

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.01.2018  
PRONOUNCED ON : 30.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.878 of 2003

Pandian ... Appellant  
Vs.  
Thiagarajan ... Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 29.01.2002 made in A.S.No.1 of 2002 on the file of the Additional District Court, Nagapattinam, confirming the judgment and decree dated 02.07.2001 made in O.S.No.179 of 1999 on the file of the Principal Sub Court, Mayiladuthurai.

For Appellant : Mr.S.Sounthar  
For Respondent : No appearance

JUDGMENT

This second appeal is directed against the judgment and decree dated 29.01.2002 made in A.S.No.1 of 2002 on the file of the Additional District Court, Nagapattinam, confirming the judgment and decree dated 02.07.2001 made in O.S.No.179 of 1999 on the file of the Principal Sub Court, Mayiladuthurai.

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.85,000/- from one Janaki W/o.T.Muthukumar on 12.10.1996 and executed the suit promissory note in her favour and agreed to repay the said sum with 24% interest as recited therein either to her or her order on demand and the defendant paid a sum of Rs.60,000/- on 24.08.1999 to Janaki and Janaki made over the promissory note in favour of the plaintiff on 24.08.1999 directing the plaintiff to collect the balance amount from the defendant and despite several requests to pay the balance amount due and the issuance of notice on 25.09.1999, the defendant has not taken steps to pay the same and hence, 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. The defendant did not borrow any sum much less Rs.85,000/- from Janaki on 12.10.1996 and executed the suit promissory note as alleged in the plaint and the suit promissory note is a fabricated document and not valid in law. It is false to state that the plaintiff had obtained a made over of the suit promissory note from Janaki on 24.08.1999 and the said made over is not supported by any consideration and the plaintiff, knowing fully well that the suit promissory note is a fabricated document, had obtained the made over and hence, the plaintiff is not a bona fide holder in due course and not entitled to recover the suit amount from the defendant. The plaintiff had not issued any notice apprising the made over in his favour and on that ground also, the suit is liable to be dismissed.

6. The defendant was a subscriber in a Chit run by Muthaiah and accordingly, the defendant bid in the auction held on 29.07.1996 and obtained a sum of Rs.5,000/- agreeing to repay the said amount in 20 installments and accordingly, the defendant had also discharged the said amount to the Chit company run by Muthaiya and at the time of lending the amount, Muthaiah had obtained the signature of the defendant on a stamped printed promissory note and even after the discharge, the said signed promissory note had not been returned by Muthaiah and the defendant also did not retrieve the said promissory note reposing confidence on Muthaiah and it appears, Muthaiah had fabricated the suit promissory note based upon the signed promissory note entrusted by the defendant in the name of his daughter-in-law Janaki, as if the defendant, had borrowed a sum of Rs.85,000/- from Janaki and thereafter, the said promissory note had been fraudulently assigned in favour of the defendant and the plaintiff has also been a member of the Chit company run by Muthaiah and also bid in the auction and executed the promissory note and in the said promissory note executed in favour of Muthaiah's wife, the defendant had attested the same and the plaintiff, knowing the above said facts, had obtained the made over and hence, the plaintiff is not entitled to recover the suit amount and the suit is also barred by limitation and hence, the suit is liable to be dismissed.

7. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to 4 were marked. On the side of the defendant, DW1 was examined and Exs.B1 was marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On appeal preferred by the defendant, the first appellate Court also confirmed the judgment and decree of the trial Court in all

aspects, however, modified the same holding that the plaintiff is only entitled to recover a sum of Rs.25,000/- with interest based on the assignment of the suit promissory note and accordingly, disposed of the first appeal preferred by the defendant. Impugning the same, the present second appeal has come to be laid.

