

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 07.01.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.387 of 2012 &
M.P.No.1 of 2012

Mr.Ganapathy ...Appellant / Defendant

Vs

Mr.Thirumalai Gounder ...Respondent / Plaintiff

Prayer:- Second Appeal has been filed under Section 100 of C.P.C.to set aside the judgment and decree dated 27.09.2011 passed in A.S.No.74 of 2010 on the file of the Subordinate Judge, Kallakurichi reversing the judgment and decree dated 20.02.2010 in O.S.No.499 of 2007 on the file of the I Additional District Munsif Court, Kallakurichi.

For Appellant : Mr.R.Kumaravel

For Respondent : Mr.P.Valliappan

JUDGMENT

Aggrieved over the finding of the first appellate Court reversing the decree and judgment of the trial Court, the present second appeal has been filed.

2. For the sake of convenience, the parties are arrayed as per their own ranking before the trial Court.

3. This appeal is pending from the year 2012 under the 'admission caption'.

4. Heard Mr.R.Kumaravel, learned counsel for the appellant and Mr.P.Valliappan, learned counsel for the respondent.

5. The brief facts of the plaintiff case is as follows :

The defendant borrowed a sum of Rs.50,000/- on 02.03.2005 and executed a promissory note agreeing to pay interest at the rate of 15% per annum. Thereafter, despite repeated reminders, the defendant failed to repay the principal as well as the interest. Therefore, a legal notice has been issued, which was

also acknowledged by the defendant. Even then, no payment has been made. Hence, the suit.

6. The brief contention of the defendant is as follows :

The defendant, denying the execution of the promissory note, taken a specific contention that he has not signed the promissory note and has not put his thumb impression in the promissory note. P.W.2 is a stranger to the defendant and the promissory note has been fabricated on the ground that the defendant had failed to sell his land to the plaintiff. Hence, prayed for dismissal of the suit.

7. The trial Court framed following issues for consideration in the suit :

1. Whether the promissory note is genuine, valid and supported by consideration?
2. To what relief?

8. On the side of the plaintiff, P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.4 were marked and on the side of the defendant, D.W.1 was examined and no documents were marked. The trial Court considering the materials and evidence has come to the conclusion that the plaintiff has not taken the aid of the expert in proving the signature of the defendant and further, there are inconsistencies in the evidence of P.W.1 and held that promissory note has not been proved as per law and dismissed the suit. As against the dismissal of the suit, the plaintiff preferred appeal before the first appellate Court and the first appellate Court, considering the evidence of P.W.1 and P.W.2 and the pleadings of the respective parties, has set aside the judgment of the trial court and thereby, decreed the suit in favour of the plaintiff. As against which, the present appeal came to be filed.

9. Mr.R.Kumaravel, learned counsel appearing for the appellant vehemently contended that the first appellate Court has not appreciated the facts properly and infact, placed the burden on the defendant to rebut the evidence, which is not according to law. The evidence of P.W.1 and P.W.2 is not properly appreciated by the first appellate Court. Therefore, the first appellate Court has come to the erroneous conclusion in decreeing the suit. Hence, submitted that there is substantial question of law involved in the appeal and prayed for allowing the appeal.

10. The learned Counsel, Mr.P.Valliappan, appearing for the respondent has contended that admittedly the plaintiff had proved the execution of the promissory note. Therefore, the statutory presumption available under section 118 of the Negotiable Instruments Act squarely attracts to the facts of the case. Except denying the signature, the defendant has not discharged his burden by bringing any circumstance to rebut the legal presumption attached to Ex.A.1 promissory note. The first appellate Court has rightly decided the issue and appreciated the facts properly. Hence, submitted that there is no substantial question of law involved in the appeal and prayed for dismissal of the appeal.

11. I have perused the entire materials available on record. It is the case of the plaintiff that the defendant had borrowed a sum of Rs.50,000/- to meet out his family expenses and executed a promissory note on 02.03.2005 agreeing to repay the principal with interest at the rate of 15% per annum. Despite repeated demands and legal notice, the defendant failed to repay the amount.

