

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2018

Pronounced on : 03.01.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No.631 of 1997

K.Rasu

... Appellant/Plaintiff

Vs

1.Mayavan
2.Periyasamy
3.Ranganathan

... Respondents/Defendants

PRAYER: The Second Appeal filed under Section 100 of CPC, against the judgment and decree of the Subordinate Court, Villupuram in A.S.No.8 of 1995 dated 22.01.1997 reversing the judgment and decree of the Additional District Munsif, Villupuram, in O.S.No.663 of 1992 dated 08.07.1994.

For Appellant : Mr.T.Dhanyakumar

For R1 & R2 : No appearance

For R3 : Dismissed vide order dated 20.12.18

JUDGEMENT

The plaintiff in O.S.No.663 of 1992 on the file of the Additional District Munsif Court, Villupuram, is the appellant. By judgment dated 08.07.1994, the suit was decreed. Thereafter, the defendants had filed A.S.No.8 of 1995 before the Subordinate Court, Villupuram. By judgment dated 22.01.1997, the appeal was allowed and the judgment of the trial court was set aside.

2.Challenging that judgment, the plaintiff has filed the present Second Appeal. The second appeal had been admitted on the following substantial questions of law:

1.Whether Ex.A1 pronote is not supported by consideration?

2.Whether the statement recorded under Section 161 Cr.P.C and the F.I.R. are admissible as evidence in civil case?

3.Whether a decree can be passed on the admission of defendants made in the additional written statement?

O.S.No.663 of 1992 (The Additional District Munsif Court, Villupuram):-

3.The plaintiff, K.Rasu had filed the suit against three defendants namely, K.Mayavan, M.Periyasamy and M.Ranganathan seeking a judgment and decree for payment of a sum of Rs.6,342/-, on the basis of a promissory note dated 06.07.1989 for a sum of Rs.5,000/- and also for future interest and costs. According to the plaintiff, the defendants had borrowed a sum of Rs.5000/- and had executed a promissory note for the same. The promissory note bore interest at 9% per annum. Claiming that the amount had not been paid, the suit had been filed for the relief stated above.

4.The second defendant had filed a written statement, which was adopted by the first and third defendants. In the said written statement, it was stated that Anjalidevi the sister of the second and third defendants was proposed to be given in marriage to one Thanigachalam. The plaintiff was the uncle of Thanigachalam. The plaintiff brought up Thanigachalam, since his father died. The plaintiff, as guardian of Thanigachalam, demanded five sovereign of gold and also a house to be built for Thanigachalam. The defendants did not have money to provide the same. Consequently, they executed a promissory note for Rs.5,000/-.It had been specifically stated that no consideration had passed under the promissory note. Thereafter, Anjalidevi and Thanigachalam married, but, further demands for dowry were made. Anjalidevi was driven out of the house. She filed a police complaint with Valavanur Police Station on 05.12.1992 against Thanigachalam, the plaintiff herein and the wife of the plaintiff. Cr.No.887/1992 was registered. It was specifically stated that the defendants did not borrow any amount. It was stated, the suit should be dismissed.

5.The first defendant filed an additional written statement. In the additional written statement, it was stated that the plaintiff had also taken possession of the properties of the defendants by illegal method. It was stated that the defendants could not cultivate the property. It was stated that the plaintiff had derived income from the property which measured 0.29.5 hectares in wet S.No.475/1 and 0.13.5 hectares in wet S.No.475/2, totally measuring 0.43.0 hectares in Arasamangalam Village, Villllupuram Taluk. It was stated that, the plaintiff was not entitled to any amount and that the suit should be dismissed.

6.The plaintiff filed a reply statement denying the allegation that he had taken possession of the lands of the defendants. The plaintiff claimed that the suit should be decreed.

7.On the basis of the pleadings, the following issues and additional issues were framed:

- 1.Whether the promissory note was executed without consideration?
- 2.Whether the promissory note was executed in the circumstances stated by the defendants?
- 3.Whether the promissory note is valid?
- 4.Whether the suit is maintainable?
- 5.To what relief is the plaintiff entitled to?

The following additional issues were also framed:-

- 1.Whether the plaintiff was in possession of the lands of the defendants?
- 2.Whether the amount under the promissory note had been recovered by such possession?
- 3.To what relief is the plaintiff entitled to?

8.During trial, the plaintiff examined three witnesses. The plaintiff was examined as PW-1 and two other witnesses Pauvnammal and Krishnadoss were examined as PW-2 and

PW-3. The defendants examined four witnesses. The second defendant Periyasamy was examined as DW-1. Govindarasu, Ramanujam and Madasamy were examined as DW-2, DW-3 and DW-4. The plaintiff marked Ex.A1, which was the promissory note dated 06.07.1989. The defendants marked Exs.B1 to B9. Ex.B1 was the F.I.R. dated 29.11.1992. Exs.B2 to B7 were the copies of the evidence in C.C.No.83/93. Ex.B8 was the F.I.R. dated 05.12.1992. Ex.B8 was the voters list for the year 1988.

