IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.1639 of 2008
and
MP No.1 of 2008

1. M.Ramalingam
2. M.Umapathy ... Appellants/Defendants

Vs

Dhanakoti Ammal ... Respondent /Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree passed by the Principal District Judge, Chengalpattu in A.S. No.152 of 2003, dated 29.07.2005 confirming the judgment and decree passed by the Additional Subordinate Judge, Chengalpattu in O.S. No.12 of 1999, dated 30.04.2003.

For appellants :Ms.Y.Kavitha
for M/s.P.V.S. Giridhar Associates

For respondent :No appearance

JUDGMENT

This Second Appeal has been filed challenging the concurrent findings of the Courts below.

Brief facts leading to the filing of the Second Appeal :

2. The defendants in the suit O.S. No.12 of 1999 on the file of the Additional Sub Court, Chengalpattu are the appellants herein and the respondent is the plaintiff in the said suit.

3. The suit was filed for recovery of a sum of Rs.48,553.30 together with interest and costs from the defendants. The suit was filed by the plaintiff on the ground that the defendants availed a loan of Rs.20,000/- under a demand promissory note executed by them in favour of the plaintiff on 09.12.1992. According to the

plaintiff, the defendants agreed to pay the loan amount together with interest at 36% p.a. According to the plaintiff, since the defendants failed to repay the loan together with interest, amounting to Rs.48,553.30, the plaintiff was constrained to file a suit.

4. The defendants filed the written statement stating that the suit is hopelessly barred by the law of limitation. It is also their case that they have no acquaintance with the plaintiff and they had money transaction only with a person by name Manicka Mudaliar, who is a professional money lender.

5. It is also their case that it is only the second defendant, who borrowed a sum of Rs.20,000/- for his urgent agricultural purposes and not the first defendant, as alleged in the plaint.

6. It is also their case that the second defendant has been paying interest every month regularly from 09.12.1992 at the rate of 36% upto October 1995. It is also their case that from November 1995, the interest and instalments could not be paid and thereafter, the second defendant has made a payment of Rs.7,000/- to the plaintiff. They have disputed the alleged endorsement found in the reverse of the demand promissory note and according to them, it was made only by Manicka Muddaliar and not by any of the defendants. It is also their case that the signature of the second defendant found in the endorsement on the reverse of the promissory note was obtained by the plaintiff at the time when the second defendant availed a loan on 09.12.1992 and not on 29.11.1995, as alleged by the plaintiff. It is also stated in the written statement that the second defendant being an Agriculturist is entitled for benefits under the Agricultural Relief Act.

7. The Trial Court after framing issues and after trial decreed the suit in favour of the plaintiff by its judgment and decree dated 30.04.2003 passed in O.S. No.12 of 1999.

8. Aggrieved by the same, the defendants in the suit preferred an appeal before the Principal District Court, Chenglepet in A.S. No.152 of 2003.

9. The Lower Appellate Court has also confirmed the findings of the Trial Court and dismissed the appeal by its judgment and decree dated 29.07.2005 passed in A.S. No.152 of 2003.

10. Aggrieved by the same, the defendants in the suit

has now preferred the Second Appeal.

11. Heard Ms.Y.Kavitha, learned counsel for the appellant. Despite service of notice on the respondent and her name having been printed in the cause list today, she remains unrepresented in this Second Appeal.

12. According to the learned counsel for the appellants, the suit is hopelessly barred by the law of limitation. According to her, the endorsement allegedly made by the second defendant acknowledging liability of the debt and payment of Rs.100/- in the reverse of the promissory note which was marked as Ex.A2 is disputed. According to her, the signature found therein was signed by the defendants at the time when the loan was availed on 09.12.1992 and not on 29.11.1995, when the alleged endorsement is said to have been made. Since the suit was filed only in the year 1999, according to the learned counsel for the appellants, the period of limitation has not been extended and the suit is hopelessly barred by the law of limitation.

13. According to the learned counsel for the appellants, Section 20 of the Negotiable Instruments Act, 1881 will apply only for execution of the promissory note at the time of availing the loan and not to an endorsement which has been made subsequently. Therefore, according to her, the Trial Court as well the Lower Appellate Court has erroneously applied Section 20 of the Negotiable Instruments Act, 1881 and held that the defendants are liable to pay the decretal amount.

