

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 20.04.2018**

CORAM

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR**S.A. (MD) .No.102 of 2013****and****M.P. (MD) .No.1 of 2013**

Dhuraismy .. Appellant/Appellant/Defendant

Vs

Gnanendran .. Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 21.12.2009 made in A.S.No.41 of 2007 on the file of the Principal District Court, Dindigul, confirming the judgment and decree dated 05.06.2007 made in O.S.No.8 of 2003 on the file of the Subordinate Court, Palani.

For Appellant : Mr.A.Arumugam
for M/S.Ajmal Associates

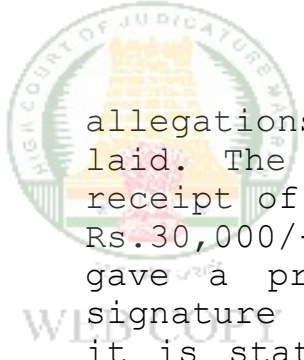
For Respondent : Mr.G.Gomathi Sankar

JUDGMENT

The defendant in the suit in O.S.No.8 of 2003 on the file of the Subordinate Court, Palani, is the appellant in the second appeal.

2.The respondent in this appeal filed a suit in O.S.No.8 of 2003, on the file of the Subordinate Court, Palani for recovery of a sum of Rs.1,02,806.70/- and subsequent interest due on a promissory note for Rs.70,000/- and for costs.

3.The case of the plaintiff in the suit is that, the defendant received a sum of Rs.1,10,000/- on 31.01.2000 and executed a pro-note on the same day and agreed to repay the same with interest at 12% p.a. It is the further case of the plaintiff that on 24.10.2001, the defendant paid part of the amount towards principal, for which, the plaintiff had given a receipt. It is further stated in the plaint that the defendant has not paid any other sum, despite repeated demands and hence issued a suit notice on 22.10.2002. In response to the suit notice, the defendant issued a reply notice on 12.11.2002, contending that the



allegations in the notice are false and thereafter, the suit was laid. The suit was contested by the defendant. He admitted the receipt of a sum of Rs.10,000/- on 13.03.1999 and a further sum of Rs.30,000/- on 19.01.2000. It is the case of the defendant that he gave a pro-note only for a sum of Rs.10,000/-. Though the signature of the defendant is admitted in the written statement, it is stated that the plaintiff obtained blank pro-notes. It is further stated that for the sum of Rs.10,000/- a pro-note was given indicating Rs.10,000/- in figures. It is the specific case of the defendant that he was paying interest at the rate of 36% p.a., without any default and that he had repaid a sum of Rs.40,000/- and obtained a receipt. Thus, according to the defendant, the principal amount was settled in full, apart from the periodical payment towards interest.

4.The trial Court after framing necessary issues found that the plaintiff is entitled to a sum of Rs.70,000/- towards principal and interest with costs. Aggrieved by the finding of the trial Court, the defendant preferred an appeal in A.S.No.41 of 2007, on the file of the Principal District Court, Dindigul. The lower appellate Court also confirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the concurrent judgments and decrees of the Courts below, the defendant has preferred the above second appeal.

5.Before the trial Court, the plaintiff examined himself as P.W.1 and examined one Rajendran as P.W.2, who signed as a witness in Ex.A.1 Pro-note. The plaintiff apart from marking Ex.A.1, the original suit pro-note filed, marked the notice and the reply notice as Ex.A.2 and Ex.A.3 respectively. The defendant examined himself as D.W.1 and marked the receipt for a sum of Rs.40,000/- as Ex.B.1.

6.At the time of admitting the second appeal, this Court has framed the following substantial questions of law:

"(a)Whether the non-consideration of Ex.B.1, an admitted documents in a proper perspective has vitiated the judgment of the trial Court and the first appellate Court to the detriment of defendant??"

(b)Whether the Courts below are legally wrong in not drawing an adverse inference under Section 114(g) of Indian Evidence Act, 1872 against the plaintiff for the failure to examine the attesting witness of the promissory note?

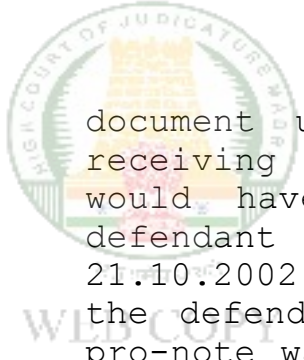
(c)Whether the findings of the Courts below that Ex.A.1 was proved and Ex.A.1 was accepted by the defendant was a result of admission of irrelevant and immaterial evidence and rejection of material



admissible evidence and whether such perverse findings are liable to be set aside under Section 100 of C.P.C., 1908?"