9.On the basis of the oral and documentary evidence, the learned Additional District Munsif, Villupuram, decreed the suit with costs. The learned Additional District Munsif, found that the promissory note had been admitted to have been executed by the defendants and consequently, held that a presumption can be drawn that consideration had passed and consequently, rejected the stand of the defendants. The learned Additional District Munsif, also found that the promissory note was true and had been validly executed. The learned Additional District Munsif, also relied on the evidence of PW-2, Puvnammal who was the mother of Thanigachalam, who stated that no demand was made during the marriage. Consequently, the suit was decreed.

A.S.No.8 of 1995 (Subordinate Court, Villupuram):-

10.The defendants then filed A.S.No.8 of 1995, before the Subordinate Court Villupuram. This came up for consideration on 22.01.1997. The learned Subordinate Judge, framed points for consideration and also re-appraised the evidence. The learned Subordinate Judge, found that the evidence pointed out that no consideration had passed towards the promissory note. The learned Subordinate Judge, observed that it was a fact that Anjalidevi, sister of the second and third defendants was given a marriage to Thanigachalam, whose uncle was the plaintiff. It was also found that even though Ex.A1 reflected the names of four persons, one of the named person, Moorthy did not sign the promissory note. The learned Subordinate Judge, disbelieved the case of the plaintiff and held that the promissory note suffered from want of consideration. The learned Subordinate Judge, also relied on Exs.B2 to B9 which were the statements and records of the criminal case filed by the defendants against the plaintiff. The learned Judge finally allowed the appeal and dismissed the suit.

S.A.No.631 of 1997:

11.The plaintiff then filed the present second appeal. The second appeal had been admitted on the following three substantial questions of law:-

1. Whether Ex.A1 pronote is not supported by consideration?

2. Whether the statement recorded under Section 161 Cr.P.C and the F.I.R. are admissible as evidence in civil case?

3. Whether a decree can be passed on the admission of defendants made in the additional written statement?

12. For the sake of convenience, the parties would be referred as plaintiff and defendants. It must also be stated that the plaintiff had not taken steps to serve the third defendant/third respondent and the appeal was dismissed as against the third respondent.

13. The case of the plaintiff was that a sum of Rs.5000/- was borrowed by the defendants and they had executed a promissory note on 06.07.1989. As a matter of fact, a perusal of the plaint shows that the plaint is in a printed form. Only the blanks have been filled up. The promissory note had been executed in a half page white paper, which was written down in Tamil. It was said to be executed by four persons namely, Mayavan and his sons Periyasamy, Ranganathan and Moorthy. However, Moorthy did not sign the promissory note. Even in the promissory note, it had been stated that, it had been executed towards the expenses incurred for the marriage of the younger sister. These facts have not been mentioned in the plaint.

14. The plaintiff has not disclosed that one of the person mentioned in the promissory note had not signed the promissory note. He had also not mentioned that the amount was borrowed towards the marriage expenses of the younger sister of the second and third defendants. It is clear that plaintiff had not come to Court with clean hands.

15. On the other hand, the defendants have very categorically stated that sister of the second and third defendants by name Anjalidevi, was proposed to be married to one Thanigachalam. The plaintiff was the uncle of Thanigachalam. It was also stated that dowry was demanded and towards the same, the promissory note was executed. It is therefore clear that consideration could not have passed under the promissory note. It is also seen that Anjalidevi, had also filed a police complaint against Thanigachalam, against the plaintiff herein and against the wife of the plaintiff. These records establish the fact of demand for dowry. It is clear that the plaintiff had suppressed material facts while filing the suit.

16.In the evidence of DW-1, it had been very clearly established that money was not borrowed, but, the promissory note was executed only towards the payment of dowry, as security for such payment. Consequently, I hold that the Lower Appellate Court had correctly decided that no consideration passed under the promissory note. The statements recorded during police enquiry cannot be looked into, to determine any fact. However, as a fact, a First Information Report had been registered against Thanigachalam, the plaintiff and the wife of the plaintiff. The decree cannot be passed, unless the plaintiff establishes that consideration had passed under promissory note. In the present case, the plaintiff had miserably failed to establish that fact.

17.In view of the above discussion, with respect to the substantial questions of law, I hold that Ex.A1 promissory note is not supported by consideration and that the statement recorded under Section 161 of CRPC, cannot be looked into by any Court of Law, but that the First Information Report can be examined only to the limited extent of establishing as a fact, the registration of a case but, not for proving anything more against the accused. I also hold that a decree cannot be passed on the basis of the admission, unless the plaintiff proves that consideration had passed and that the promissory note had been executed in accordance with law.

18.For all the reasons stated above, I do not find any reason to interfere with the judgment and decree of the First Appellate Court and accordingly the second appeal is dismissed, without costs. The judgment and decree in A.S.No.8 of 1995 on the file of the Subordinate Court Villupuram, dated 22.01.1997, is confirmed. The judgment and decree in O.S.No.663 of 1992 on the file of the Additional District Munsif Court Villupuram, dated 08.07.1994, is set aside. The Second Appeal is dismissed, No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

Smv

To

1.The Subordinate Court, Villupuram

2.The Additional District Munsif, Villupuram

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

S.A.No.631 of 1997

NRL (CO)
GMY (29/03/2019)



WEB COPY