9. The plaintiff, as an assignee of the suit promissory note, has laid the suit against the defendant for recovery of money. Briefly stated, according to the plaintiff's case, the defendant borrowed a sum of Rs.85,000/- from one Janaki on 12.10.1996 and executed the suit promissory note marked as Ex.A1 and further, according to the plaintiff's case, the defendant paid a sum of Rs.60,000/- only to Janaki on 24.08.1999 and Janaki had assigned/made over the suit promissory note in favour of the defendant on 24.08.1999 and thus, according to the plaintiff, he is a holder in due course of the suit promissory note and accordingly, it is his case that inasmuch as the defendant had not paid the amount due under the promissory note, despite several requests and also the issuance of notice, according to him, he has been necessitated to lay the suit for recovery of money. The assignment, in respect of the suit promissory note, has been marked as Ex.A2.

10. The defendant has challenged the case of the plaintiff contending that he has not received the sum of Rs.85,000/- from Janaki and executed the suit promissory note on 12.10.1996 as put forth in the plaint and on the other hand, according to him, he was a subscriber to a Chit transaction run by Muthaiah and accordingly, also discharged the amount bid by him in the Chit transaction and it is his further case that Muthaiah had obtained his signature in a stamped blank promissory note at the time of lending the amount in the course of the Chit transactions and despite the discharge of the bid amount by the defendant, the signed blank promissory note had not been returned by Muthaiah and the plaintiff had also not obtained the same reposing confidence on Muthaiah and thus, according to the defendant, Muthaiah had concocted the suit promissory note in the name of Janaki misusing the signed blank promissory note and accordingly, also had assigned the same in favour of the plaintiff fraudulently and the plaintiff being aware of all the said facts, thus, according to the defendant, the plaintiff is not entitled to recover the suit amount.

11. The defendant examined as DW1 during the course of cross examination has clearly admitted that his signature is available in the suit promissory note Ex.A1. It is thus found that even as per the case of the defendant, when he has admitted that his signature is available in the suit promissory note Ex.A1 and when according to the defendant, Muthaiah, in respect

of the Chit transaction, had obtained a signed blank promissory note from him and if further according to the defendant, he had discharged the said amount obtained by him in the course of the chit transaction, definitely as determined by the Courts below, the defendant would have retrieved the signed blank promissory note said to have been entrusted by him to Muthaiah at the time of receiving the amount in respect of the chit transaction. However, it is pleaded by the defendant that though he had discharged the amount borrowed by him in the course of the chit transaction, reposing confidence on Muthaiah, he had not retrieved the signed blank promissory note from him. This defence put forth by the defendant cannot at all be accepted in any manner. Muthaiah has been examined as PW2. It is found from the evidence of PW2, that it is he, who had written the promissory note and also the assignment of the promissory note in favour of the plaintiff marked as Ex.A2. Though from the evidence of Muthaiah, it is found that he had been running a chit transaction business, it is his specific case that the defendant did not become a subscriber in the chit transaction run by him and also denied that the defendant in the course of the chit transaction obtained a sum of Rs.5,000/- and discharged the same by paying the said sum in installments. Therefore, when according to the defendant, only in respect of the Chit transaction, where under, he had received a loan of Rs.5,000/- and subsequently, discharged the same in respect of which transaction, it is alleged Muthaiah had obtained a signed blank promissory note from him and when according to Muthaiah examined as PW2, the defendant had not subscribed to such a chit transaction run by him, it is found that the case of the defendant that in connection with the chit transaction, Muthaiah had obtained a signed blank promissory note from him as such cannot be accepted sans any material pointing to the same. Though Muthaiah had admitted that used to obtain blank promissory note in respect of the Chit transactions run by him, when he has vehemently denied the case of the defendant that he was a subscriber to the chit transaction, where under, a sum of Rs.5,000/- was advanced to the defendant and further, when he has disputed the claim of the defendant that he had discharged the said sum in installments, it is found that the plea of the defendant that in respect of the said chit transaction, a signed blank promissory note had been obtained from him by Muthaiah as such cannot be accepted in the absence of any evidence pointing to the same. Further, if really such a signed blank promissory note had been secured from the defendant by Muthaiah, as rightly found, on the defendant discharging the amount in entirety, in the normal course, the first task that would have been adopted by the defendant is to retrieve the signed blank promissory note said to have been given by him at the time of obtaining the loan in connection with the chit transaction. However, according to the defendant, reposing confidence on Muthaiah PW2, he had not

