

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.No.1450 of 2007

and

M.P.No.1 of 2007

A.Kannivel Chettiar ... Appellant/Defendant

Versus

M.K.G. Gnana Oli ... Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 10.04.2007 made in A.S.No.61 of 2006 on the file of the Subordinate Judge at Kancheepuram by confirming the Judgment and Decree dated 03.04.2006 made in O.S.No.250 of 2004 on the file of the Additional District Munsif Court, Kancheepuram.

For Appellant : Mr.V.B.Perumal Raj

For Respondent : Mr.Y.Jyothish chandran

JUDGMENT

This second appeal has been filed, challenging the concurrent judgments of the courts below.

Brief facts leading to the filing of this second appeal:

2.The Appellant is the defendant in the suit O.S.No.242 of 2004, which was re-numbered as O.S.No.250 of 2004 on the file of the Additional District Munsif Court, Kancheepuram.

3.For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

4.The respondent is the plaintiff in the said suit. The plaintiff filed the suit against the defendant for recovery of a sum of Rs.98,182.50/- together with the interest and costs from the defendant, based on a promissory note dated 05.01.1995 for a sum of Rs.47,500/- executed by the defendant in favour of the plaintiff.

5.It is the case of the plaintiff that the defendant borrowed a sum of Rs.47,500/- for his business purposes and he agreed to repay the said loan with interest at the rate of 36% per annum.

6.The defendant filed a written statement, denying all the allegations contended in the plaint. According to him, he never borrowed the said sum of Rs.47,500/- and never executed a promissory note dated 05.01.1995, as alleged by the plaintiff.

7.It is his case that the plaintiff has been running an unregistered chit company and the defendant is a subscriber for a chit amount of Rs.50,000/- payable in 20 instalments. Only as a security for due repayment of the chit transaction, the defendant signed in a blank promissory note in favour of the plaintiff. According to the defendant, the chit fund transactions instalments were paid to the plaintiff without committing any delay.

8.The Trial Court by its Judgment and Decree dated 03.04.2006 decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendant filed an appeal before the Subordinate Court, Kancheepuram in A.S.No.61 of 2006 i.e., the Lower Appellate Court by confirming the findings of the Trial Court and dismissed the above said appeal. Aggrieved by the same, this second appeal has been filed.

9.Heard Mr.V.B.Perumal, learned counsel for the Appellant/defendant and Mr.Y.Jyothish chandran, learned counsel appearing for the respondent/plaintiff.

Discussion:

10.This Court, while admitting the second appeal on 27.07.2009, formulated the following substantial question of law:-

" Whether the judgment and decree of the courts below are liable to be set aside on the grounds of misreading of evidences and error of law in regard to the issue of rebutting the presumption under section 118-A of the Negotiable Instruments Act, in the light of the uncontroverted evidences of Exs.B1 to B6 and oral evidences of DW.2 more in particular when the amount of consideration in figure was filled up in a different ink?"

11.Before the Trial Court, the plaintiff filed two documents, which were marked as Exs.A1 and A2. Ex.A1 is the promissory note dated 05.01.1995 executed by the defendant in

favour of the plaintiff for a sum of Rs.47,500/-. Ex.A2 is the legal notice dated 15.12.1997 issued by the counsel for the plaintiff to the defendant seeking repayment of the loan. On the side of the defendant, six documents have been filed, which were marked as Exs. B1 to B6. Ex.B1 is the certified copy of the deposition of one Pazhani, who is employee of the alleged plaintiff's father in O.S.No.67 of 1995 on the file of the Sub-Court, Kancheepuram. Ex.B2 is the Xerox-copy of the deposition in O.S.No.179 of 1997 on the file of the Sub-Court, Kancheepuram. Ex.B3 is the certified copy of deposition of one Vijayalakshmi, who is the mother of the plaintiff in O.S.No.67 of 1995 on the file of the Sub-Court, Kancheepuram. Ex.B4 is the chit in the name of Kannivel Chettiar/defendant. Ex.B5 is a cancelled pro-note dated 06.11.1991. Ex.B6 is the receipt issued by K.R.Anandhan. On the side of the plaintiff, the plaintiff (PW.1) examined himself as a witness and on the side of the defendant, two witnesses were examined as DW.1 and DW.2. DW.1 is Kannivel Chettiar/defendant and DW.2 is K.R.Anandhan, who is a friend of the defendant.

