

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 05.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

S.A.No.416 of 2008

&

MP.No.1 of 2008

Palani

Appellant/defendant

Vs

Rajasundaram

Respondent/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 22.07.2005 passed in A.S.No.89 of 2004 on the file of Principal District Court, Cuddalore reversing the Judgment and decree dated 29.04.2004 passed in O.S.No.84 of 2001 on the file of Subordinate Court, Panruti.

For Appellant : Mr.C. Gowthamaraj
for Mr.R.Sunil Kumar
For Respondent : No appearance

J U D G M E N T

Aggrieved over the decree and Judgment of the first appellate Court, in reversing the Judgment of the trial Court in decreeing the suit for recovery of the amount based on the promissory note, this Second Appeal has been filed.

2. The brief facts leading to filing of the suit is as follows :

The defendant had borrowed a sum of Rs.1,00,000/- from the plaintiff on 06.12.1999 and executed a promissory note agreeing to pay interest at the rate of 12% per annum. Despite, repeated reminders, he did not repay the amount. Hence, the suit.

3. Whereas it is the contention of the defendant that he did not execute the suit promissory note nor received any consideration from the plaintiff. The Plaintiff is none other than the brother-in-law of the defendant. In fact, the defendant has given 20 sovereigns jewels at the time of his sister's marriage as sridhanam. But, the plaintiff demanded more Sridhana. However, the defendant did not give it to the plaintiff. Therefore, there is enmity between the parties.

4. It is the further case of the defendant that he was working as a staff under one P.S. Ranganathan in a jewellery business and he was given full incharge of the business owned by the said Ranganathan. At that time, the defendant has signed in a blank promissory note and gave it to the said Ranganathan and also executed power deed relating to the defendant's immovable property towards security. As the defendant was full incharge of the gold business owned by the said Ranganathan, the defendant asked for excess amount, for which the said Ranganathan refused and asked the defendant to surrender the possession of the gold business. Further, on the strength of the power deed executed by the defendant, Ranganathan tried to sell the property of the defendant and attempted to register a sale deed. Hence, there was a dispute between Ranganathan and the defendant and the plaintiff used the said promissory note and filed the suit.

5. The trial Court dismissed the suit. However, the first appellate Court analyzing the entire facts as well as the law, reversed the finding and decreed the suit. As against which, the present Second Appeal has been filed.

6. The learned Counsel appearing for the appellant would contend that the first appellate Court has not considered the evidence in proper manner and the plaintiff has not proved passing of consideration. The first appellate Court has simply applied presumption under section 118 of the Negotiable Instruments Act and decreed the suit. Hence, submitted that the Judgment of the first appellate Court requires to be interfered.

7. Heard the arguments advanced on both sides and perused the entire materials available on record.

8. It appears that this Second Appeal is pending from the year 2008 in the admission stage itself. The suit is filed in the year of 2001. It is the specific case of the plaintiff that the defendant borrowed a sum of Rs.1,00,000/- on 06.12.1999 and executed the suit promissory note Ex.A.1 agreeing to pay interest at the rate of 12% per annum. But, the defendant specifically denied execution of the promissory note and passing of consideration. On the other hand, it is the specific contention of the defendant that a blank promissory note was given to one Ranganathan under whom, the defendant was working as a security and the same has been misused by the plaintiff.

9. P.W.1 in his evidence has clearly stated about the nature of the transaction between the parties. The relationship between the defendant and the plaintiff is not in dispute. It is curious to note that the signature found in the promissory note is not disputed by the defendant. The only contention of the defendant is that he gave a blank promissory note to one

Ranganathan as security. To substantiate the above fact, the defendant has not taken any steps to summon the so called Ranganathan.

10. It is further to be noted that one of the attested witness was examined as D.W.2 on the side of the defendant. D.W.2, in his evidence has categorically stated that the promissory note was executed by the defendant in favour of the plaintiff after receipt of Rs.1,00,000/- as a loan. The evidence of D.W.2 coupled with the evidence of P.W.1 clearly proves the execution of promissory note.

