



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.03.2019

Delivered on: 22.05.2019

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THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

S.A.No.162 of 2013

C.Sriraman

... Appellant/Plaintiff

Vs.

1.P.Suseela

2.Minor P.Appu

3.Minor P.Hari

...Respondents/ Defendants

(2 and 3 minors are represented
by their mother and natural guardian
the first respondent - P.Suseela)

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No.15 of 2012 on the file of the Subordinate Judge, Gudiyatham, Vellore District, dated 31.08.2012 reversing the judgment and decree made in O.S.No.145 of 2010 on the file of the District Munsif, Gudiyattam, Vellore District, dated 12.01.2012.

For Appellant : Mr.K.A.Ravindran

For Respondents : Mr.V.Perumal for
Mr.T.Dhanyakumar for R1 to R3

JUDGMENT

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the Sub-Judge, Gudiyatham, Vellore District, in A.S.No.15 of 2012 dated 31.08.2012 reversing the judgment and decree passed by the District Munsif, Gudiyatham, Vellore District in O.S.No.145 of 2010 dated 12.01.2012.



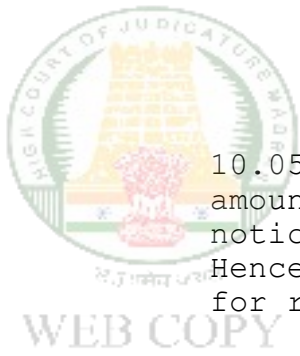
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2. The respondent herein had filed a suit in O.S.No.145 of 2010 on the file of the District Munsif, Gudiyatham, Vellore District on a pronote for recovery of Rs.51,600/- with interest on the said amount at contract rate from the date of the suit, till the date of realization, from and out of the estate left by the deceased G.Pandurangan which is now in their hands of the defendants. The learned District Munsif, by the judgment dated 12.01.2012 had decreed the suit directing the defendants to pay the principal amount of Rs.30,000/- with interest at the rate of 12% per annum from the date of the pronote i.e., 07.06.2007 till the date of the decree and thereafter at the rate of 6% per annum with cost from and out of the estate of the deceased G.Pandurangan which is in the hands of the defendants. Aggrieved by the same, the defendants had filed an appeal in A.S.No.15 of 2012 on the file of the Sub-Judge, Gudiyatham. The learned Sub-Judge, Gudiyatham, by the judgment dated 31.08.2012 had allowed the said appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit. However, the parties were directed to bear their respective costs. Feeling aggrieved, the plaintiff has filed the present Second Appeal.

3. For the sake of convenience, the parties are referred to as described before the trial Court.

4. The averments made in the plaint are, in brief, as follows:-

The first defendant is the wife and the defendants 2 and 3 are the children of the deceased G.Pandurangan. The said G.Pandurangan borrowed a sum of Rs.30,000/- from the plaintiff for clearing the debt which was incurred for purchasing the land and executed a pronote dated 07.06.2007 agreeing to repay the same with interest at the rate of 24% per annum. In spite of demands, the said G.Pandurangan did not pay any amount either towards principal or interest. He died intestate on 09.04.2009 leaving behind the defendants as his legal heirs. The defendants are in possession and enjoyment of the estate of the said G.Pandurangan and hence, they are liable to discharge the aforesaid debts from and out of the estate of G.Pandurangan which is in their hands. After the death of the said G.Pandurangan, the plaintiff has been demanding the first defendant to pay the due. She has been taking time to pay the amount but she did not come forward to pay amount. Hence, the plaintiff was constrained to issue a legal notice dated



10.05.2010 to the defendants demanding the payment of the amount. Though the first defendant had received the said notice, she did not send any reply nor paid the amount. Hence, the plaintiff was constrained to file the above suit for recovery of the amount.

5. The averments made in the written statement filed by the first defendant on her behalf and also on behalf of the other minor defendants are in brief as follows:-

The allegation that the deceased G.Pandurangan borrowed a sum of Rs.30,000/- to clear the debt and executed a promissory note on 07.06.2007 agreeing to repay the demand at the rate of 24% per annum are all false. It is also false to say that the defendants are in possession and enjoyment of the estate of the deceased G.Pandurangan. The execution of the promissory note dated 07.06.2007 is specifically denied. No such document has been executed by the deceased G.Pandurangan. He had not borrowed any amount from the plaintiff. The signatures in the promissory note are not that of the deceased G.Pandurangan. The plaintiff along with some other persons were running a Finance at Pernambut before several years and with the help of the documents in the said finance, the plaintiff had fabricated the suit documents and filed the false suit in order to make unlawful gain. The defendants are not liable to pay any amount to the plaintiff. The suit is barred by limitation. Therefore, the defendants prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned District Munsif, Gudiyatham, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and marked Exs.A1 to Ex.A4 as exhibits. On the side of the defendants, neither oral nor documentary evidence has been adduced.