obtained the signed blank promissory note said to have been entrusted by him to PW2 in respect of the Chit transaction. This plea of the defendant cannot be accepted, particularly, when PW2 Muthaiah had stoutly disputed the claim of the defendant that in respect of the Chit transaction, where under, a sum of Rs.5,000/- had been obtained by the defendant and a signed blank promissory note had been obtained from the defendant. Though the defendant in the written statement had claimed that he was in the custody the Pass Book and other documents pointing to the above said chit transaction he had with PW2, it is found that no document worth acceptance has been placed by the defendant with reference to the same. In this connection, the defendant examined as DW1 has admitted that there is no Pass Book in respect of Chit transaction he had with PW2 and all the transactions are held only orally. It is thus found that there is absolutely no material at all placed on the part of the defendant that he was a subscriber in the chit transactions run by Muthaiah PW2 and that, in the course of the said Chit transactions, he had secured a sum of Rs.5,000/- as put forth by him in the year 1996 and that, he has thereafter discharged the said amount in installments and also failed to establish that in connection with the said chit transaction, PW2 had obtained a signed blank promissory note from him. Such being the position, when as regards the above plea of the defendant, there is no material forthcoming to buttress his claim and when the document marked as Ex.B1 does not in any manner lend support to his defence, it is found that inasmuch as the defendant was not a member of any particular chit transaction, as had been averred by him in the written statement, he is unable to substantiate the same by placing acceptable and reliable evidence pointing to the same.

12. As above referred to, the defendant has admitted his signature available in the suit promissory note. Therefore, it is found that the presumption under Section 118 of the Negotiable Instrument Act would apply and accordingly, it is for the defendant to establish that the suit promissory note had been concocted by PW2 in the name of Janaki as put forth by him. However, there is no material on the part of the defendant with reference to the same. When the presumption that could be made under Section 118 of the Negotiable Instruments Act has not been rebutted by the defendant by placing any acceptable and reliable material and when it is found from the evidence of PWs1 & 2 that the defendant had borrowed a sum of Rs.85,000/- from Janaki and executed the suit promissory note and when PW2, who is the scribe of the suit promissory note has clearly testified about the said transaction and when there is no material projected by the defendant to disbelieve the version of PW2 and when further the defendant has not rebutted the presumption raised under Section 118 of the Negotiable Instrument Act, it is found that

the suit promissory note has been executed by the defendant in evidence of the borrowal of the amount as recited therein and accordingly, it is found that he is liable to pay the sum borrowed as promised under the suit promissory note.

13. According to the plaintiff, the defendant had repaid the sum of Rs.60,000/- to Janaki on 24.08.1999 in connection with the amount borrowed under the suit promissory note. Further, according to the plaintiff, on 24.08.1999, Janaki had assigned the suit promissory note in his favour and the said assignment has been marked as Ex.A2. According to the defendant, the plaintiff is not a bona fide holder in due course as he is aware of his defence pleas as regards the suit promissory note as discussed above. However, when the said pleas of the defendant as regards the suit promissory note are found to be devoid of any merits and not proved, it is found that the defence projected by the defendant that the plaintiff is not a bona fide holder in due course as such also does not merit acceptance. There is always the presumption under Section 118 of the Negotiable Instruments Act that the holder of a Negotiable Instrument is a holder in due course. Now, as per the case of the plaintiff, he has paid a sum of Rs.25,000/- to Janaki and obtained the made over of the promissory note from her under Ex.A2. No doubt, there are some corrections made in the said made over / assignment marked as Ex.A2. However, the said corrections had been properly explained by PW2 and accordingly, when it is found that the same had been properly explained by the plaintiff and PW2, as determined by the first appellate Court, in such view of the matter, merely on the basis of certain corrections found in Ex.A2 endorsement, it cannot be held that the plaintiff is not a bona fide holder in due course. Accordingly, it is found and as determined by the Courts below rightly, the corrections found in Ex.A2 endorsement had not in any manner materially vitiated the same and also do not in any manner undermine the entitlement of the plaintiff to recover the amount due under the promissory note on the basis of the said made over.