12.The Trial Court, after considering the pleadings and evidence available on record, decreed the suit, in favour of the plaintiff and rejected the contentions of the defendant that he had never borrowed the money under the promissory note and that the plaintiff had misused the blank papers signed by him, which was given for a chit transaction. The Lower Appellate Court by its judgment and decree dated 10.04.2007 passed in A.S.No.61 of 2006 confirmed the findings of the Trial Court and dismissed the appeal.

13.It is the case of the plaintiff that the defendant borrowed a sum of Rs.47,500/- on 05.01.1995 by executing a demand of promissory note for the said amount on that date. The defendant admits the signature found in the promissory note/Ex.A1, however, disputes the borrowal of money on the ground that the plaintiff has misused the blank papers given by him to the defendant in towards a chit transaction. According to the defendant, the blank papers were signed as security for the said chit transaction.

14.But, as seen from the materials available on record, the defendant had not produced any documentary evidence to prove that he had a chit transaction entered with the plaintiff and the defendant. He has also not filed any documentary evidence to prove that he had not received the consideration of Rs.47,500/- on the date of the promissory note/Ex.A1.

15.The promissory note/Ex.A1 contains the undisputed signature of the defendant. The initial burden to prove that the defendant executed promissory note has been discharged in view

of the undisputed signature found in the promissory note. Once it has been discharged, the burden is shifted to the defendant, to disprove the execution of the promissory note/Ex.A1.

16.This Court has also perused the written statement. The defendant has admitted that a sum of Rs.47,500/- was received by him, but it is his case, it was received on account of a chit transaction. No evidence has been adduced by the defendant to establish that the said money was received from the plaintiff only towards chit transaction and not towards the loan availed under the promissory note/Ex.A1.

17.Considering the evidence available on record, the plaintiff has discharged his initial burden, hence, Section 118-A of the Negotiable Instruments Act, 1881 comes into play. Therefore, this Court will have to presume that the promissory note dated 05.01.1995/Ex.A1, was in fact, executed by the defendant in favour of the plaintiff for the purpose of the loan. The documents filed by the defendant in the suit under Exs.B1 to B6 does not relate to the subject transaction. Exs.B1, B2 and B3 are depositions made by third parties in various suits, which were filed by plaintiff's father and mother and they are no way connected to the present suit. Exs.B4, B5 and B6 are also no way connected with the case on hand, which are irrelevant documents.

18.The pleadings and the deposition of the plaintiff are also consistent and no contradictions are found. Both the Trial Court as well as the Lower Appellate Court has duly considered the pleadings and evidence available on record and only thereafter has come to the right conclusion that the plaintiff is entitled to a decree as prayed for in the suit.

19.The substantial question of law formulated by this Court is answered against the appellant, since there is no misreading of evidences and error in law, as the Trial Court as well as the Lower Appellate Court has rightly applied Section 118-A of the Negotiable Instruments Act and come to the right conclusion that the plaintiff has discharged his initial burden of proof of the execution of promissory note by the defendant and the defendant has miserably failed to disprove the case of the plaintiff.

20.For the foregoing reasons, the substantial question of law formulated by this Court on 27.07.2009 is answered against the appellant as there is no merit in the Second Appeal.

Conclusion:

21.This Court does not find any perversity in the findings of the Trial Court and the Lower Appellate Court. Hence, the judgement and decree dated 10.04.2007 passed by the learned Subordinate Judge at Kancheepuram in A.S.No.61 of 2006 is confirmed. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Court,
Kancheepuram.

2.The Additional District Munsif Court,
Kancheepuram.

+1cc to Mr.V.Ayyadurai, Advocate Sr.98273

+1cc to Mr.Y.Jyothish Chandran, Advocate Sr.98225

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and
MP.No.1 of 2007

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