7. The learned District Munsif, after considering the materials placed before him found that the suit promissory note is not barred by limitation. He further found that the said promissory note was executed by the deceased G.Pandurangan and the same is supported by the consideration and hence, the defendants being the legal heirs of the said G.Pandurangan, are liable to discharge the said debt from and out of the estate which is available in their hands. Accordingly, he decreed the suit directing the defendants to pay the principal amount of Rs.30,000/- with interest at the rate of 12% per annum from 07.06.2007



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from the date of promissory note i.e., 07.06.2007 till the date of decree and thereafter, at the rate of 6% per annum till the date of realization and with cost from and out of the estate of the deceased G.Pandurangan available in their hands. Aggrieved by the same, the defendants had filed an appeal in A.S.No.15 of 2012 on the file of the Sub-Judge, Gudiyatham. The Sub-Judge, had allowed the said appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit. Further, the parties were directed to bear their respective costs. Feeling aggrieved, the plaintiff has filed the present Second Appeal.

8. This Court, at the time of admitting the second appeal, has formulated the following substantial questions of law:-

"1. Whether the lower Appellate Court is right in dismissing the suit when there is no contra evidence let in by the respondents/defendants to disprove the execution of the pronote by Sr.Pandurangan under Ex.A1?

2. Whether the respondents / defendants had obtained from the witness box and had not made any statement in support of their pleading set out in the written statement, whether the lower Appellate Court is right in dismissing the suit without drawing an adverse inference against the defendants?

3. When the appellant has specifically stated and proved the execution of pronote and passing of consideration whether the lower Appellate Court is right in dismissing the suit?"

9. Heard, Mr.K.A.Ravindran, the learned counsel for the appellant and Mr.V.Perumal for Mr.T.Dhanyakumar for the learned counsel for the respondents 1 to 3.

10. Substantial Questions of law 1 to 3:-

The learned counsel for the appellant has submitted that the first Appellate Court has erred in reversing the well considered judgment and decree of the trial Court. He further submitted that the first Appellate Court failed to see that the plaintiff has established his case through oral and documentary evidence but the defendants did not adduce evidence on their side. He



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further submitted that the first Appellate Court failed to see that, to prove the averments made in the written statement the defendants did not enter into the witness box and subject themselves for cross examination and as such, an adverse inference has to be drawn against the defendants. He further submitted that Exs.A2 to Ex.A4 would show that before filing of the suit, the plaintiff had issued a lawyer's notice stating that the deceased G.Pandurangan had borrowed the amount and executed the suit promissory note and hence, the defendants are liable to pay the said amount and that the first defendant had received the said notice but she did not send any reply and that itself would show that she has not disputed the averments made in the said notice. He further submitted that the trial Court taking into consideration of all the aforesaid facts, had rightly decreed the suit, however, the first Appellate Court without considering the evidence in a proper perspective had erroneously allowed the appeal and dismissed the suit and hence, he prayed to allow the Second Appeal.

11. Per contra, the learned counsel for the respondents/defendants has submitted that even though the defendants have denied the signatures found in Ex.A1 promissory note as not that of the deceased G.Pandurangan, the plaintiff has not taken any steps for getting handwriting expert's opinion. He further submitted that in Ex.A1 promissory note, it is stated that two persons have signed as witnesses and one person 'has signed as scribe but the plaintiff has not chosen to examine any of them and prove that the promissory note was executed by the deceased G.Pandurangan. He further submitted that since the plaintiff has not discharged his burden by adducing satisfactory evidence, the burden is not at all shifted to the defendants to adduce rebuttal evidence. He further submitted that the trial Court without taking into consideration of the aforesaid facts, mechanically decreed the suit but the first Appellate Court by considering the aforesaid facts in a proper perspective had rightly dismissed the suit and in the said factual findings, this Court cannot interfere and therefore, he prayed to dismiss the Second Appeal.

12. According to the plaintiff, on 07.06.2007, the deceased G.Pandurangan borrowed a sum of Rs.30,000/- from him, for discharging the debt which was incurred by him while purchasing the land and agreed to repay the said amount on demand with interest at the rate of 24% per annum. His further case is that inspite of demands, the said G.Pandurangan died without discharging the said debt



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and that the defendants being the legal heirs of the said G.Pandurangan are liable to discharge the said debt from and out of estate of the deceased. His further case is that after the death of the said G.Pandurangan, he made demands with the first defendant to pay the debt but she has been taking time to pay the amount but she has not paid and hence, he was constrained to send a lawyer's notice on 10.05.2010. His further case is that even though the first defendant had received the said notice, she did not send any reply nor paid the amount and hence, he was constrained to file the suit for recovery of the amount.

13. The case of the defendants is that the deceased G.Pandurangan did not execute the suit promissory note and he did not borrow any amount from the plaintiff. Their further case is that the signatures found in the suit promissory note are not that of the deceased G.Pandurangan. Their further case is that the plaintiff was running a Finance at Pernambut before several years and with the help of the documents, the plaintiff has fabricated the suit documents and filed the false suit in order to make unlawful gain and hence, they are not liable to pay the suit amount. It is their further case that the suit is barred by limitation.

