

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.12.2019

Date of Verdict : 18.12.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.319 of 2002

M.Venkatachalam ...Appellant/2nd Respondent/
2nd defendant
Vs.

1.R.Arulanandam ...1st Respondent/Appellant/
Plaintiff

2.N.Thiagarajan ...2nd Respondent/1st Respondent/
1st defendant

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 11.07.2001, in A.S.No.24 of 2000 on the file of the learned IInd Additional District Judge, Salem reversing the decree and judgment dated 30.07.1999 in O.S.No.548 of 1989 on the file of the learned I Additional District Munsif, Salem.

For Appellant : Mr.I.Abrar Mohammed Abdullah

For Respondents

For R1 : Mr.K.Selvaraj

For R2 : Not ready notice

JUDGMENT

This second appeal is directed as against the judgment and decree dated 11.07.2001, passed in A.S.No.24 of 2000 on the file of the learned II Additional District Judge, Salem, reversing the judgment and decree dated 30.07.1999 in O.S.No.548 of 1989 on the file of the learned I Additional District Munsif, Salem.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. The case of the plaintiff in brief is as follows :

3.1. The plaintiff filed the suit for recovery of money. On 20.04.1986, the defendants borrowed a sum of Rs.6,000/- from the plaintiff for their family expenses and business purposes on execution of promissory note in favour of the plaintiff agreeing

to repay the said sum with interest at the rate of 24% per annum. Thereafter, the defendants failed to repay the said amount and as such the plaintiff made several request and also caused legal notice to the defendants. Even then, the defendants failed to pay the said sum borrowed by them.

4. Resisting the plaintiff's case, the defendants filed written statement and averred that they completely denied the borrowal of a sum of Rs.6,000/- from the plaintiff on 20.04.1986 and also denied the execution of the alleged promissory note in favour of the plaintiff. The defendants being jointly took the lease hold right of the Tamil film 'Ponnukku Thanga Manasu' from Salem Shanmuga Films on 20.12.1983. At that time, the defendants borrowed a sum of Rs.7,500/- and towards the said debt, Rs.4,500/- was repaid and a sum of Rs.3,000/- is due. The plaintiff took away the print of the film 'Ponnukku Thanga Manasu' from the second defendant and screened the picture and also earned a lot of money. The plaintiff has also submitted the accounts of income derived from the screening of the movie. The defendants are entitled for the balance amount in the profit from the plaintiff. The defendants have been repeatedly demanding the accounts and excess amount due to them. Hence, the plaintiff issued a notice with false allegations for which a suitable reply was given by them. In fact, the defendants have taken separate action for recovery of amount due from the plaintiff with regards to exhibiting the picture 'Ponnukku Thanga Manasu'. Therefore, the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 and P.W.2 were examined and four documents were marked as Ex.A.1 to Ex.A.4. On the side of the defendants D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.6 were marked. Based on the materials placed on record, both oral and documentary evidence by the respective parties and the submissions, the trial court dismissed the suit on the ground that the plaintiff failed to prove the pronote's genuinity, validity and due execution to attach the liability upon the defendants by examining the attestor of exhibit A1, the pronote. Aggrieved by the same, the plaintiff preferred an appeal suit in AS.No.24 of 2000 and the first appellate court reversed the judgment and decree passed by the trial court holding that the suit pronote is a true and genuine document. Aggrieved by the same, the second defendant alone has preferred this second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the lower appellate Court was justified in interfering with the finding of

fact without stating reasons as to how the trial Court was wrong?

b) Having regard to the fact that there is conflict in oral evidence of the parties and the decision depends upon the credibility of witnesses whether the lower appellate Court was justified in interfering with the findings of the trial Court?

7. The case of the plaintiff is that the defendants borrowed a sum of Rs.6,000/- on 20.04.1986 and also executed promissory note agreeing to pay the said sum with interest at the rate of 24% per annum. The defendants failed to pay the said amount on demand and as such the suit was instituted before the trial court. The first defendant was remained *exparte* and the second defendant alone contested the suit. Though the second defendant resisted the pronote as forged one, he admitted in his cross examination that the signatures found in the promissory note are belonging to the defendants. Therefore, the signatures in the promissory note were admitted by the defendants and as such the burden of proof in respect of the promissory notice trusts on the defendants.