12. Whereas, it is the specific stand of the defendant that the signature found in the promissory note is not that of his signature and thumb impression has been fabricated and Ex.A.1 promissory note has been fabricated, since the defendant did not heed to request of the plaintiff to sell his property. Except denying the signature and thumb impression, in the entire written statement, no other circumstances, whatsoever, has been pleaded in the written statement. It is to be noted that the defendant has not even replied to the legal notice sent by the plaintiff. Though mere non reply of the legal notice is not an admission of liability, but his conduct in not disputing the document at the earliest point of time cannot be ignored altogether.

13. It is further to be noted that the initial onus always lies on the plaintiff to prove the execution of the promissory note. Once, the plaintiff discharged his initial onus in proving the execution, the burden automatically shifts on to the defendant to disprove the factum of execution, proved by the plaintiff. Similarly, once, the execution of the promissory note is proved in the manner known to law, the statutory presumption available under section 118 of the Negotiable Instruments Act attracts to the negotiable instrument, not only as to the date but also time, consideration etc.

14. P.W.1, the holder of the promissory note, in his evidence has categorically spoken about the manner in which E.A.1 came to be executed by the defendant. Similarly, P.W.2, one of the attesting witness, who was present at the time of

execution has also been examined to prove the execution of the promissory note by the defendant. On a careful perusal of the entire evidence of P.W.1 and P.W.2, no circumstances, whatsoever brought in their evidence to show any of the circumstances which lead to rebut the legal presumption attached to Ex.A.1. The purpose of examining the attesting witness is to identify the person, who has put his signature in any document in his presence. When the plaintiff has complied the legal requirement in proving the execution, the legal presumption available under section 118 of the Negotiable Instruments Act squarely attracts to Ex.A.1. Of course, such statutory presumption can be rebutted. To rebut such presumption, there need not be direct evidence. Even circumstances, even admission from the parties can be taken note of to rebut the presumption.

15. A perusal of the entire evidence of both sides reveals that except denying the signature, the defendant has not brought any circumstance to rebut the legal presumption. Once, execution of the promissory note has been proved, the burden shifts on to the defendant to bring the better evidence to show that the signature found in Ex.A.1 is not that of his. He has not taken any such exercise to get the expert aid in this regard. Therefore, by mere denial of his signature, one cannot succeed in rebutting the legal presumption.

16. It is also curious to note that it is the specific case of the plaintiff that the defendant had borrowed a sum of Rs.50,000/- to meet out his family expenses. Such a pleading has not been specifically denied in the entire written statement. Except stating that he has not signed in the promissory note, the borrowal has not been specifically denied by the defendant. Once, the specific pleading in the plaint has not been specifically denied by the defendant, it is deemed to have been admitted as per Order VIII Rule 5 Code of Civil Procedure. But the pleading of the defendant is nothing but evasive in nature. That also cannot be ignored altogether. Therefore, some inconsistencies in the evidence of P.W.1 as to the nature of signature found on the stamps itself cannot be a ground to doubt the genuineness of Ex.A.1. When the entire evidence of P.W.1 is read, the minor inconsistencies in his evidence cannot be given much importance. Therefore, the trial Court giving importance to the minor inconsistencies in the evidence of P.W.1 is not according to law. Hence, on consideration of the entire evidence, this Court do not find any substantial question of law to admit this appeal and the appeal is liable to be dismissed.

17. In the result, the Second Appeal is dismissed and the judgment and decree of the first appellate Court is confirmed with cost throughout. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Subordinate Court,
Kallakurichi.
2. The Additional District Munsif,
Kallakurichi.
3. The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.R.Kumaravel, Advocate, S.R.No.1656

+1 cc to Mr.P.Valliappan, Advocate, S.R.No.1630

Second Appeal No.387 of 2012

CNR(CO)
SSM(24/04/2019) .