

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 20.02.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.1321 of 2009 &
M.P.No.1 of 2009

Mr.P.Thirumalaisamy

... Appellant/Defendant

Vs

Mrs.Mari Rajam Durairaj

... Respondent/Plaintiff

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 29.11.2006 in O.S.No.39 of 2005 on the file of the District Munsif Court, Udumalpet confirmed in A.S.No.22 of 2007 on the file of the Principal Subordinate Court, Udumalpet vide judgment and decree dated 27.07.2009.

For Appellant : Mr.V.Manohar

For Respondent : Mr.S.Gunalan

JUDGMENT

This Second Appeal has been filed as against the concurrent finding of the Courts below decreeing the suit filed on the basis of the promissory note dated 07.08.2004.

2. While admitting the Second appeal, the following substantial question of law have been framed :

Whether the Courts below were right in concluding that Ex.A.1 is a promissory note and the presumption under Section 118 of Negotiable Instruments Act would arise in the given circumstances?

3. The brief facts of the plaintiff case is follows :

The defendant had borrowed a sum of Rs.64,000/- on

07.08.2004 and agreed to repay the amount with interest at the rate of 12% per annum. Despite several demands, he had failed to repay the amount with interest.

3. It is the contention of the defendant that he had received only a sum of Rs.24,000/- and not Rs.64,000/-. Hence, disputed the suit promissory note contending that it is not enforceable.

4. The trial Court framed necessary issues. On the side of the plaintiff P.W.1 and P.W.2 have been examined and Ex.A.1 o A.3 have been marked. On the side of the defendant, D.W.1 has been examined and Ex.D.1 has been marked.

5. At the time of arguments, it was contended by the defendant that Ex.A.1 document is not a promissory note. However, the trial Court has held that Ex.A.1 is a promissory note and decreed the suit. Whereas, the appellate Court has held that Ex.A.1 is not a promissory note as there is no recital with regard to the payment on demand. However, held that Ex.A.1 has been executed by the defendant and confirmed the decree of the trial Court. Learned counsel for the appellant contended that Ex.A.1 is not a promissory note, therefore the Courts below decreeing the suit is not proper. Similarly, P.W.1 himself had admitted that he had advanced an amount of Rs.one lakh four years back. Therefore, Ex.A.1 is not supported by any consideration. Hence, prayed for allowing the appeal.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

7. The suit has been laid on the basis of Ex.A.1 dated 07.08.2004. Ex.A.1 is written on twenty rupees stamp paper and revenue stamp has also been affixed. The recitals of the document clearly show that the plaintiff has advanced a sum of Rs.64,000/- as a loan to the defendant on 07.08.2004 and interest is at the rate of 12% per annum. The document was executed in the presence of two other witnesses. One of the witness was examined as P.W.2 and he has also spoken about the execution. It is not the case of the defendant in her entire written statement that she never executed Ex.A.1. Her main contention is that she has received only Rs.24,000/- as consideration and not Rs.64,000/-. According to her, she has already paid Rs.44,000/-. However, no materials, whatsoever, has been placed by her to prove the alleged discharge.

8. It is further to be noted that though there is no recitals in Ex.A.1 for demand on payment, this Court is of the opinion that the document can be treated as a bond and it is sufficiently stamped as required under law. Therefore, this Court is of the view that Ex.A.1 has been properly proved in the manner known to law and execution is also not disputed by the defendant. Hence, the burden lies on the defendant to prove the fact that she has discharged a part of the amount shown in Ex.A.1, which has not been done so.

9. Yet another contention of the learned counsel for the appellant is that the plaintiff himself has admitted that he had advanced an amount of Rs.One lakh four years back. Such contention also will not help the defendant in any way, since the time barred debt also valid consideration. Hence, I do not find any merits in this Second Appeal and the substantial question of law is answered against the appellant.

10. Accordingly, this Second Appeal is dismissed and the judgment and decree of the Courts below are confirmed. Consequently, the connected miscellaneous petition is closed. No cost.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

vrc
To

1. The Principal Subordinate Judge,
Udumalpet.

2. The District Munsif,
Udumalpet.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.V.Manohar, Advocate Sr.No.15770
+1 cc to Mr.S.Gunalan, Advocate Sr.No.15681

Second Appeal No.1321 of 2009

PMS (CO)
CSL/23.04.2019