

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2019

PRONOUNCED ON:20.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.2170 of 2004

Gothandarama Reddiar ... Appellant/Plaintiff

Vs.

Natarajan ... Respondent/2nd Defendant

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.35 of 2003 dated 29.04.2004 on the file of the Principal District Court, Villupuram, reversing the judgment and decree passed in O.S.No.153 of 1996 dated 31.08.2001 on the file of the Sub Court, Kallakurichi.

For Appellant : Mr.A.G.Rajan

For Respondent : M/s.Mythili Suresh
for M/s. Sarvabhauman Associates

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 29.04.2004 passed in A.S.No.35 of 2003 on the file of the Principal District Court, Villupuram reversing the judgment and decree dated 31.08.2001 passed in O.S.No.153 of 1996 on the file of the Subordinate Court, Kallakurichi.

2. The second appeal has been admitted on the following substantial question of law.

Whether the appellant is bound to prove the genuinity of Ex.A1 namely suit pronote, when once the signature found in Ex.A1 is not denied and no explanation was offered by the 2nd defendant for having signed the suit pronote?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. The plaintiff has laid the suit against the defendants for recovery of money on the basis of a promissory note said to have been jointly executed by the defendants 1 and 2.

6. The relationship between the parties is not in dispute. The first defendant is the mother and the second defendant is one of the sons of the first defendant. The plaintiff is the brother of the first defendant's husband. No dispute as regards the abovesaid relationship between the parties. In the suit laid by the plaintiff against the defendants, summons had been sent to both the defendants. However, it is seen that only the first defendant had entered appearance and filed the written statement challenging the plaintiff's case contending that the suit promissory note, on the basis of which, the plaintiff has laid the suit, is a concocted document developed in collusion with the plaintiff and the second defendant, her son and according to her, inasmuch as, she had refused to part with her properties to the second defendant, it is alleged that the second defendant and the plaintiff acted hand in glove and concocted the suit promissory note as if she had also executed the same along with the second defendant with reference to the borrowal of the amount mentioned therein from the plaintiff and hence according to the first defendant, she has neither borrowed any sum from the plaintiff nor executed any promissory note in favour of the plaintiff jointly with the second defendant as alleged by the plaintiff and thereby sought for the dismissal of the plaintiff's suit. Though the second defendant had also been duly served in the suit, for the reasons best known to the second defendant, he has not evinced interest to contest the plaintiff's suit. Accordingly, the second defendant is found to have been set exparte in the suit and till the disposal of the suit by the trial court, the second defendant has not endeavored to set aside the exparte order passed against him in the suit one way or the other, in the manner known to law and not filed any application in the trial court to set aside the exparte decree passed against him in the manner known to law. The trial court based on the materials placed on record by the respective parties, namely the plaintiff and the first defendant in the matter, on an analysis

of the same, for the reasons given by it, determined that the suit promissory note has not been executed by the first defendant and that she had not borrowed any sum from the plaintiff based upon the suit promissory note and that her signature had been concocted and further holding that the plaintiff and the second defendant had colluded together and come forward with the false suit and thereby the plaintiff having come forward with the false suit, on that determination, dismissed the plaintiff's suit as against the first defendant. However, proceeding further, the trial court held that inasmuch as, the second defendant though had been served with the summons in the suit, had not evinced interest to set aside the ex parte order passed against him in the manner known to law and also not put forth any plea denying his signature in the suit promissory note nor taken any defence that the suit promissory note is bad for passing of consideration as recited therein as regards him and the second defendant having knowledge about the consequences in not defending the suit laid by the plaintiff and holding that inasmuch as the second defendant has no defence to resist the plaintiff's case for the recovery of the suit sum from him based on the suit promissory note, on that determination held that the second defendant alone is liable to pay the suit claim of the plaintiff and accordingly granted the decree in favour of the plaintiff against the second defendant alone.

7. As abovenoted, the second defendant has neither taken any steps in the trial court to set aside the ex parte order passed against him in the court or set aside the ex parte decree passed against him in the suit. As against the dismissal of the suit qua the first defendant, the plaintiff has not come forward with any appeal. On the other hand, against the judgement and decree of the trial court, the second defendant is found to have preferred the first appeal and the plaintiff has also not preferred any cross appeal or cross objection in the first appeal preferred by the second defendant. The first appellate court on an appreciation of the materials placed on record, holding that the plaintiff has failed to establish that the second defendant has also borrowed the suit sum from him and executed the suit promissory note jointly with the first defendant, on that determination, allowed the appeal preferred by the second defendant and by way of the same, dismissed the plaintiff's suit in toto. Impugning same, the present second appeal has been laid by the plaintiff.

