

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.12.2019

PRONOUNCED ON: 18.12.2019

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

S.A.No.1058 of 2008
& MP.No.1 of 2008

R.Parthasarathy

... Appellant/Respondent/Defendant

Vs.

Kullammal

... Respondent/Appellant/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 07.07.2006 passed in A.S.No.10 of 2006 on the file of the Principle District Judge, Salem reversing the judgment and decree dated 06.09.2005 passed in O.S.No.136 of 2001 on the file of the learned Subordinate Judge, Mettur.

For Appellant : Mr.N.Manokaran

For Respondent : No appearance

J U D G M E N T

This Second Appeal has been filed against the judgment and degree dated 07.07.2006 in AS.No.10 of 2006 on the file of the Principal District Court, Salem reversing the judgment and decree dated 06.09.2005 in O.S.No.136 of 2001 on the file of the Subordinate Court, Mettur.

2. The facts which gave raise to the filing of the present Second Appeal are stated hereunder:

The appellant herein was the defendant in the suit. The respondent herein was the plaintiff in the suit. The suit was filed by the plaintiff for recovery of a sum of Rs.85000/- on the basis of Loan Document dated 30.10.1998. According to the plaintiff, the appellant/defendant herein had borrowed a sum of Rs.85000/- and in acknowledgment of the borrowing, he had executed loan document dated 30.10.1998 on the signed blank stamp paper. Since the amount which was borrowed was not repaid

by the appellant/defendant, the suit was filed for recovery of the same.

3. In the proceedings before the trial Court, a written statement was filed by the appellant/defendant, stating that it was a false case filed by the plaintiff as the defendant averred that he had actually borrowed a sum of Rs.10000/- from one Jayabalan in August 1998 and repaid the loan to the plaintiff in the month of September 1998, after obtaining the GPF loan from the office. According to the appellant/defendant, that he and the said Jayabalan were working in the Tamilnadu Electricity Board at Mettur. However, on repayment of the loan, when a demand was made for return of the document i.e., blank five rupees stamp paper, which according to the defendant, was signed by him, the said Jayabalan refused to return the document. However, a lawyer's notice was subsequently sent in the name of his wife stating that the defendant had borrowed a sum of Rs.85000/- under the loan document. Thereafter, the suit was filed by the plaintiff, who was none other than the sister of the said Jayabalan.

4. On the side of the defendant, several contentions were raised stating that the signature has been obtained on the blank stamp paper, which was actually purchased in Dharmapuri on 25.08.1998 and the same was made use of by the said Jayabalan in order to extract more money from the defendant but was not actually due to him. The trial Court after evaluating the oral and documentary evidence, has found that the witnesses who were privy to the document Ex.A1 namely, the loan document dated 30.10.1998 have given completely contradictory statements regarding the place of document executed. The trial Court has noted the material contradictions in the statements of each witness i.e., PW1 to 4, who had given different version as to the date, time and place of the document executed. The trial Court has also found that the witnesses PW1 to 4 were from the different places and there was no explanation on the part of the plaintiff as to how these persons were being made privy to the document i.e., Ex.A1. Moreover, it was also the fact that originally notice was issued in the name of the said Jayabalan's wife and subsequently, the suit was filed by the sister of the Jayabalan. The document purchased in Dharmapuri which was dated 25.08.1998 and there was no explanation by the plaintiff as to how the stamp paper which was purchased in August 1998 was used as the loan document which was dated 30.10.1998. Finding that, there were too many contradictions and lacunae in the case of the plaintiff, the trial Court found that the case for recovery was not made out and dismissed the suit.

5. As against the dismissal of the suit, an appeal in A.S.No.10 of 2006 was filed before the Principal District Court, Salem and the Appellate Court allowed the appeal filed, by its judgment and decree dated 07.07.2006. According to the lower Appellate Court, the trial Court has erred and dismissed the suit on the basis of the so-called contradictions in the version of plaintiff's witnesses. The lower Appellate Court has found that there was no proper rebuttal on the part of the defendant, who is the appellant herein and when the signature in the loan document has been admitted, there is a presumption in favour of the plaintiff and in the absence of sufficient and proper material evidence by way of rebuttal, the case of the plaintiff was made out. The lower Appellate Court has also relied on Ex.A2 which was a complaint given by the defendant that he was subjected to dowry demand by his son-in-law and therefore, the defendant was in need of money and could have borrowed the amount from the plaintiff. As against allowing the appeal by the lower Appellate Court, the present Second Appeal has been filed by the defendant.

