

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.No.3 of 2010
and
M.P.No.1 of 2010

1.P.Ganapathi
2.G.Saraswathi

... Appellants

Vs.

K.Anandan

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 16.04.2009 passed in A.S.No.61 of 2007 by the Subordinate Judge, Thiruvallur upholding the decree and judgment dated 05.12.2006 passed in O.S.No.128 of 2005 by the District Munsif, Pallipattu.

For Appellants : Mr.A.Gouthaman

For Respondent : Mr.B.Gopalakrishnan for
Mr.P.A.Chithramani

JUDGMENT

The appellants are the defendants in O.S.No.128 of 2005 on the file of the District Munsif Court, Pallipattu and appellants in A.S.No.61 of 2007 on the file of the Subordinate Judge, Thiruvallur.

2.The respondent/plaintiff filed the suit in O.S.No.128 of 2005 before the District Munsif Court, Pallipattu, for recovery of a sum of Rs.50,760/- together with interest at the rate of 9% per annum on Rs.40,000/- from the date of suit till the date of decree and at the rate of 6% per annum thereafter till the date of realization. The suit was filed based on a promissory note[Ex.A1] executed by the defendants on 29.11.2002.

3. For the sake of convenience, the parties are referred to as per their ranking in the original suit and at appropriate places, their ranks in the present appeal would also be indicated, if necessary.

4.The case of the respondent/plaintiff in nutshell is as follows:

The defendants 1 and 2 borrowed a sum of Rs.40,000/- from the plaintiff and executed the promissory note on 29.11.2002, promising to repay the principal together with interest at the rate of 24% per annum on demand by the plaintiff or to his order. However, the defendants did not pay any amount either towards the principal or interest inspite of repeated demands made by the plaintiff. Therefore, the plaintiff issued a notice dated 30.03.2005 to the defendants. A copy of the notice is marked as Ex.A2. The defendants received the said notice, as evidenced by the postal acknowledgment cards Ex.A4 and Ex.A5 and sent a reply Ex.A3 dated 01.04.2005, which according to the plaintiff contained false allegations. Therefore, the plaintiff filed the suit for recovery of the amount due under Ex.A1.

5.The defendants filed their written statement with the following contentions.

(i)The defendants signed only on unfilled promissory notes.

(ii)The said promissory notes are not supported by consideration.

(iii)During the closure of the finance company run by the father-in-law of the plaintiff and the first defendant, the plaintiff's father-in-law insisted the defendants to sign three blank promissory notes as a security.

(iv)Only after receiving notice from the plaintiff, and one Mohan the defendants came to know that the unsigned blank promissory notes have been pressed into service by the plaintiff and one Mohan to file the present suit in O.S.No.128 of 2005 before the District Munsif, Pallipattu as well as the suit in O.S.No.285 of 2004 filed before the District Munsif Court, Sholinghur.

(v)Since the suit in O.S.No.285 of 2004 was dismissed, the present suit is also liable to be dismissed.

6.On the basis of the above pleadings, the trial Court, framed necessary issues and after full contest, decreed the suit in favour of the plaintiff, directing the defendants to pay a sum of Rs.50,760/- together with interest at 6% per annum, on the principal amount of Rs.40,000/- from the date of plaint till the date of realization vide its decree and judgment dated 05.12.2006. Aggrieved over the same, the defendants filed an appeal in A.S.No.61 of 2007 before the Subordinate Judge, Thiruvallur. The learned Subordinate Judge, Thiruvallur, after analysing the evidence on record, dismissed the appeal filed by the defendants and upheld the findings recorded by the trial Court. Now, the present second appeal is filed by the defendants.

7.The second appeal came up for admission on 18.01.2010 and notice regarding admission was sent to the respondent/plaintiff. Subsequently, the second appeal was listed before this Court.

8. At the outset, it may be observed that the defendants had not denied their signatures in the suit promissory note Ex.A1. Their main contention is that they signed three unfilled printed promissory notes as security, at the instance of the father-in-law of the plaintiff while closing down the finance business conducted by the father-in-law of the plaintiff and the first defendant.

9. The learned counsel appearing for the appellants/defendants contended that the respondent/plaintiff did not dispute the documents, viz., Ex.B1 to Ex.B8, pertaining to the finance business and in such circumstances, the plaintiff should have adduced sufficient evidence to show that the suit promissory note was supported by consideration. His specific contention is that neither the attesting witness nor the scribe of the suit promissory note was examined on the side of the plaintiff. He also relied on the decision of the Allahabad High Court in CH.BIRBAL SINGH Vs. HARPHOOL KHAN AND ANOTHER (AIR 1976 ALLAHABAD 23) and contended that the word 'execution' of a document consists in signing a document written out, read over and understood and does not consist of merely signing a blank paper. The learned counsel therefore contended that when the defendants have taken a specific stand that they signed on three unfilled blank papers, the burden lies on the plaintiff to prove the execution of the suit promissory note and passing of consideration. His further contention is that the plaintiff apart from examining himself as P.W.1 has examined his father-in-law as P.W.2 and that merely based on the evidence of P.W.1 and P.W.2, it cannot be held that the suit promissory note was duly executed and supported by consideration especially when P.W.2 is an interested witness. Reliance was also placed on the decision of this Court in KATHIRVEL Vs. PURUSHOTHAMAN (2017 (1) LW 722) by the learned counsel for the appellants/defendants wherein it has been held that when the plaintiff has failed to establish that the suit promissory note is supported by consideration, the question of invocation of Section 118 of Negotiable Instruments Act, would not arise.

