

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 29.11.2018

Delivered on 09.01.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA
S.A.No.173 of 2016

Paramasivam

.. Appellant / Plaintiff

Vs

Lakshmanan

.. Respondent / Defendant

Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and decree dated 18.02.2015 made in A.S.No.67 of 2014 on the file of the Court of the Principal District Judge, Ariyalur District Confirming the Judgment and Decree, dated 03.04.2014 made in Original Suit No.236 of 2010 on the file of the Court of the Additional District Munsif, Ariyalur.

For Appellant : Mr.M.V.Krishnan

For Respondent : Mr.M.E.Manikandan

O R D E R

The plaintiff is the appellant in the above Second Appeal. The Second Appeal arises against the Judgment and Decree passed by the learned Principal District Judge, Ariyalur, in A.S.No.67/2014 dated 18.02.2015, confirming the judgment and decree dated 03.04.2014 made in Original Suit No.236 of 2010 on the file of the Court of the Additional District Munsif Court, Ariyalur.

2.The parties are referred to in the same litigative status as in the suit.

[A] Plaintiff Case:

The plaintiff has instituted the suit O.S.No.236 of 2010 for recovery of a sum of Rs.65,407/- together with future interest from the date of the suit till date of the payment. The case of the plaintiff was that the defendant had on 14.05.2006 borrowed a sum of Rs.48,000/- from him and had also

executed a promissory note on the said date. It is the further case of the plaintiff that despite the repeated request / demands, the defendant did not come forward to re-pay the amount and on 19.04.2009 the defendant had paid a sum of Rs.1,000/- and an endorsement to that effect was made on the reverse of the promissory note. Thereafter, there was no further payments from the defendant, which constrained the plaintiff to issue a legal notice dated 12.12.2009 and despite receiving the said notice, the defendant had not come forward to re-pay the said sum nor come forward to reply to the said notice. Therefore, left with no other alternative, the plaintiff was constrained to file the suit for recovery.

[B] Defendant Case:

The defendant had come forward with a written statement inter alia denying the borrowal of a sum of Rs. 48,000/- from the plaintiff. It was his case that in the year 2003, the defendant had approached the plaintiff and borrowed a hand loan of Rs.10000/- with a monthly interest of Rs.4/- for every Rs.100/- and under the said agreement, the defendant was required to repay a sum of Rs.24,000/- only. It is the case of the defendant that the defendant was not able to return the said amount on the agreed date. Therefore, the plaintiff had insisted upon the defendant executing a fresh promissory note by doubling the amount repayable from Rs.24,000/- to a sum of Rs.48,000/-. Thereafter, the defendant would contend that he had repaid a sum of Rs.18,000/-, which was given to the plaintiff through one of his neighbours, Appadhi Durai Udayar. The defendant also asked Appadhi Durai Udayar to obtain the receipt for payment of the said sum. However, after receiving the said amount, the plaintiff had informed that he would give the receipt to the defendant as and when he comes to the defendant's village. The defendant would further contend that the defendant got acquainted with the plaintiff as the plaintiff's daughter was given in marriage in the defendant's village. The defendant had denied the payment of Rs.1,000/- on 19.04.2009, and had also denied his signature in the endorsement made on the reverse to the promissory note dated 14.05.2006. The defendant would firmly contend that the suit was highly barred by limitation and the signature on the endorsement was forged. Therefore, the defendant sought for the dismissal of the suit.

[C] Trial Court's findings:

The learned Additional District Munsif, Ariyalur had framed the following issues in the suit :

- a) Whether the endorsement made in the suit promissory note was a forgery or whether it was true?
- b) Whether the promissory note is supported by consideration?
- c) Whether the plaintiff is entitled to recover the amount as claimed in the suit?
- d) to what other relief, the plaintiff is entitled to?

During the trial, the plaintiff has examined himself as PW1 and one Thanushkodi as PW2 and another person Settu as PW3 and he has marked Exs.A1 to A4 in support of his contentions. The defendant had examined himself as DW1 and none else was examined on his side and no documents have also been filed. As regards, issue No.1, the trial Court had returned a finding that the endorsement that was made on the reverse of suit promissory note was not the signature of the defendant and the plaintiff has not been able to prove that the signature in Ex.A2 was that of the defendant either by examining witnesses or by marking documents. Therefore, the first issue was answered against the plaintiff. As regards, the second issue with reference to the passing of consideration, the Court below has held that the promissory note dated 14.05.2006 has been admitted by the defendant with regard to his signature. The Court held that the suit was barred by the limitation and ultimately, the learned Judge dismissed the suit.

[D]Appellate Court's Findings:

The appeal was heard by the learned Principal District Judge, Ariyalur and the learned District Judge framed the following points for consideration:-

- 1) Whether the endorsement made in the pro-note is valid?
- 2) Whether the suit is barred by limitation?
- 3) Whether the Plaintiff is entitled to the decree amount?
- 4) Whether the lower court Judgment and decree and correct?
- 5) Whether the appeal is liable to be allowed?
- 6) To what relief?

The Appellate Court was also of the opinion that the endorsement in Ex.A2 was materially altered and not that of the defendant. Further, PW2 and PW3 who had adduced evidence as the attesting witnesses, were close relatives of PW1 and therefore, they are interested witness and the learned District Judge had also opined that the scribe of Ex.A2 was not examined and had he been examined, he would have been an independent witness. The learned Judge also drew an adverse inference against the plaintiff for not proving the signature of the defendant in Ex.A2 by comparing it with the admitted signatures. It is seen that the request for comparison of signature had also been frowned upon by the learned District Judge, since comparison of signatures by Court is not advisable. The learned District Judge therefore, declined to accept Ex.A2. The learned Judge had ultimately held that Ex.A2 was not valid and considering the fact that borrowal as alleged the plaintiff was on 14.05.2006, the suit filed on 19.08.2010 was clearly barred by limitation. Challenging the concurrent Judgments and Decrees, the appellant/plaintiff is before this Court.

3.At the time admission, this Court had framed the following Substantial question of law:

"a)Whether the Courts below ought to have decreed the plaintiff's suit on the promissory note (Ex.A1) on the clear admissions made by the Defendant as DW1 in his cross examination?"

4.Heard Mr.M.V.Krishnan, learned Counsel for the appellant, who would argue that both the Courts below had totally overlooked the fact that the defendant had admitted the execution of the promissory note and the Courts would have very well sent the dispute signature for comparison with the admitted signature and he would therefore, pray that the Judgment and Decree of the Courts below may be set aside.

5.Heard the learned Counsel for the respondent / defendant and perused the records.

6.The suit was filed on the basis of the promissory note, which has been executed on 14.05.2006 and the suit has been filed on 19.08.2010. The plaintiff has sought to bring the suit within limitation on the basis of an endorsement dated 19.04.2007, which has been marked subject to objections as Ex.A2. Defendant in his written statement has categorically denied the execution of the endorsement. Under these circumstances, the burden shifts upon the plaintiff, to prove the execution of the suit promissory note by the defendant. Having failed to do so, the plaintiff cannot be granted any relief in respect of the suit which is clearly barred by limitation. Therefore, considering the fact that the suit has been filed beyond time, the Courts below have rightly dismissed the suit and the substantial question of law is therefore answered against the appellant.

In the result, the second appeal is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

dua

To

1.The Additional District Munsif Court, Ariyalur.

2.The Principal District Judge, Ariyalur

+1cc to Mr.M.V.Krishnan, Advocate SR.No.2144

+1cc to Mr.E.Manikandan, Advocate SR.No.2165

S.A.No.173 of 2016

CNR (CO)

GMV (08/03/2019)



WEB COPY