

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.06.2019
Delivered on: 11.07.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.277 of 2013
&
M.P.No.1 of 2013

Narayana Doss : Appellant/Defendant

Vs

Subramaniyan : Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree in A.S.No.41 of 2005 on the file of the I Additional Subordinate Judge, Villupuram, and dated 28.09.2006 in reversing the Judgement and Decree in O.S.No.170 of 2004, on the file of the Principal District Munsif, Thirukoilur dated 18.08.2004.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.N.Suresh

J U D G E M E N T

The defendant in a suit for promissory note is the appellant before this Court. The Second Appeal arises against the Judgement and Decree of the learned I Additional Subordinate Judge, Vilupuram, in A.S.No.41 of 2005, in and by which the learned Judge has reversed the Judgement and Decree of the Principal District Munsif, Thirukoilur in O.S.No.170 of 2004. The parties in the above Second Appeal are referred to in the same array as in the suit and the facts preceeding the filing of the above Second appeal are herein below narrated.

Plaintiff's Case:

2. The plaintiff would contend that on 10.01.2003, the defendant had borrowed a sum of Rs.45,000/- agreeing to repay the same together with interest at the rate of 12% per annum on demand. The plaintiff would contend that the defendant had

executed a promissory note in proof of the borrowal and despite repeated demands the defendant had not come forward to clear the said loan. Therefore, according to the plaintiff he was constrained to issue a legal notice dated 04.02.2004 and despite the receipt of the said notice on 07.02.2004 there was no response from the defendant. The plaintiff therefore left with no other alternative had filed the suit for recovery of sum of Rs.49,556/- together with interest at the rate of 9% per annum from the date till date of payment. Though the plaintiff was entitled to interest @ 12 % per annum he had reduced the interest to 9% per annum.

Defendant's Case:

3. At the very outset the defendant had denied the borrowal of money from the plaintiff. He had also contended that he had not received the notice dated 04.02.2004. The defendant would go on to state that blank promissory note which he had executed in favour of one Kannan Chettiyar has been used to create the suit promissory note.

4. To substantiate the above, the defendant had contended that he had borrowed a sum of Rs.10,000/- from the said Kannan Chettiyar on 15.06.2002, repayable daily at the rate of Rs.100/-. A sum of Rs.800/- was upfront deducted towards interest and on 18.06.2002, Kannan Chettiyar had only given a sum of Rs.9,200/- to the defendant. When the above sum of Rs.9,200/- was handed over, Kannan Chettiyar had made the defendant sign in a blank printed promissory note.

5. It is the further case of the defendant that he had been repaying the said sum of Rs.100/- daily and the payments was being recorded in a small note book (Which is marked as Ex.B.1). He would contend that till 08.11.2002, repayments were made regularly and a total of Rs.5,300/- was repaid and only a balance of Rs.4,700/- was continued. Due to certain financial constraints the defendant was unable to repay the said loan, he had therefore requested time to make the payment, while so, all of sudden on 10.07.2003, a legal notice was issued by the said Kannan Chettiyar stating that the plaintiff had borrowed a sum of Rs.40,000/- on 21.05.2002 and that he had not repaid any amount towards this loan. The defendant who received the notice had sent a reply notice on 26.07.2003, inter alia contending that no such borrowal was made and that the promissory note was fabricated.

6. As regards the promissory note which was subject matter of the present suit, the defendant had go on to state that it was the blank promissory note which he had executed in favour of Kannan Chettiyar on 18.06.2002, that had been used to fabricate

the suit promissory note. He would contend that the plaintiff had no means to lend such a huge amount. That apart, the defendant did not require such a huge amount as loan since he was only carrying on the roadside vending of Coconuts. The defendant therefore sought for the dismissal of the suit.

Trial Court:

7. The Trial Court, namely the Principal District Munsif, Thirukoilur, had framed two main issues namely:

- a) Whether the plaintiff is entitled to the suit amount?
- b) Whether the suit promissory is true, valid and supported by consideration?

8. The plaintiff was examined as P.W.1, attesting witness one Ramachandiran as P.W.2 and the Scribe Anandhakrishnan as P.W.3 and marked exhibits, Ex.A.1 to Ex.A.3. The defendant on his part had examined himself as D.W.1 and Kannan Chettiyar as D.W.2 and had marked exhibits, Ex.B.1 to Ex.B.3.

9. The learned Judge after considering the oral and documentary evidence dismissed the suit stating that the promissory note was not executed by the defendant in favour of the plaintiff.

Appellate Court:

10. Aggrieved by the said Judgement and Decree of the learned District Munsif Court, Thirukoilur, the plaintiff had filed A.S.No.41 of 2005 on the file of the I Additional Subordinate Court, Villupuram. The learned I Additional Subordinate Judge, Villupuram, proceeded to allow the appeal by setting aside the Judgement and Decree of the Trial Court on the ground that execution of the promissory note was accepted by the defendant and therefore the burden to prove that the same was not supported by consideration was heavily on the defendant and in the opinion of the learned I Additional Subordinate Judge, Villupuram, this onus has not been properly discharged by the defendant.

