

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2019

PRONOUNCED ON : 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.32 of 2016

Radhakrishnan .. Appellant /Defendant

Vs.

Vellaiyan .. Respondent/Plaintiff

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgment and Decree dated 09.02.2015 passed in A.S.No.40 of 2014 on the file of the Principal District Court, Ariyalur, confirming the Judgment and Decree dated 23.12.2011 passed in O.S.No.301 of 2008 on the file of the District Munsif Court, Ariyalur.

For Appellant : Mr.M.Baskaran
For Respondent : Mr.P.Valliappan

JUDGMENT

Challenge in this second appeal is made to the Judgment and Decree dated 09.02.2015 passed in A.S.No.40 of 2014 on the file of the Principal District Court, Ariyalur, confirming the Judgment and Decree dated 23.12.2011 passed in O.S.No.301 of 2008 on the file of the District Munsif Court, Ariyalur.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for recovery of money.

4.The case of the plaintiff is that the defendant had executed the suit promissory note on 05.12.2007 in his favour for a sum of Rs.75,000/- received by him as recited in the said note and promised to repay the sum with interest as recited therein and thereafter, the defendant did not repay the borrowed sum with interest as promised and also failed to repay the sum, despite the issuance of notice dated 16.08.2008 and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate relief.

5.The defendant resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and there is no debtor / creditor relationship between the plaintiff and the defendant and the signature found in the promissory note is not that of the defendant and the same had been forged by the plaintiff to suit his convenience and the suit promissory note is not supported by any consideration and the scribe of the same belongs to a different village and when the said notice was issued, the defendant was attending his son-in-law, who had been taking treatment at Appollo Hospital, Chennai and the plaintiff, taking advantage of the same, had manoeuvred with the postmen by obtaining a refused endorsement as regards the said notice and the defendant owned a vacant house site lying on the opposite side of the plaintiff's house and the plaintiff had been pressurising the defendant to sell the same to him for a low price, to which, the defendant was not agreeable and aggrieved over the same, the plaintiff had fabricated the suit promissory note by making use of the signature of the defendant in the sale deed executed in his favour by the defendant's grandfather and hence, according to the defendant, the plaintiff has no cause of action and therefore, the suit is liable to be dismissed.

6.In support of the plaintiff's case, PWS1 & 2 were examined and Exs.A1 to A7 were marked. On the side of the defendant, DW1 was examined and no document was marked.

7.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly, granted the relief in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been preferred by the defendant.

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

" (1).Whether the Courts below were right in decreeing the suit when the plaintiff himself has admitted by proving Ex.A4 that some amount was borrowed by the defendant on 07.12.2004 and the present suit promissory note was executed only in connection with the said loan? and

(2) Whether the Courts below were right in ignoring the pleading of the plaintiff that on the date of the execution of the suit promissory note, a sum of Rs.75,000/- was paid whereas during cross-examination he has admitted that

loan amount was paid only in the year 2004 under Ex.A4?"

9.The suit has been laid by the plaintiff for recovery of money based on the promissory note and the suit promissory note has been marked as Ex.A1 and according to the plaintiff, the defendant had executed the suit promissory note in his favour promising to repay the sum received by him as recited therein with interest and inasmuch as the defendant had failed to repay the borrowed sum as promised by him, despite several requests and the issuance of notice dated 16.08.2008 marked as Ex.A2, according to the plaintiff, he has been necessitated to institute the suit against the defendant for necessary relief.

10.Now, according to the defendant, the suit promissory note is a fabricated one and that he had not received any sum from the plaintiff on 05.12.2007, the date on which the suit promissory note is said to have been executed by the defendant in favour of the plaintiff and therefore, according to the defendant, the suit promissory note is not supported by consideration and according to the defendant, the plaintiff had been pressurising him to alienate the house site belonging to him for a low price, which the defendant had not been willing to and hence, according to the defendant, with a view to wreak vengeance against him, the plaintiff had fabricated the suit promissory note and laid the suit and therefore, the suit is liable to be dismissed.