6. Mr.N.Manoharan, learned counsel appearing for the appellant would submit that the trial Court was right in dismissing the suit as the finding of fact by the trial Court was well founded as the trial Court found too many material contradictions as to the execution of the crucial document namely Ex.A1 dated 30.10.1998. All the witnesses deposed on behalf of the plaintiff had given contradictory statements which could not be ignored by the trial Court and therefore, the trial Court has based its finding on lack of coherent evidence in support of the plaintiff's claim. Moreover, regarding the manner in which the document was executed and the place in which the same was purchased and also the person who had lent money, etc., were all appeared to be doubtful, which was rightly appreciated by the trial Court and dismissed the suit. The learned counsel would submit that but unfortunately, the lower Appellate Court which merely held that the trial Court judgment and decree in dismissing the suit on the basis of the contradictions was not acceptable without giving any worthwhile reasons for over turning the verdict of the trial Court. In fact, the learned counsel would lay emphasis to the casual finding of the lower Appellate Court that the lower Appellate Court relied on Ex.A2, Complaint filed by the defendant for concluding that the defendant was in requirement of money on the basis of the document which was of the year 2002. But the loan was said to have been taken by the defendant in 1998. Therefore, the lower Appellate Court has completely mis-directed itself by relying on subsequent document for establishing the factum of loan being taken by the defendant in 1998. More over, the lower Appellate Court has not given any

contra reasons for over looking the material contradictions in the evidence let in on behalf of the plaintiff. The doubtful nature of execution of the document and also the doubtful nature of who has lent the money to which, the lower Appellate Court has over looked all the lacunae and reversed the findings of the trial Court which are completely unsustainable both in law or on the facts and the same is liable to be interfered with.

7. The learned counsel appearing for the appellant has also relied on the decision of the Hon'ble Supreme Court reported in "(1999) 3 SCC 35 in Civil Appeal No.4576 of 1997 dated 18.02.1999 in the case of (Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Payrelal). The learned counsel would draw the attention of this Court to the paragraph nos.12 & 14 of the above judgment, which are extracted hereunder:

"12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor

contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist. We find ourselves in the close proximity of the view expressed by the Full Benches of the Rajasthan High Court and the Andhra Pradesh High Court in this regard.

14. A perusal of the written statement of the defendant would clearly and unambiguously show that to disprove the consideration of the promissory note, he had brought certain circumstances to the notice of the Court which he wanted to probabilise by leading evidence. The evidence led by the defendant in that regard was not accepted by any of the Judges dealing with the case as noticed herein earlier. In the absence of disproving the existence of the consideration, the onus of proof of the legal presumption in favour of the plaintiff could not be shifted. It is true that the plaintiff had produced evidence in the case and that evidence was, in fact, the evidence in rebuttal of the evidence produced by the defendant in the case. After holding Issue 1 to have not been proved, the High Court was not justified in holding that the defendant had discharged the onus of proof of Issue 2. In fact, both the issues were required to be decided together which was not done with the result that miscarriage of justice crept into the proceedings depriving the plaintiff of its rights on account of the pendency of this litigation in the courts for a period of about four decades now. The technicalities of law and procedural wrangles deprived the plaintiff of its due entitlement. The justice claimed by the plaintiff was buried under heaps of divergent legal pronouncements on the subject conveyed and communicated in sweetly-coated articulate language and the oratory of the persons which is shown to have

been resorted to to present the rival claims. The approach adopted by the majority of the Judges in dealing with the case was contrary to the basic principles governing the law relating to negotiable instruments. Faith of the business community dealing in mercantile and trade cannot be permitted to be shaken by resort to technicalities of law and the procedural wrangles as appears to have been done in the instant case. Even though it is true that the plaintiff's evidence was not believed yet we are of the opinion that the same could not be made the basis for rejecting its claim because obligation upon the plaintiff to lead evidence for the purposes of "to prove his case", could not have been insisted upon because the defendant has prima facie or initially not discharged his onus of proof by showing directly or probalibilising the non-existence of consideration''.