11. The learned I Additional Subordinate Judge, Villupuram, also observed that the execution and passing of consideration has been proved by examining P.W.2 and P.W.3. The learned I Additional Subordinate Judge, Villupuram was of the view that the defendant had not proved his case about the blank promissory note given to Kannan Chettiyar being misused by the plaintiff.

Second Appeal:

12. Aggrieved by this Judgement and Decree the defendant is before this Court. While admitting the said suit this Court had framed the following substantial questions of law:

"1. Whether the lower appellate Court is right in decreeing the suit after concluding that there is variation in the colour of the ink under Ex.A.1?

2. Whether the reasoning of the lower appellate Court is not perverse, when it had arrived at a finding contrary to the documentary proof?

3. Whether the lower appellate Court is right in concluding that there is no specific averment as regards concoction of the suit promissory note, when the specific case of the defendant is fraud and concoction?"

13. Heard Mr.V.Ragavachari, learned counsel for the appellant and Mr.N.Suresh, learned counsel for the respondent. Mr.V.Ragavachari would contend that the defendant by examining P.W.2 and cross examining P.W.3 had established the connection between P.W.3, the plaintiff as well as Kannan Chettiyar. He further argued that the defendant had also proved that the plaintiff was not financially capable of having lent such a huge amount especially when he was just a hawker of clothes.

14. Mr.N.Suresh, on the contrary would submit that the evidence of D.W.2 which has been summoned by the defendant clearly shows that the defendant who would come forward with a case that he had executed a promissory note in favour of the D.W.2 had not taken any steps to demand it back. He would further submit that P.W.1 has clearly shown the various means of income namely as a hawker of clothes, selling firewood etc,. He would further argue that once the cause of action is admitted and consideration is proved the Appellate Court was correct in reversing the Judgement and Decree of the Trial Court.

15. Heard the Counsels and perused the original records as well as the Judgements. From the pleadings and the evidence it is clear that the defendant has countered the claim of the plaintiff on two grounds -

a) That the blank printed promissory note which he has executed in favour of D.W.2 has been misused.

b) That the plaintiff did not have the wherewithal to advance such a huge amount of Rs.45,000/-.

16. It is seen that the Scribe (P.W.3) and the Attesting witness (P.W.2) had signed in the same ink. However a perusal of Ex.A.1 would clearly indicate that the defendant had signed in totally a different ink.

17. It is also seen from the evidence of P.W.3, the Scribe that D.W.2, Kannan Chettiyar and two others were partners in a finance business. It is also evident that the plaintiff is eking out his livelihood by hawking clothes from one city to the other on his bi-cycle. Therefore, it is clearly evident that the plaintiff is doing a very small time business in which the possibility of earning a huge sum of money whereby the plaintiff would have a surplus of Rs.45,000/- to lend money is not a plausible explanation.

18. This view is further strengthened while considering the evidence of the plaintiff as P.W.1. In his cross examination, the plaintiff would contend that the amount of Rs.45,000/- was the amount which he had received from the various persons to whom he had lent money. However, to a question as to who these people were, the plaintiff had stated that he cannot give the names which itself clearly proves that the statement is untrue.

19. D.W.2, Kannan Chettiyar had contended that the promissory note which was executed for the alleged borrowal on 21.05.2002 was returned to the defendant also gives raise to suspicion since the defendant in the reply notice to the notice dated 10.07.2003, had in very clear terms stated that the only borrowal was a sum of Rs.10,000/- for which a daily sum of Rs.100/- was being paid and the borrowal on 21.05.2002 was flatly refused and therefore there was no question of the defendant repaying the said amount and Kannan Chettiyar returning the promissory note back to the defendant thereafter.

20. In fact in the reply notice, the defendant had demanded a copy of the promissory note which had not been returned and there is no evidence to show that the same was given to the defendant since the demand was made by way of a reply notice. If really the promissory note was in existence the copy of the same would have been forwarded to the defendant particularly when D.W.2 would allege that the entire sum of Rs.40,000/- without interest was repaid two months later.

21. There is a total non application of mind on the part of the Appellate Court in as much as the learned Subordinate Judge has observed that the defendant has not pleaded the transaction between him and Kannan Chettiyar.

22. In view of the above, I am of the view that the Appellate Court has clearly erred in reversing the Judgement and Decree of the learned Principal District Judge, Thirukoilur in O.S.No.170 of 2004. The substantial questions 1 to 3 are held in favour of the defendant.

In the result, the Second Appeal is allowed and the Judgement and Decree in A.S.No.41 of 2005 on the file of the I Additional Subordinate Judge, Villupuram is set aside and the order of the Principal District Munsif, Thirukoilur in O.S.No.170 of 2004 is confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. The I Additional Subordinate Judge,
Villupuram.
2. The Principal District Munsif,
Thirukoilur.
3. The Section Officer, V.R. Section,
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, SR.No.58370.

order in
S.A.No.277 of 2013 &
M.P.No.1 of 2013

SR(CO)
CSR: 27/01/2020