11.As could be seen from the plaint averments, it is found that it is not the case of the plaintiff that the defendant had borrowed the sum of Rs.75,000/- from him on 05.12.2007 and executed the suit promissory note Ex.A1 in his favour. On the other hand, according to the plaintiff's case, as averred in the plaint, for the sum received by the defendant as recited Ex.A1 promissory note, the defendant had executed the same in his favour promising to repay the amount with interest as recited therein and accordingly, on a perusal of Ex.A1 promissory note, it is found that the same does not recite that the sum of Rs.75,000/- had been tendered by the plaintiff to the defendant on 05.12.2007 and on the other hand, the promissory note recites that the defendant had already received a sum of Rs.75,000/- from the plaintiff on 07.12.2004 and only towards the abovesaid amount, the defendant has executed the suit promissory note in favour of the plaintiff on 05.12.2007 promising to repay the sum with interest thereon as stated in the suit promissory note. Therefore, it is evident that on the date of Ex.A1, no amount has been passed by the plaintiff to the defendant and on the other hand, it is found that the suit promissory note has been executed only in respect of the consideration already received by the defendant in connection with the execution of the promissory note dated 07.12.2004 in favour of the plaintiff.

As could be seen from the materials placed on record, the promissory note dated 07.12.2004 executed by the defendant in favour of the plaintiff has come to be marked as Ex.A4. For claiming the said amount, it is found that the plaintiff had also issued a notice to the defendant calling upon him to repay the same and the said notice has been marked as Ex.A5 and the acknowledgment card with reference to the same has been marked as Ex.A6. Therefore, it is found that the consideration for the suit promissory note is only the amount received by the defendant from the plaintiff under Ex.A4 promissory note and in such view of the matter, the contention of the defendant that the suit promissory note is not supported by consideration, as such, cannot be countenanced.

12. Even in the pre-suit notice issued by the plaintiff marked as Ex.A2, it has been clearly averred that only for the sum received by the defendant as recited in the suit promissory note, the defendant has executed the suit promissory note in favour of the plaintiff. As abovenoted, the suit promissory note Ex.A1 recites that the consideration for the same is the amount received by the defendant from the plaintiff under the promissory note dated 07.12.2004. The abovesaid notice has come to be refused to be received by the defendant and the reason given by the defendant in not sending a reply to the same, as such, cannot be accepted and rightly, disbelieved by the Courts below.

13. Now, according to the defendant, as adduced by him during the course of evidence, he had discharged the debt borrowed by him by way of Ex.A4 promissory note. However, as regards the above case of discharge, there is no acceptable and reliable evidence on the part of the defendant and the defendant has not come forward with any case as to the mode of discharge of the same, whether by way of cash or cheque and if really, he has discharged Ex.A4 promissory note, necessary receipt would have been obtained from the plaintiff pointing to the same or the defendant would have endeavoured to collect Ex.A4 promissory note from the plaintiff as per law. When there is no material on the part of the defendant to evidence that he has discharged the amount borrowed under Ex.A4 promissory note and when it is found that the plaintiff had also issued notice to the defendant for claiming the amount borrowed by him under Ex.A4 promissory note marked as Ex.A5 and the same had been also acknowledged by the defendant, as could be seen from Ex.A6 acknowledgement card and when there is no material on the part of the defendant to hold that he had validly discharged the amount borrowed by him under Ex.A4 promissory note, in such view of the matter, the case projected by the defendant that he had discharged the promissory note Ex.A4, as such, cannot be accepted. Accordingly, it is found that inasmuch as Ex.A4 promissory note

had not been discharged by the defendant, as could be seen from the arrangement entered into between the parties, the defendant had agreed to execute a fresh promissory note in favour of the plaintiff with reference to the same and accordingly, necessary recitals to that effect had been incorporated in Ex.A1 suit promissory note and therefore, it is further seen that as such, on the date of Ex.A1 promissory note, no amount had been passed by the plaintiff to the defendant towards the consideration recited therein. Inasmuch as the consideration recited therein had already been received by the defendant by way of Ex.A4 promissory note, therefore, it is found that acknowledging his liability under Ex.A4 promissory note and inasmuch as the defendant has not discharged the amount received by him under Ex.A4 promissory note, it is clearly put forth by the plaintiff that the defendant had come forward to execute the suit promissory note in favour of the plaintiff on 05.12.2007 promising to repay the same with interest as recited therein as agreed to between the parties. As abovenoted, claiming the amount under the suit promissory note, the plaintiff had issued the pre suit notice Ex.A2 and the defendant has not chosen to send any reply to the same. Therefore, it is seen that inasmuch as the defendant has executed the suit promissory note in favour of the plaintiff for the consideration as recited therein and inasmuch as the defendant had not discharged the amount received by him from the plaintiff under Ex.A4 promissory note, unable to resist the claim of the plaintiff made under Ex.A2 notice, it is seen that the defendant has not responded to the same and on the other hand, after the institution of the suit, he has come forward with a lame excuse as to why he had not chosen to repudiate the claim of the plaintiff made under Ex.A2 notice. With reference to the said reason for non issuance of reply, there is absolutely no valid explanation and reasonable proof placed on the part of the plaintiff.