14. From the materials projected, it is found that the plaintiff has paid a sum of Rs.25,000/- to Janaki and obtained the assignment of the suit promissory note under Ex.A2. Accordingly, the first appellate Court has held that the plaintiff is entitled to only recover the said amount with interest from the defendant and accordingly, disposed of the first appeal preferred by the defendant. The first appellate Court, for coming to the said conclusion, has rightly analyzed the evidence of PWs 1 & 2 independently in the right perspective and accordingly, modified the judgment and decree of the trial Court holding that the plaintiff is entitled only to recover the amount of Rs.25,000/- with interest thereon based on the

assignment. No challenge, as such, has been made by the plaintiff as against the above determination of the first appellate Court. In such view of the matter, no further discussion is required to be made on the above aspect of the case.

15. As above discussed, the Courts below have rightly analysed the case in the right perspective by holding that the defendant has failed to establish that he has handed over a signed blank promissory note to Muthaiah PW2 at the time of the alleged chit transaction as pleaded in the written statement and accordingly, rightly come to the conclusion that the plea of the defendant that the suit promissory note is a fabricated document as such does not merit acceptance in any manner. It is further found that as rightly determined by the Courts below, even as per the admission of the defendant examined as DW1, he has no enmity with PW2 as such. In such view of the matter, when the main defence projected by the defendant is that it is only PW2, who had concocted the suit promissory note based on the signed blank promissory note said to have been given by him in the course of the chit transaction, when the above said case of the defendant has not been substantiated with acceptable and reliable materials and when from the evidence of PWs 1 & 2, it has been rightly held by the Courts below that there is no such chit transaction between PW2 and the defendant and accordingly, when it is further found that there is no scope for the defendant to hand over a signed blank promissory note to PW2 in connection with such a chit transaction, accordingly, it is found that the defendant is unable to place any material to hold that he had discharged the amount received by him in connection with the said chit transaction and further, accordingly, it is seen that the defendant had also not evinced any interest to retrieve the alleged signed blank promissory note said to have been entrusted by him to PW2 and all these facts cumulatively viewed, would only go to show that the above pleas had been projected by the defendant with a view to thwart the claim of the plaintiff from recovering the suit amount from him on the basis of Exs.A1 & 2. That apart, it is found that prior to the institution of the suit, the plaintiff has issued a notice to the defendant marked as Ex.A3 and the said notice had been returned as refused. The defendant had admitted that the address found in Ex.A4 returned cover is his address. Though the defendant would claim that he was not in the said address at the relevant point of time, there is no material forthcoming to substantiate the same. Accordingly, it is found that as rightly determined by the Courts below, when the defendant has not pleaded any motive on the part of the postal authority to make the endorsement of refusal on the part of the defendant as regards Ex.A4 notice returned cover, it is found that the defendant knowing the contents of Ex.A3 notice sent under Ex.A4,

accordingly, chosen to refuse to receive the same and left with no other alternative, the postal authority has also made the necessary endorsement that the defendant had refused to receive the same. In such view of the matter, the plea projected by the defendant that the plaintiff has not intimated about the assignment of the promissory note prior to the institution of the suit as such cannot be accepted in any manner. It is found that the plaintiff has duly intimated about the assignment to the defendant by way of Ex.A3 notice and despite the same, it is found that the defendant has projected false pleas to stifle the plaintiff's case one way or the other as discussed above. Accordingly, it is seen that the defendant is unable to place any reliable material to buttress his defence in any manner and it is found that the Courts below have, on proper reasonings and conclusions, rejected the same and the same, thus, do not warrant any interference by this Court. The substantial questions of law formulated in this second appeal are accordingly answered against the defendant.

In conclusion, the second appeal fails and is, accordingly, dismissed. No costs. Consequently, connected miscellaneous petition, if any, closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Additional District Judge, Nagapattinam.
2. The Principal Subordinate Judge, Mayiladuthurai.

+1cc to Mr.S.Sounthar, Advocate sr.No.7363

GJII(CO)

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Judgment made  
in S. A.No.878 of 2003