

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2019
PRONOUNCED ON: 06.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1420 of 2005

M.Thagapillai

...Appellant/Respondent/Plaintiff

Vs.

M.Periasamy

...Respondent/Appellant/Respondent

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.01.2005 made in A.S.No.115 of 2004 on the file of Principal District Court, Villupuram reversing the judgment and decree made in O.S.No.200 of 2000 on the file of Subordinate Judge, Kallakurichi dated 02.01.2004.

For Appellant : Mr.K.Muthukumaraswamy

For Respondent : Ms.A.Vinupradha
for Mr.A.Thiyagarajan

JUDGMENT

In this second appeal, Challenge is made to the judgment and decree dated 18.01.2005 passed in A.S.No.115 of 2004, on the file of the Principal District Court, Villupuram, reversing the judgment and decree dated 02.01.2004 passed in O.S.No.200 of 2000 on the file of the Subordinate Court, Kallakurichi.

2. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

3. Suit for recovery of money.

4. Briefly stated, the case of the plaintiff is that the defendant borrowed a sum of Rs.65,000/- from him on 05.09.1998 and in evidence thereof, executed the suit promissory note agreeing to repay the principal sum with interest as recited therein and despite the repeated requests, the defendant failed to pay the amount and hence the plaintiff sent a legal notice claiming the same, for which the defendant sent a reply containing the false allegations and hence according to the plaintiff, he has been necessitated to lay the suit against the

defendant for the recovery of the amount due to him under the suit promissory note.

5. The case of the defendant in brief is that he has not borrowed a sum of Rs.65,000/- from the plaintiff on 05.09.1998 as put forth in the plaint nor executed the suit promissory note in favour of the plaintiff and according to the defendant, the suit promissory note is a fabricated and concocted document and further according to the defendant, on 05.09.1998, he had borrowed only a sum of Rs.25,000/- from the plaintiff by way of a hand chit and agreed to repay the same with interest and subsequently settled the said loan by paying both the principal and the interest and apart from the said transaction, there is no other monetary transaction between the plaintiff and the defendant on 05.09.1998 and only on account of enmity, at the instigation of others, the plaintiff has come forward with the suit with false allegations and therefore, the suit is liable to be dismissed.

6. In support of the Plaintiff's case, P.Ws.1 to 3 were examined and Exs.A1 to A3 were marked. On the side of the defendant D.W.s.1 to 2 were examined and EXs.B1 to B4 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit as prayed for. On appeal by the defendant, the first appellate court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

"1. Whether the judgment of the lower appellate court dismissing the suit is vitiated by its failure to consider the entire evidence and apply the correct principles of law?

2. Whether the findings of the Lower Appellate Court that the transaction between the plaintiff and the defendant is under Ex.B2 are not perverse and unsustainable especially when the execution of Ex.A1 Promissory Note and passing of consideration are proved with the evidence of attestors and scribe i.e. P.W.2, P.W.3 and

D.W.2?"

9. The suit has been laid by the plaintiff for recovery of money and according to the plaintiff, the defendant borrowed a sum of Rs.65,000/- from him on 05.09.1998 and executed the suit promissory note marked as Ex.A1 but failed to repay the same with interest as per the terms recited therein and hence he sent a legal notice marked as Ex.A2 and instead of complying with the demand made in the legal notice, the defendant has sent a reply containing false allegations marked as Ex.A3 and hence according to the plaintiff, he has been necessitated to lay the suit for proper relief.

10. Per contra, the defendant has denied the borrowal of the suit amount and execution of the suit promissory note as alleged in the plaint and according to the defendant, on 05.09.1998, he had borrowed only a sum of Rs.25,000/- from the plaintiff by way of a hand chit agreeing to repay the same with interest and later discharged the said loan and that apart, there is no other transaction between the plaintiff and the defendant on 05.09.1998 and according to the defendant, only on account of enmity, the false suit has been laid by the plaintiff and therefore, the suit is liable to be dismissed.

11. Inasmuch as the defendant has disputed the genuineness of Ex.A1 promissory note, it is for the plaintiff to establish the same by placing acceptable and reliable evidence. With reference to the same, the plaintiff has examined himself as P.W.1 and one of the attestors as P.W.3 and also examined the scribe as P.W.2. Both the plaintiff as well as P.Ws.2 and 3 have tendered clear evidence that the defendant borrowed a sum of Rs.65,000/- from the plaintiff on 05.09.1998 and only in evidence thereof, had executed the suit promissory note and in particular, P.Ws.2 and 3 have deposed that the defendant had executed the suit promissory note after the receipt of consideration and despite the cross examination, nothing has been culled out by the defendant from P.Ws.1 to 3 to discredit their evidence in any manner. On an analysis of the evidence of P.Ws.1 to 3 in toto, it is found that, as deposed by them, the defendant is found to have borrowed the suit amount of Rs.65,000/- from the plaintiff on 05.09.1998 and executed the suit promissory note in favour of the plaintiff. Therefore, it is evident and as determined by the trial court the plaintiff has established his case through his evidence as well as the evidence of P.Ws.2 and 3. The evidence of P.Ws.1 to 3 are found to be consistent with and supportive to each other and also totally reliable, convincing and trust worthy. In addition to that, the other attestor has been examined by the defendant as D.W.2 and on a perusal of the evidence of D.W.2, it is seen that only after the receipt of consideration, the defendant has executed the suit promissory note. Therefore, it is found that