7. The learned counsel appearing for the appellant/defendant submitted that the defendant has admitted only the signature in the pro-note and it does not mean that the defendant has accepted the contents of Ex.A.1, as regards the receipt of consideration. Having regard to the specific case of the defendant that he received only a sum of Rs.10,000/- on 13.03.1999 and that the pro-note has been filled up by the plaintiff by inserting the figure "1" before 10,000/- in the document as Ex.B.1, which was produced as Ex.A.1, the learned counsel for the appellant submitted that the burden lies on the plaintiff to prove that the defendant borrowed a sum of Rs.1,10,000/- on 31.01.2000 and that the plaintiff has not let in any evidence to prove the receipt of such amount before the Court below. It is to be noted that there is a material alteration in the receipt Ex.B.1 produced by the defendant. This document Ex.B.1, is dated 24.10.2001 and the said receipt was signed by the plaintiff, who acknowledged the receipt of a sum of Rs.40,000/- out of the principal due under the suit pro-note. The document Ex.B.1 shows that a sum of Rs.40,000/- was received by the plaintiff towards pro-note. Further, in this document, it could be seen that the document was originally written as follows; "என்ஸிடம் வாங்கிய பூரோஜோட்டுக் கடனில் அசலில் ரூ.40000/- ரூபாய் நூற்றதூதாயிரம் மட்டும் பெற்றுக்கொண்டேன்". Further in the word "அசலில்" the letter "ல" has been deleted by two cross lines. By showing this document, the learned counsel appearing for the appellant contended that the entire amount towards principal was settled by payment of Rs.40,000/- under Ex.B.1 and that further, no money is due from the defendant under the pro-note. It is further contended that the pro-note that was executed for a sum of Rs.10,000/- has been manipulated by inserting the figure "1" before 10,000/- to make it appear as if the defendant has borrowed a sum of Rs.1,10,000/-, which is also evident by relying upon the document Ex.B.1. It is further contended that the plaintiff while receiving a sum of Rs.40,000/- under Ex.B.1 has noted down all the numbers of 500 currency notes that were given by the defendant to the plaintiff and that such a person will not agree for the issuance of Ex.B.1, if further money is payable by the defendant. In other words by reading Ex.B.1, it was suggested by the learned counsel for the appellant that if any sum more than Rs.40,000/- was due from the defendant, the plaintiff would certainly show the balance payable by the defendant in Ex.B.1. This has been relied upon as a strong circumstances in favour of the appellant.

8. The plaintiff has examined P.W.2, the attester of the document Ex.A.1. The suit pro-note under Ex.A.1 was signed by the defendant. This suit pro-note was dated 31.01.2000. It is also admitted that Ex.B.1 receipt was issued on 24.10.2001. If the



document under Ex.B.1 was obtained from the plaintiff, after receiving the entire amount due under pro-note, the defendant would have certainly obtained the pro-note executed by the defendant under Ex.A1. The suit notice came to be issued on 21.10.2002 and it was only in the reply notice dated 12.11.2002, the defendant took a stand that the entire money due under the pro-note was settled. There was no explanation on the part of the defendant as to why he never insisted the plaintiff to return the pro-note Ex.A1 if he had settled the amount in full by the payment of Rs.40,000/- under Ex.B.1.

9.The learned counsel for the appellant relied upon the judgment of the learned Single Judge of this Court in the case of Jainul Arabu and others v. Yasmin Panu and others in S.A.(MD). No.114 of 2011. While considering the various legal Maxims, this Court has quoted the meaning of Maxims "***Verba chartarum fortius accipiuntur contra proferentem.***" as the words of an instrument shall be taken most strongly against the party employing them" After referring to the judgment, the learned counsel for the appellant submitted that the document Ex.B1 should be construed to convey the meaning that the sum of Rs.40,000/- under Ex.B.1 was paid in settlement of the amount due outstanding on the pro-note and not as part of the amount due under the pro-note. In this case, Ex.A.1 was executed by the defendant and there is no dispute that the amount of Rs.1,10,000/- is written on the top of the pro-note on the left hand side.

10.The case of the appellant is that the first number "1" had been inserted by the plaintiff later to make Rs.10,000/- as Rs.1,10,000/-. If one see the figure without the first number, the alignment and space will look odd and improper. Hence, the submission of appellant cannot be readily accepted. Existence of another pro-note for Rs.30,000/- is neither admitted nor proved by defendant. The evidence of P.W.2 would support the case of plaintiff as there is no reason to disbelieve the statement of P.W.2. The material alteration in Ex.B1 is not acknowledged by plaintiff. In such circumstances, this Court is also of the view that the correction in Ex.B.1 is not authorized and it has been done by defendant to suit his case. The judgment relied upon by the appellant for the proposition that words of an instrument should be taken strongly against the party employing them is not helpful to the appellant in this case as the appellant has not proved that the plaintiff is the author of correction in Ex.B1. The Courts below have disbelieved the case of defendant after considering the entire evidence on record. This Court do not find any reason to interfere with the findings of Courts below. Hence, this Second Appeal has no merits and the substantial questions of law raised have no substance.



11.As a result, the Second Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Deputy Registrar
(Lok Adalat/Mediation & Conciliation)

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Sub Assistant Registrar

To

1. The Principal District Judge,
Dindigul.
2. The Subordinate Judge,
Palani.

Copy to:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.G.Gomathi Sankar , Advocate in SR No. 62425

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