14. She also drew the attention of this Court to a Division Bench Judgment of this Court reported in Manu/TN/0163/1959 in Wazir Sultan and Sons Vs. P.Satchithananda Rao and others and submitted that a creditor to get the benefit of an extension of limitation has to prove two facts, a) that there has been a payment on account of a debt before the expiration of the prescribed period by the person liable to pay the debt or by his duly authorized agent and (b) that there is an acknowledgement of the payment in the handwriting of or in a writing signed by the person making the payment. According to her, since the writing made in the endorsement has been disputed by the defendants, the burden of proof is on the plaintiff to establish that the said writing was infact made only by the defendants.

15. According to her in the case on hand, the

plaintiff has not discharged her burden of proving that the writing found in the endorsement has infact been written by the defendants. Therefore, according to her, the suit filed in the year 1999 is hopelessly barred by the law of limitation.

Discussion :-

16. The contentions raised by the learned counsel for the appellants has been duly considered by the courts below.

17. It is not in dispute that the signature found in the endorsement of the promissory note viz., Ex.A2 acknowledging the payment of Rs.100/- towards interest is that of the defendants. It is the case of the defendants that the signature found in Ex.A2 was signed by the second defendant at the time of execution of the promissory note, dated 09.12.1992 and not on 29.11.1995.

18. Section 20 of the Negotiable Instruments Act, 1881 reads as under :-

> Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount :
>
> PROVIDED that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder :-

19. This Court has perused Ex.A1 and Ex.A2. Ex.A1 is the promissory note and Ex.A2 is the endorsement found in the reverse of the promissory note. The defendants have not disputed their signatures found in Ex.A1 and Ex.A2. Ex.A2 is the endorsement made in Ex.A1 by the defendants acknowledging payment of Rs.100/- on 29.11.1995 towards interest. Ex.A1 is the promissory note which is duly stamped and in accordance with law and is the principal

instrument which enables the plaintiff to recover the loan. Ex.A2 is only an endorsement made by the defendants in Ex.A1 acknowledging the payment of Rs.100/- towards interest. There is no law requiring an endorsement signifying payment towards interest to be stamped. Therefore, the endorsement made by the defendants in Ex.A2 on 29.11.1995 has the effect of saving limitation under Section 19 of the Limitation Act, 1963 and it is admissible in evidence.

20. The Trial Court as well as the Lower Appellate Court has rightly applied Section 20 and 118 (e) of the Negotiable Instruments Act, 1881. Since the signatures of the defendants found in Ex.A1 and Ex.A2 are undisputed, the Trial Court has applied Section 20 of the Negotiable Instruments Act, 1881 and held that the promissory note Ex.A1 is a valid promissory note. No evidence to the contrary has also been produced by the defendants to disprove Ex.A1 and Ex.A2. There is always a presumption under Section 118 (e) of the Negotiable Instruments Act, 1881, as to the order of endorsements appearing upon an negotiable instrument were made in the order in which they appear thereon unless the contrary is proved. In the case on hand, no evidence is available on record to disprove the contention of the plaintiff that the endorsement in the reverse of the promissory note (Ex.A2) was infact made by the defendants only. The plaintiff has discharged her burden of proving the debt by virtue of Ex.A1 and Ex.A2 which contains the undisputed signatures of the defendants. The evidence available on record will clearly indicate the defendants have miserably failed to disprove the claim of the plaintiff. There is no necessity for a borrower to sign in the front as well as in the reverse of promissory note. The contention of the defendants that both the signatures were obtained on the date of availing of the loan is unbelievable. To the naked eye, the ink of the signatures found in Ex.A1 and the handwritten matter as well as the signatures of the defendants found in Ex.A2, are different. Therefore, this Court can take judicial notice of the fact that Ex.A1 was executed on the date of the promissory note i.e., on 09.12.1992 and Ex.A2 was executed by the defendants on 29.11.1995.

21. The Trial Court as well as the Lower Appellate Court has rightly appreciated the evidence available on record and only thereafter has decreed the suit which was confirmed by the Lower Appellate Court.

22. For the foregoings reasons, the substantial

questions of law raised by the Appellants does not deserve any merit.

Conclusion:

23. In the result, this Court does not find any perversity in the findings of the Trial Court as well as the Lower Appellate Court and the judgements and decree of both the Courts are confirmed. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III-MDU)

//True Copy//
Sub Assistant Registrar

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To

1.The Principal District Judge,
Chengalpattu.

2. The Additional Subordinate Judge,
Chengalpattu.

Copy to:
The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.P.V.S.Giridhar & Sai, Advocate, S.R.No.99100

S.A. No.1639 of 2008

EV(CO)
CB(22/07/2020)