11. Once, the plaintiff discharges his initial burden of execution of the promissory note, then the burden automatically shifts on to the defendant to disprove not only execution but also to rebut the legal presumption available under section 118 of the Negotiable Instruments Act. Except denying passing of consideration, no other circumstances, whatsoever, has been brought by the defendant to rebut the legal presumption. Of Course, the statutory presumption is a rebuttable one. To rebut such presumption, there must be some materials or circumstances to be brought on record. But no such circumstances, whatsoever, has been brought on record by the defendant to rebut the statutory presumption.

12. Once, execution is proved and there is no evidence to rebut the legal presumption, then the plaintiff is entitled to the relief on the basis of Ex.A.1. The contention of the defendant that there is enmity between the plaintiff and the defendant regarding the marriage of the plaintiff with the sister of the defendant is highly improbable and it is against normal human contact. Having admitted that he has signed the blank promissory note, Section 20 of the Negotiable Instrument Act gives prima facie authority to the holder even to fill the blank promissory note. Whereas, in this case D.W.2 has clearly spoken about the execution of the promissory note after receipt of the loan amount. Considering all these facts, the first appellate Court has rightly come to the correct conclusion and decreed the suit. Hence, I do not find any substantial question of law in this appeal.

13. Accordingly, this Second Appeal is dismissed and the Judgment and decree dated 22.07.2005 passed in A.S.No.89 of 2004 on the file of Principal District Court, Cuddalore is confirmed. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

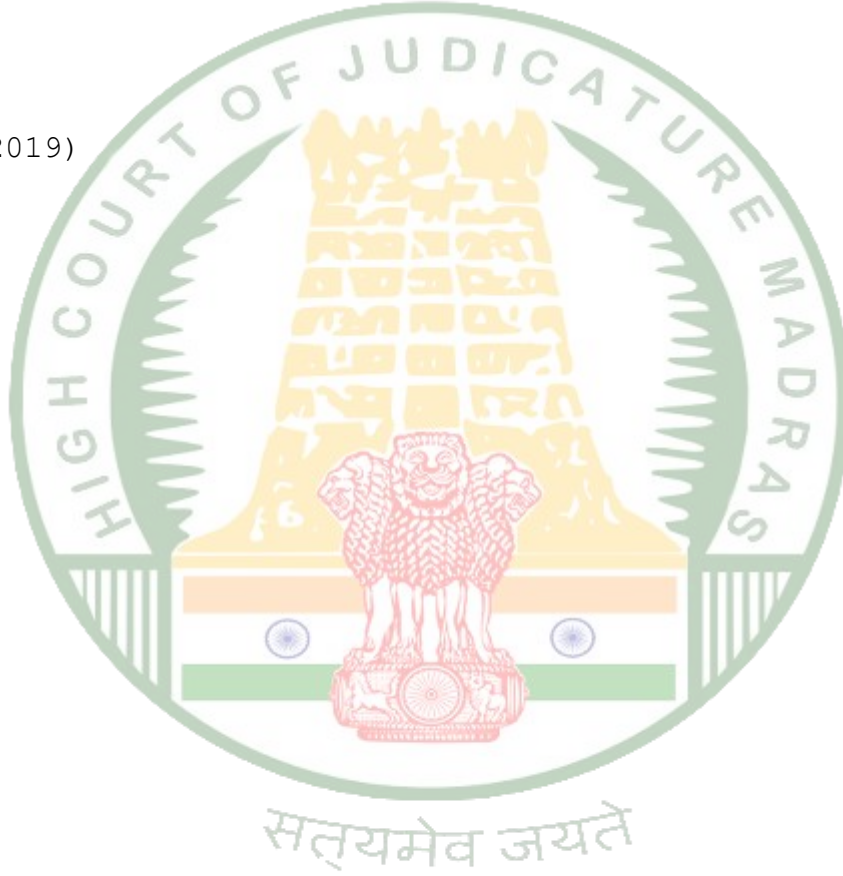
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To

- 1.The Principal District Judge,
Cuddalore.
- 2.The Subordinate Judge,
Panruti.
3. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

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