the case of the plaintiff has also been amply proved by the evidence of the attestor examined by the defendant as D.W.2. Though the defendant would dispute the signature in the suit promissory note and contended that the suit promissory note is a fabricated document, however, during the course of cross examination, he has admitted that the signature found in Ex.A1 promissory note is that of his signature. In the light of the abovesaid factors, when the passing of consideration and the execution of the suit promissory note has been established by the plaintiff through the evidence of P.Ws.1 to 3 and the evidence of D.W.2 and the admission of the defendant examined as D.W.1, in such view of the matter, as rightly determined by the trial court, the presumption under Section 118 of the Negotiable Instrument Act comes into force and it is for the defendant to rebut the said presumption and establish that the suit promissory note is not supported by consideration and that he had not executed the suit promissory note. However, there is no evidence adduced on the part of the defendant with reference to the same repudiating the evidence of P.Ws.1 to 3 as well as the evidence of D.W.2.

12. According to the defendant, he has borrowed only a sum of Rs.25,000/- from the plaintiff on 05.09.1998 by way of a hand chit and subsequently discharged the same and therefore, other than the said transaction, no other monetary transaction took place between him and the plaintiff on 05.09.1998. The hand chit signed by the defendant has been marked as Ex.B2. The plaintiff's signature is not found in Ex.B2. According to the defendant the contents of Ex.B2 had been written by the plaintiff. It is found that the document Ex.B1 had come to be obtained from the plaintiff's by the defendant's lawyer during the course of cross examination. The trial court has found no similarities in the hand writings available in Ex.B1 and the hand chit marked as Ex.B2. On the other hand, the first appellate court, on a comparison of the abovesaid documents as well as the unregistered agreement marked as Ex.B4 said to have been written by the plaintiff, finding similarities in the hand writings found in the abovesaid documents, on that premise, proceeded to hold that Ex.B1 hand chit had been written by the plaintiff and thereby, concluded that other than the said transaction, no other monetary transaction took place between the plaintiff and the defendant and thereby, disbelieved the plaintiff's case. However, as rightly putforth by the plaintiff's counsel, when the plaintiff has established his case in all aspects by examining the scribe and the attestors and when there is no contra evidence with reference to the same on the part of the defendant, in such view of the matter, as rightly putforth by him, the first appellate court is found to have disbelieved the plaintiff's case merely on the comparison of the documents projected by the defendant and by holding that the hand writings found in the abovesaid documents are written

by one and the same person, namely, the plaintiff and thereby disbelieved the plaintiff's case. However, the abovesaid approach of the first appellate court is found to be totally unsustainable in the eyes of law. No doubt, the first appellate court is entitled to compare the writings and the signatures and come to a conclusion. However, for reaching a conclusion on the abovesaid aspects, the first appellate court should have endeavoured to give valid reasons as to in what respects it found similarities in the hand writings contained in the documents seen by it and when the first appellate court has not furnished any reason whatsoever and has proceeded to baldly hold that the hand writings are found to be similar on a naked comparison of the same, in my considered opinion, the abovesaid approach of the first appellate court cannot, at all, be sustained as per law. Furthermore, when the defendant has not endeavoured to subject the hand chit marked as Ex.B2 for expert's scrutiny as per law and when the defendant has also not placed any material to show that he had discharged the said amount alleged to have been borrowed by him from the plaintiff on 05.09.1998 by placing acceptable material and when the defendant has failed to place reliable contra evidence to rebut the presumption raised against him under Section 118 of the Negotiable Instrument Act, in all, it is found that the first appellate court has committed a total error in disbelieving the plaintiff's case and upholding the defence version merely on finding certain similarities in the hand writings of the contents of the documents marked as Exs.B2 and B4 and thereby endeavoured to accept the defence version and reject the plaintiff's case. But the position remains there is no contra evidence on the side of the defendant to rebut the presumption rained against him. Furthermore, the first appellate court has not cared to assess the evidence of the plaintiff and his witnesses as well as the evidence of the other attesor examined as D.W.2 and on the other hand, focused its attention only on observing the similarities in the hand writings found in Exs.B2 and B4 and the abovesaid approach of the first appellate court is found to be totally against the provisions of law and cannot be countenanced in any manner. It is thus noted that the first appellate court has disposed of the appeal without appreciating the evidence placed on record, both oral and documentary and on the other hand, its approach in upholding the defence version based on the comparison of the hand writings found in Ex.B2 and B4, without furnishing any acceptable reasons with reference to the same, are found to be totally perverse, irrational and unsustainable and accordingly, the substantial questions of law formulated in this second appeal are answered against the defendant and in favour of the plaintiff.

13. The principles of law outlined in the decision relied upon by the plaintiff's counsel reported in 1999 (1) CTC 497 (SC) (Bharat Barrel Vs. Amin Chand Pyarelal) are taken in to

consideration and followed as applicable to the case at hand.

14. In conclusion, the judgement and decree dated 18.01.2005 passed in A.S.No.115 of 2004, on the file of the Principal District Court, Villupuram, are set aside and the judgment and decree dated 02.01.2004 passed in O.S.No.200 of 2000 on the file of the Subordinate Court, Kallakurichi, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

bga

To

1. Principal District Court, Villupuram
2. Subordinate Court, Kallakurichi.

Copy to

The Section Officer, V.R.Section,
High Court, Madras.

+1 CC to Mr.K.Muthukumaraswamy, Advocate sr 20581.

S.A.No.1420 of 2005

KJ(CO)
SP(15/05/2019)

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