10. Per contra, the learned counsel appearing for the respondent/plaintiff raised the following points:

(i) In the reply notice dated 01.04.2005 [Ex.A3], the defendants have not stated that they put their signatures on the blank promissory notes.

(ii) In the written statement, they have taken a new plea that they signed three blank papers.

(iii) The plaintiff has discharged his burden of proving that the suit promissory note is executed by the defendants by examining himself as P.W.1, apart from examining his father-in-law as P.W.2. When the defendants admitted their signatures on the suit promissory note, there is a presumption under Section 118 of the Negotiable Instrument Act that the suit promissory note is supported by consideration, unless contrary is proved.

(iv) Since in the instant case, the defendants did not adduce evidence to show that the suit promissory note is not supported by consideration, the findings rendered by both the Courts below are perfectly in order and cannot be interfered with in the present appeal.

11. In order to establish that the suit promissory note was executed by the defendants, the plaintiff examined himself as P.W.1 and his father-in-law as P.W.2. Both the Courts below concurrently held that P.W.2 corroborated the versions of P.W.1 in all material particulars. Merely because P.W.2 is closely related to P.W.1, his evidence cannot be thrown out. In fact, no contradictions in the evidence of P.W.1 and P.W.2 were pointed out. In the decision in CH. BIRBAL SINGH (cited supra) there were contradictions in the evidence examined on the side of the plaintiff and in the said circumstances, it was held that the plaintiff has not discharged his burden of proving the suit promissory note. Further more in para 7 of the same judgment it has been held thus.

"7. The point has been argued at great length from both sides. I have given my anxious consideration to the whole matter and have no hesitation to say that in a case based on pronote the initial burden lies on the plaintiff to prove execution of the pronote and when this burden is discharged it is then that the court shall raise a presumption in favour of the plaintiff for holding that the pronote was for consideration and it will be for the defendants to rebut that presumption. The same principle was laid down in the case of Kundan Lal Ralla Ram v. Custodian Evacuee Property, Bombay, (AIR 1961 SC 1316)."

12. In this case, the specific contention of the defendants in the suit is that they delivered three unfilled printed pro-notes duly signed by them to P.W.2, the father-in-law of the plaintiff during the closure of finance business as security for amicable settlement of the disputes between the partners. It is to be pointed out that none of the documents filed on the side of the defendants speak about the unfilled signed promissory notes delivered by the defendants to the plaintiff's father-in-law.

13. In the decision in KATHIRVEL Vs. PURUSHOTHAMAN (2017 (1) LW 722) a single judge of this Court referred a decision of the Hon'ble Supreme Court in MOIDEEN KUTTY HAJEE Vs. PAPPU MANJOORAN AND ANOTHER reported in [(1996) 8 SCC 586, wherein it is held thus.

"When the suit is based on pronote, and promissory note is proved to have been executed, Section 118(a) raises the presumption, until the contrary is proved, that the promissory note was

made for consideration. That initial presumption raised under Section 118(a) becomes unavailable when the plaintiff himself pleads in the plaint different considerations. If he pleads that the promissory note is supported by a consideration as recited in the negotiable instrument and the evidence adduced in support therefor, the burden is on the defendant to disprove that the promissory note is not supported by consideration or different consideration other than one recited in the promissory note did pass. If that consideration is not valid in law nor enforceable in law, the court would consider whether the suit promissory note is supported by valid consideration or legally enforceable consideration. The burden of proof is of academic interest when the evidence was adduced by the parties. The court is required to examine the evidence and consider whether the suit as pleaded in the plaint has been established and the suit requires to be decreed or dismissed."

Moreover in the decision KATHIRVEL(cited supra) the plaintiff himself has taken out a plea during the course of evidence and specifically contended that the consideration is different from what had been recited in the suit promissory note. In such circumstances, it was held that invocation of presumption under Section 118 of the Negotiable Instruments Act cannot be taken as such and the burden of proof lies on the plaintiff to adduce evidence to establish that the suit pro-note is supported by consideration as stated by him. The facts of the present case is entirely different.

14.At this juncture, it is also relevant to point out that the defendants in the reply notice Ex.A3 have not mentioned that they have put their signatures in three blank unfilled promissory notes, on 29.11.2002. Only during the course of evidence of D.W.1, it is alleged that the defendants put their signatures on three unfilled printed promissory notes on 29.11.2002.

15.As already observed, the plaintiff has adduced sufficient evidence to show that the defendants executed the suit promissory note Ex.A1 and therefore, the burden of proof shifted on the defendants to prove that the promissory note is not supported by consideration.

16.Even assuming that the defendants signed only unfilled printed promissory notes, Section 20 of the Negotiable Instruments Act comes into operation.

"Section 20 in The Negotiable Instruments Act, 1881

20. Inchoate stamped instruments.—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."

17. In view of the above, both the Courts below had concurrently held that the defendants executed the suit promissory note in favour of the plaintiff and the defendants did not prove that the suit promissory note is supported by consideration. All the observations made by both the Courts below are perfectly in order and in fact there is no substantial question of law in the present second appeal. In the said circumstances, the second appeal fails and the same is liable to be dismissed.

18. In the result,

(i) The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) Decree and Judgment dated 16.04.2009, passed in A.S.No.61 of 2007, by the Subordinate Judge, Thiruvallur is upheld.

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Thiruvallur.

2. The District Munsif,
Pallipattu.

Copy To

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

S.A.No.3 of 2010 and
M.P.No.1 of 2010

BP (CO)
GMY (05/05/2021)



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