8. As above pointed, it is not in dispute that the second defendant had been duly served with the summons in the suit. It is found that the second defendant thereby knew very well that the plaintiff had laid the suit against him for the

recovery of money based on the suit promissory note and as above noted, the plaintiff has laid the suit against the defendants on the footing that the defendants 1 and 2 had borrowed the said sum from him and jointly executed the suit promissory note and as above seen only the first defendant had challenged the plaintiff's contention putting forth the defence that she had neither borrowed any sum from the plaintiff nor executed the suit promissory note along with the second defendant and according to the first defendant, the suit promissory note had been concocted in collusion made between the plaintiff and the second defendant as according to her, the second defendant had been acting adversely against her on her refusal to part away with the properties belonging to her in favour of the second defendant. As abovenoted, the abovesaid case of the first defendant had been accepted by the trial court and accordingly, the trial court had dismissed the plaintiff's suit as against the first defendant.

9. In so far as the second defendant is concerned, despite being aware of the nature of the case levied by the plaintiff against him, he had chosen to remain exparte and failed to place any pleas in this case to explain or state as to his defence as regards the case projected by the plaintiff qua the suit promissory note. Resultantly, it is found that there is no plea on the part of the second defendant denying his signature in the suit promissory note and there is no plea on the part of the second defendant that he has not received the suit sum from the plaintiff based on the suit promissory note. There is no plea on the part of the second defendant that the suit promissory note is not supported by consideration. There is no plea on the part of the second defendant that the plaintiff had fabricating his signature in the suit promissory note and laid a false case against him. There is no plea on the part of the second defendant that the plaintiff had laid the suit against him acting in collusion with the first defendant. There is no plea on the part of the second defendant that there is no necessity on his part to borrow the suit sum from the plaintiff based on the suit promissory note. Furthermore, there is no plea on the part of the second defendant that the relationship between him and the plaintiff was not cordial on the date of the execution of the suit promissory note.

10. In the light of the abovesaid position, when there is no plea at all taken by the second defendant with reference to his resistance to the plaintiff's case in any way, accordingly, as rightly contended by the plaintiff's counsel, when the plaintiff has clearly tendered evidence that the second defendant also had executed the suit promissory note based upon the borrowal of the consideration recited therein, in such view of the matter, the second defendant in the first appeal cannot

be allowed to contend that the suit promissory note is a concocted document even as regards him and fabricated by the plaintiff and that he had not borrowed any sum from the plaintiff as put forth by the plaintiff on 06.06.1988 and executed the suit promissory note in his favour. Therefore, in the absence of any plea put forth by the second defendant resisting the plaintiff's case in any manner, it does not stand to reason as to how come the first appellate court assumed that the second defendant had taken the plea that he had not borrowed the suit sum from the plaintiff and not executed promissory note in evidence thereof as put forth by the plaintiff. It is thus found that as rightly contended by the plaintiff's counsel without any pleas on the part of the second defendant resisting the plaintiff's case before the trial court, the first appellate court seem to have invented a defence on the part of the second defendant by taking a special interest in the matter and on that basis proceeded to analyse the defence materials projected by the first defendant to resist the plaintiff's case. When the documents projected by the first defendant are not even claimed to have relied upon by the second defendant before the trial court one way or the other and when as above noted, the documents projected by the first defendant before the trial court are not sufficient, in my considered opinion, to suggest that all is not well with the plaintiff and the second defendant at the relevant point of time and when the abovesaid documents had been projected by the first defendant only to show the collusion on the part of the plaintiff and the second defendant for obtaining unjust enrichment from her one way or the other, by concocting her signature in the suit promissory note and in such view of the matter, the reasonings of the first appellate court that inasmuch as the plaintiff had failed to establish his case by examining the scribe and the attestors to the suit promissory note, his case could not be accepted and relied upon, as such, are found to be untenable. Particularly, when the plaintiff had discharged the proof in support of his case and marked the document with reference to the same and when the said evidence of the plaintiff and the document projected by him, remaining unchallenged, as far as the second defendant is concerned in any manner, the determination of the first appellate court that inasmuch as the plaintiff had come forward with the suit that the defendants 1 and 2 had jointly executed the suit promissory note and inasmuch as the trial court had disbelieved the plaintiff's case as against the first defendant, the same logic would also apply to the second defendant and therefore the second defendant is also not liable to pay the suit claim, as such, cannot be accepted in any manner. Particularly, when there is no contra material placed on the part of the second defendant resisting the plaintiff's case either by way of necessary pleas or by any evidence, in any manner, known to law and when the evidence of the plaintiff is

