex.A1 and however would state that no amount was paid at the time of execution of Exs.A1 and A2. He has also admitted that he does not know the earlier transaction entered into between the parties, however he would state that whenever the promissory notes are written, the payment of consideration would be reflected therein. If according to D.W.3, no consideration had been passed on under Exs.A1 and A2, there is no necessity for him to write that the consideration had been paid under the said promissory notes. Further, in the re-examination, D.W.3 has admitted that there are recitals in Exs.A1 and A2 about the passing of consideration. It is thus found that the evidence of D.W.3 read in toto would go to show that he has come forward with a false case as if the consideration has not passed on under the suit promissory notes. The evidence of D.W.2 is not of much significance as he is not directly involved in the suit transactions as such. He is concerned only with the writing of the document marked as Ex.B1. It is thus found that the evidence of D.W.2 would not be of any purpose to resolve the issues involved in the matter.

11.As rightly determined by the first appellate court, when it is found that the defendants have clearly admitted the execution of the suit promissory notes and when it is not the case of the defendants that the promissory notes had been obtained by the plaintiff with force, coercion, threat or otherwise and accordingly it is seen that the presumption u/s.118 of the Negotiable Instruments Act would operate and when there is no acceptable and reliable evidence placed by the defendants to rebut the said presumption, it is found that the first appellate court on a proper appreciation of the materials placed on record, rightly found that the plaintiff has

established the passing of consideration under Exs.A1 and A2 and it is found, that as rightly determined by the first appellate court, the scribe examined as D.W.3 is evading to answer the issues involved in the matter forthright despite having knowledge about the same and accordingly it is seen that the plaintiff has established the passing of consideration under the suit promissory notes.

12.The defendants' counsel mainly contended that the defendants are agriculturists and hence the plaintiff is not entitled to claim the interest as put forth in the plaint. However, as rightly determined by the trial court, the defendants have not placed any material to hold that they are entitled to avail the benefits of any agriculturists relief act and further when no specific ground has been raised by the defendants in the second appeal that they are entitled to claim the benefits of any agricultural relief act, as such, on the footing that they are the agriculturists, it is found that the claim of the defendants that they are not liable to pay the interest as projected in the plaint cannot be accepted.

13.The defendants' counsel in support of his contentions relied upon the decisions reported in

(i)2017(5) Law weekly 222 [R.Thimmaiyan Vs. M/s.SMT Chits and Finance Corporation rep. By its Proprietor K.Kalyanasundaram]

(ii)AIR 2008 Supreme Court 2898 [Mallavarapu Kasivisweswara Roa Vs. Thadikonda Ramulu Firm and others]

(iii)AIR 2008 Supreme Court 1325 [Krishna Janardhan Bhat Vs. Dattatraya G.Hegde]

(iv)AIR 1999 Supreme Court 1008 [Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Payrelal]

(v)Judgment dated 11.01.1991 of High Court of Madras, MANU/TN/0497/1991 [A.S.Duraisami Chettiar Sons and others Vs. S.Rathinaswami Gounder] The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the case at hand.

14.In the light of the above discussions, the first appellate court had rightly held that Exs.A1 and A2 promissory notes are supported by consideration on the basis of the proper assessment of the oral and documentary evidence placed on record. The substantial question of law formulated in the second appeal is accordingly answered in favour of the plaintiff and against the defendants.

15.At the end, the second appeal is found to be devoid of merits and accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mfa
To

1.The Principal District Judge, Salem.

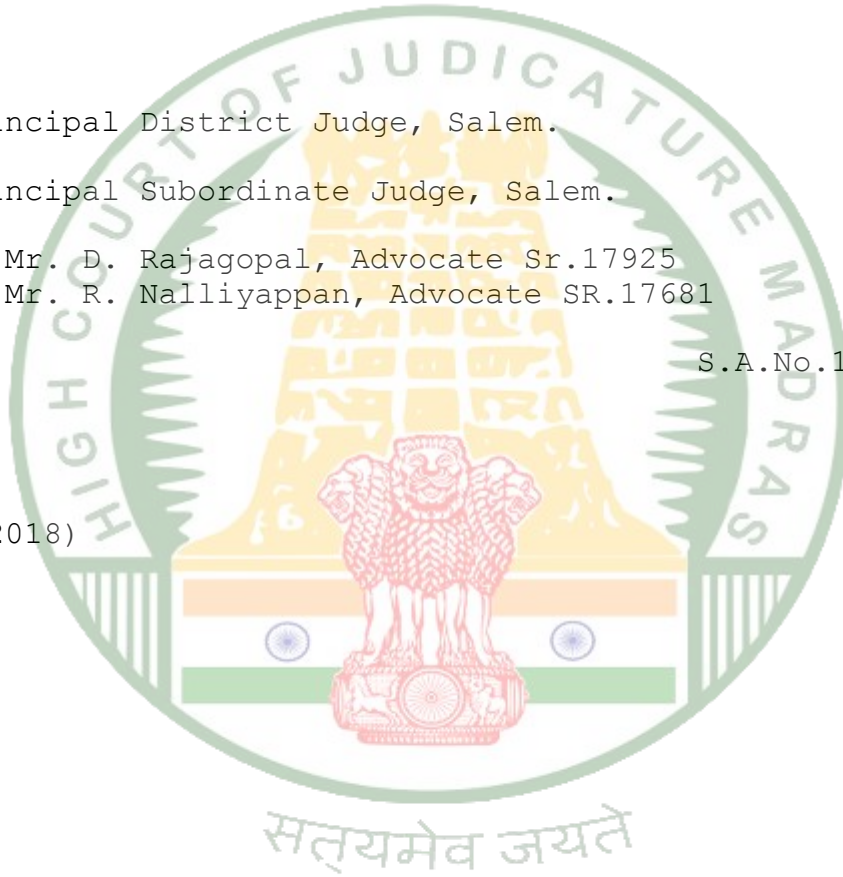
2.The Principal Subordinate Judge, Salem.

+ 1 cc to Mr. D. Rajagopal, Advocate Sr.17925

+ 1 cc to Mr. R. Nalliyappan, Advocate SR.17681

S.A.No.1794 of 2003

KGK(CO)
EU(16/04/2018)



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