7.1. Whereas the case of the second defendant is that they took the lease hold right of Tamil film 'Ponnukku Thanga Manasu' for which they borrowed a sum of Rs.7,500/- in the year 1983. But they did not plea that from whom it was borrowed and when it was borrowed. In the evidence of the second defendant, it was deposed that the said amount was borrowed from Sri Amman Finance Corporation, in which the plaintiff was the Managing Director. At the time of borrowal of the said amount, their signatures were obtained in blank promissory note and the plaintiff is making use of the said promissory note and filed the present suit. But nowhere averred in the written statement about the same by the defendants. Therefore without pleaded anything in the written statement, mere deposition alone cannot be considered and the first appellate court rightly held that the defendants are liable to pay the amount as claimed by the plaintiff.

7.2. Further the deposition of the second defendant is taken into consideration. According to him, he borrowed a sum of Rs.7,500/- from the said Finance Corporation and thereafter he repaid some amount and the balance is only Rs.3,000/- While borrowing the said amount, the alleged pronote was obtained by the plaintiff as he was Managing Partner in the Finance Corporation. On the discharge of the said amount, any prudent man would have demanded the return of the signed blank promissory note, which was obtained at the time of borrowal.

Also it is not the case of the second defendant that the said promissory note was obtained on coercion or by fraud. If really the second defendant had discharged his debt, he would have taken steps to get back the blank signed promissory note from the plaintiff. Therefore, the story of the second defendant cannot be believable one. Further according to the defendants, they took the right of Tamil film 'Ponnukku Thanga Manasu' for lease and the plaintiff had taken the print of the said film for the loan lent by him for screening. After screening the picture, the plaintiff gained huge profit and as such the amount borrowed by the defendants was discharged. Further, the plaintiff derived excess benefit and as such the plaintiff owes to give more money to the defendants. But there is no piece of evidence to prove the said contention by the defendants to show that the plaintiff had taken the prints of the Tamil movie called Ponnukku Thanga Manasu. It is also seen from the evidence of the second defendant that the plaintiff snatched the prints from one Somu and the said Somu was not examined by the defendants. Even assuming that it is true, the defendants failed to lodge any criminal complaint and did not take any action as against the plaintiff by civil or criminal.

7.3. The learned counsel for the appellant cited the judgment of this Court in the case of Palanisamy Servai (died) and others Vs. Veerabadran Servai (died) & others reported in 2002 (1) TLNJ 128, wherein this Court has held as follows:

"The trial court dismissed the suit, but the lower appellate court decreed the suit. It is settled position of law that an unregistered sale deed is not admissible in evidence and it cannot be looked into to prove the nature admissible in evidence and it cannot be looked into to prove the nature and character of possession. The learned counsel for the appellant relied upon a decision of the apex court in Santhosh Hazari Vs. Purushottam Tiwari, 2001(1) Supreme 642, wherein it is stated as follows:

While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a

material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact. The rule is and it is nothing more than a rule of practice that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact. (See Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh & Ors., AIR 1951 SC 120). Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one."

7.4. In the above judgment, this court has cited a judgment of the Hon'ble Supreme Court of India, wherein it has been held that the appellate court must remain conscious of two principles. Firstly, the finding of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same presiding judge who authors the judgment. Further, the appellate court should not interfere with the findings of the trial Judge on the question of fact. Secondly, while reversing a finding of fact, the appellate court must come into close quarters with the reasonings assigned by the trial court and then assign its own reasons for arriving at

a different finding.

7.5. The first appellate court while reversing the judgment and decree of the trial court, formulated the following points for consideration.

1. Whether the suit pronote is true?

2. To what relief, the appellant is entitled to?

Both the questions are answered properly by appreciating the evidence in detail. Therefore, the above judgment is not applicable to the case on hand.

7.6. He also cited another judgment of the Hon'ble Supreme Court of India in the case of Easwari Vs. Parvathi & Others reported in 2014(4) CTC 583.

7.7. However, the above judgment has arisen out of concurrent findings of the courts below, and wherein the Hon'ble Supreme Court of India has held that when the courts below concurrently held in favour of one party, the High Court can set aside the findings of the courts below, when there is perversity in decision due to misappreciation of evidence as such there is no absolute ban on High Court in Second Appeal to interfere with findings of facts. In the case on hand, the trial court found that the pronote is not proved by the plaintiff and dismissed the suit. The first appellate court reversed the said judgment and decree and allowed the suit. Therefore, the above judgment is not helpful to the case of the appellant.