found to be wholly sufficient for upholding his case as against the second defendant as determined by the trial court, in my considered opinion, the determination of the first appellate court holding that the plaintiff has failed to establish his case even as against the second defendant, particularly, when the second defendant has not disputed the passing of consideration and the execution of the suit promissory note as put forth by the plaintiff and in such view of the matter, the judgment and decree of the first appellate court dismissing the plaintiff's suit as against the second defendant is not sustainable in the eyes of law and liable to be interfered with.

11. The substantial question of law formulated in the second appeal is accordingly answered against the second defendant and in favour of the plaintiff.

12. For the reasons aforesaid the judgment and decree dated 29.04.2004 passed in A.S.No.35 of 2003 on the file of the Principal District Court, Villupuram in favour of the second defendant are set aside and the judgment and decree dated 31.08.2001 passed in O.S.No.153 of 1996 on the file of the Subordinate Court, Kallakurichi against the second defendant are confirmed. Accordingly, the second appeal is allowed with costs. Consequently connected miscellaneous petition, if any is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1. The Principal District Judge,
Principal District Court,
Villupuram.

2. The Subordinate Judge,
Sub Court,
Kallakurichi.

Copy to

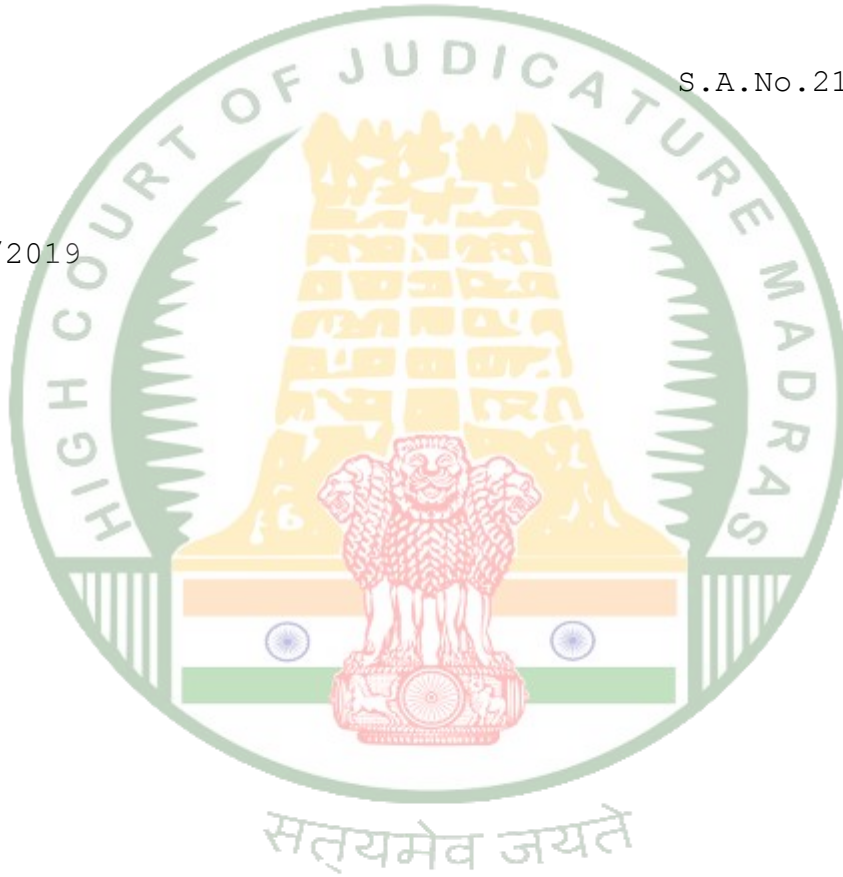
The Section Officer,
VR Section,
High Court,
Chennai.

+lcc to Mr.A.G.Rajan, Advocate Sr.27202

+lcc to M/s.Sarvabhauman Associates, Advocate Sr.26203

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mr[co]
srg 26/08/2019



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