8. Although the decision relied on by the learned counsel for the appellant need not be applied to the factual matrix of the case, however, the ratio laid down in the above said decision regarding the rebuttal by the defendant is to be applied and factually, this Court finds that the defendant has raised proper and sufficient rebuttal, rebutting the case of the plaintiff.

9. Although, notice has been sent and served on the respondent, there is no appearance on behalf of the respondent. In fact, the name of the respondent has been printed in the cause list. Today also, when the matter is taken up for hearing, there is no representation for the respondent.

10. Considered the submissions made on behalf of the appellant/defendant, and perused the materials and pleadings placed on record. The judgment and decree of the trial Court in the opinion of this Court, is on the basis of correct appreciation of the facts and circumstances of the case. The trial Court has rightly found that there were too many material contradictions in the version of witnesses PWs1 to 4, regarding the place and time of execution of the crucial document i.e., Ex.A1 dated 30.10.1998. In fact, the trial Court has correctly appreciated that those four persons, who are privy to the document were from different locations and there was no necessity for all of them being part of the document and there was no plausible explanation on the side of the plaintiff for participation of four persons in the transaction. More over, it could be seen from the proceedings that a lawyer's

notice was issued to the appellant/defendant on behalf of the wife of the said Jayabalan, but the suit was ultimately filed by the sister of Jayabalan. In fact, the loan document was purchased in Dharmapuri on 25.08.1998, but the loan transaction was said to have taken place only on 30.10.1998. There was no explanation on the side of the plaintiff as to how the stamp paper was purchased in Dharmapuri, which was a far away place, from the place of transaction and as to why it was purchased two months earlier to the date of execution. These circumstances would clearly establish the defence of the appellant herein that the defendant had indeed made out proper and sufficient rebuttal discharging his burden. The initial presumption in favour of the plaintiff was to give way for the subsequent defence established by the appellant/defendant herein, rebutting the presumption, which was correctly appreciated by the Trial Court.

11. The lower Appellate Court while reversing the findings of the trial Court did not give reasons at all as to how the trial Court was incorrect in appreciating the contradictions in the version of plaintiff's witnesses and the loan document concerned. It has simply held that the Trial Court was not right in relying on the contradictions but has not chosen to give any contra reasons for coming to a different conclusion against the defendant from that of the conclusion of the trial Court. In fact, as contended by the learned counsel for the appellant, reference to Ex.A2, complaint given by the defendant was dated 26.03.2002, whereas, the loan document was dated 30.10.1998. Therefore, the lower Appellate Court has completely mis-guided itself by relying on subsequent document and concluding that the defendant was in requirement of money and therefore, there was possibility of loan being taken by him from the plaintiff. Such conclusion is completely unacceptable and such findings of the lower Appellate Court is bordering on perversity. Therefore, the conclusion of lower Appellate Court has to be discountenanced both in law and on facts.

12. In the above circumstances, this Court finds that the entire claim of the plaintiff is rather doubtful and the evidence let in on the side of the plaintiff did not even remotely establish the claim of the plaintiff as against the appellant/defendant. Therefore, the trial Court was right in dismissing the suit, but unfortunately, the lower Appellate Court without appreciating the right approach of the trial Court, has over turned the verdict of the trial Court without any clinching materials for non confirming the findings of the trial Court. On the whole, this Court finds that the judgment and decree of the lower Appellate Court is unsustainable from looking at any angle. The conclusion reached by the lower

Appellate Court unsupported by any proper materials and evidence and therefore, has to go lock, stock and barrel.

13. In the light of the above, the substantial questions of law framed while admitting the Second Appeal are answered in favour of the appellant. Therefore, the Second Appeal is allowed and the Judgment and decree dated 07.07.2006 passed in A.S.No.10 of 2006 on the file of the Principle District Judge, Salem is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,
Salem.

2.The Subordinate Judge,
Mettur.

+1cc to M/s.N.Manokaran, Advocate Sr.105513

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S.A.No.1058 of 2008

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