14. Insofar, as the issue as to whether the suit is barred by limitation is concerned, both the Courts below concurrently found that the promissory note is dated 07.06.2007 and the suit was filed on 07.06.2007 and hence, the suit is not barred by limitation. Therefore, it has to be held that the suit is not barred by limitation.

15. Insofar, as the issue as to whether the suit promissory note was executed by the deceased G.Pandurangan is concerned, the plaintiff examined himself as PW1 and deposed that the deceased G.Pandurangan had borrowed a sum of Rs.30,000/- from him, for discharging the debts which were incurred by him for purchasing the land and executed the suit promissory note. The suit promissory note has been marked as Ex.A1. In Ex.A1 also, it is stated that the said deceased G.Pandurangan had borrowed a sum of Rs.30,000/- for discharging the debts which were incurred by him for purchasing the land. In the said promissory note, one signature has been made on the stamp paper and another signature has been made below the stamp paper. Before filing the suit, the plaintiff had sent a lawyer's notice to the first defendant on 10.05.2010 informing the fact that her husband G.Pandurangan borrowed a sum of Rs.30,000/- on 07.06.2007 for clearing debts which were incurred by him for purchasing the land and executed the



promissory note on 07.06.2007 agreeing to repay the aforesaid amount with interest at the rate of 24% per annum.

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16. He also called upon the first defendant to pay the aforesaid amount. Ex.A4 (Postal Acknowledgement) would show that the first defendant had received the said notice on 15.05.2010. the first defendant has not denied in her written statement with regard to the receipt of the said notice. So, it is clear that she had received Ex.A4 notice but she has not sent any reply denying the allegation made in the said notice.

17. The plaintiff by examining himself as PW1 has deposed that the suit promissory note has been executed by the deceased G.Pandurangan. But in order to rebut the said evidence, the first defendant did not come forward to give evidence. Though the first defendant has taken a plea in the written statement that the signatures found in the suit promissory note are not that of her husband, to prove the said plea, she did not enter into the witness box and subjected herself for cross examination. Therefore, an adverse inference has to be drawn against the defendants.

18. It is also to be pointed out that in the written statement, the first defendant has stated that the plaintiff was running a Finance Firm at Pernampet several years ago and with the help of the documents available in the said Finance Firm, the plaintiff has fabricated the suit documents and filed the false suit. So, according to the first defendant, her husband had left certain documents with the aforesaid Finance Firm and only with the help of the said documents, the suit promissory note was fabricated. In such a case, it has to be presumed that the first defendant's husband G.Pandurangan would have executed the suit promissory note. Therefore, the burden is upon the defendants that the suit promissory note was given by the deceased G.Pandurangan only in the said Finance Firm, but the defendants did not adduce any evidence to substantiate the aforesaid plea. Further, if really the said G.Pandurangan had not executed the suit promissory note in favour of the plaintiff, the first defendant would have sent a reply to Ex.A2 notice. Further, she would have entered into the witness box and subjected herself for cross examination. The aforesaid circumstances would lead to an inference that the suit promissory note was executed by the deceased G.Pandurangan, in favour of the plaintiff. Once it is proved that the suit promissory note has been



executed by the deceased G.Pandurangan, as per Section 118 of the Negotiable Instruments Act, it has to be presumed that the said promissory note is supported by consideration.

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19. Further, it is to be pointed out that it is not the case of the defendants that the deceased G.Pandurangan had any bad habits and he would have used the said amount for any illegal purpose. Therefore, it has to be presumed that he borrowed the amount only for the benefit of the family. Therefore, the defendants are bound to discharge the said debt from and out of the estate left by the deceased G.Pandurangan which is in their hands. Taking into consideration of all the aforesaid facts, the trial Court had rightly decreed the suit. Further, though the plaintiff had claimed interest at the rate of 24% till the date of the suit, the trial Court taking into consideration the transaction is not a commercial transaction, it has reduced the interest and directed the defendants to pay the interest at the rate of 12% per annum for the principal and subsequent interest at the rate of 6% per annum. But the first Appellate Court without appreciating the evidence in a proper perspective had erroneously reversed the findings of the trial Court and therefore, the Second Appeal has to be allowed. Accordingly, the substantial questions of law are answered in favour of the appellant/plaintiff.

20. In the result, the Second Appeal is allowed with costs. The judgment and decree passed by the first Appellate Court are set aside. The judgment and decree passed by the trial Court are restored.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Gudiyatham,Vellore District.

2.The District Munsif Court,
Gudiyatham.Vellore District

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

+1cc to Mr.T.Dhanyakumar , Advocate SR.No. 44214

+1cc to Mr.K.A.Ravindran , Advocate SR.No. 44144

S.A.No.162 of 2013

A.SK(14/11/2019)