7.8. The learned counsel appearing for the respondent cited the judgment of this Court in the case of R. Pandyan and Another Vs. M. Palgani reported in 2015 (2) MWN (Civil) 264, wherein it is held that the quality of evidence is important and not quantity. Law imposes no obligation that promissory note should be attested. Failure to examine the attesting witness not to invalidate the promissory note. In view of fact that defendant having not rebutted the legal presumption under Section 118 of NI Act, case of the plaintiff has to be accepted. In the case on hand, the witnesses to the pronote was not examined by the plaintiff whereas the plaintiff was examined as P.W.1, and P.W.2 who was also present at the time of execution of pronote was examined. When the defendants did not deny their signatures in the pronote, the burden of rebuttal lies on the defendants. They miserably failed to rebut the legal presumption under Section 118 of NI Act. Therefore, the above judgment squarely applies to the case on hand, and the defendants need to rebut the legal presumption arose under Section 118 of NI Act.

7.9. Be that as it may, this Court has accepted the case of the plaintiff. Therefore, this Court does not find any valid reasons to interfere with the reasonings and findings rendered

by the first appellate court for upholding the case of the plaintiff. All the substantial questions of law are answered accordingly against the defendants and in favour of the plaintiff.

8. In fine, this second appeal is dismissed with no costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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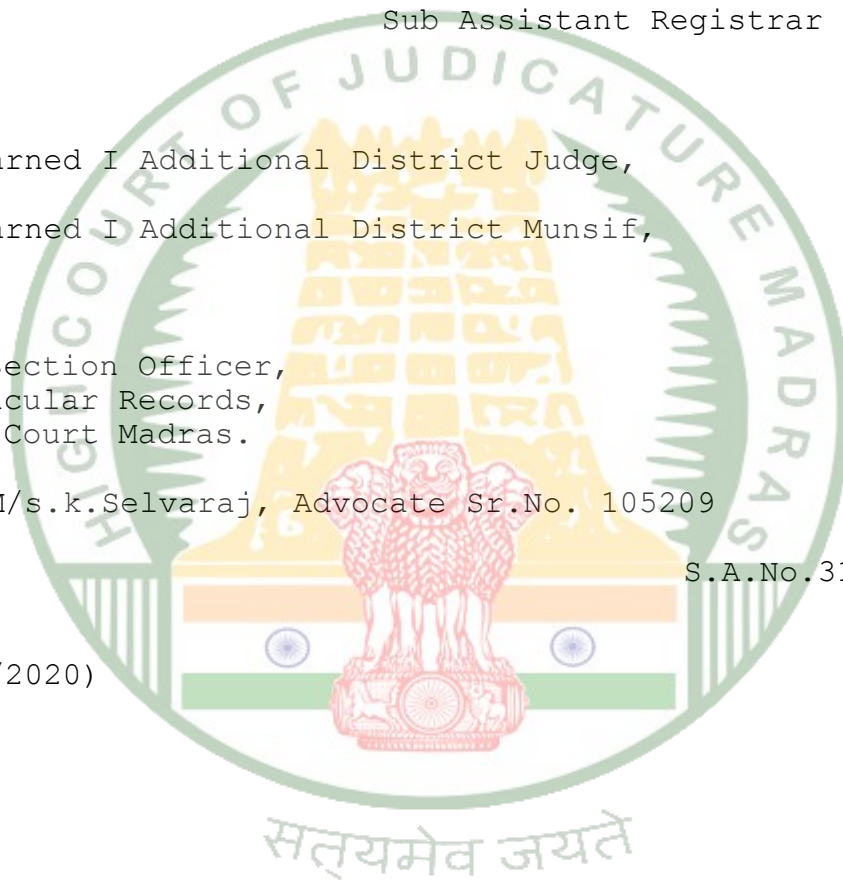
1. The learned I Additional District Judge,
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Copy to
The Section Officer,
Vernacular Records,
High Court Madras.

+1 cc to M/s.k.Selvaraj, Advocate Sr.No. 105209

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RSK (CO)
RMP (01/09/2020)



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