14.To sustain his case, the plaintiff has also examined the scribe of the suit promissory note as PW2 and PW2 has also clearly tendered evidence that the suit promissory note had been executed by the defendant in favour of the plaintiff for the consideration recited therein and considering the position that PW2 is the scribe of the suit promissory note as well as Ex.A4 promissory note and when the execution of Ex.A4 promissory note has not been repudiated by the defendant in any manner and furthermore, when it is admitted by the defendant during the course of his evidence that he has no enmity with PW2 and when on being confronted with the signature contained in Ex.A6 and with the signature contained in Ex.A1, the defendant is unable to put forth any specific case and only stated that he cannot say anything about the same, in such view of the matter, considering the evidence of the plaintiff and the scribe adduced in the matter, in toto, as well as the admission of the

defendant that he had executed the suit promissory note in favour of the plaintiff marked as Ex.A4 for Rs.75,000/- and when as above noted, the defendant has failed to establish that he had discharged the amount received by him under Ex.A4 promissory note, in all, as rightly determined by the Courts below, it is evident that the suit promissory note had come to be executed by the defendant in favour of the plaintiff for the consideration received by him under Ex.A4 promissory note and accordingly, unable to repudiate the said facts of the plaintiff, it is found that the defendant has also not chosen to send any reply to the pre-suit notice issued by the plaintiff marked as Ex.A2.

15. In this appeal, the counsel for the defendant contended that the plaintiff, during the course of his evidence in the cross examination, has deposed that he had paid the amount to the defendant on the date of the execution of the suit promissory note and therefore, the abovesaid evidence adduced by the plaintiff not being consistent with his pleas, on that score alone, according to him, the plaintiff's case should be rejected. No doubt, the plaintiff has tendered evidence on the abovesaid line during the course of cross examination, however, as rightly put forth by the plaintiff's counsel, considering the evidence of the plaintiff, as adduced by him during the course of chief examination as well as during the course of cross examination in toto, it is evident that the plaintiff is steadfast in his evidence that the defendant had executed the suit promissory note only for the amount received by way of Ex.A4 promissory note and accordingly, had adduced evidence with reference to the same and the same could be gathered by assessing the evidence of the plaintiff in toto, and therefore, the defendant cannot be allowed to assail the case of the plaintiff by picking a solitary admission in his evidence and project the same out of proportion as if the plaintiff had tendered evidence inconsistent to the pleas set out in the plaint.

16. The defendant's counsel also contended that there is inconsistency in the evidence of the plaintiff examined as PW1 and the scribe examined as PW2 as regards the place of the execution of the promissory note. No doubt, there is inconsistency with reference to the same when considering the evidence of PWs 1 & 2. However, when the defendant has admitted that there is no enmity between him and the scribe in any manner and the defendant is also unable to challenge the similarities of the signature found in Ex.A6 with the signature available in the suit promissory note and when it is found that both the suit promissory note as well as Ex.A4 promissory note had been scribed only by PW2 and when Ex.A1 promissory note had been executed by the defendant only for the consideration received by him by way of Ex.A4 promissory note, in such view of the matter,

the abovesaid inconsistent evidence of PWs1 & 2 qua the place of the execution of the promissory note, in my considered opinion, would not tilt the case in favour of the defendant so as to disbelieve the plaintiff's case in toto. Therefore, the abovesaid inconsistent evidence projected by the defendant is found to be blown out of dimension and considering the evidence of the plaintiff and the scribe in toto, it is found that there is no material contradiction in their evidence as regards the execution of the suit promissory note by the defendant in favour of the plaintiff for the consideration as recited therein.

17.The defendant would contend that the plaintiff had been requesting to sell his house site for a low price which he had not come forward and therefore, according to the defendant, enraged over the same, the plaintiff had fabricated the suit promissory note and laid a false case. As regards the above version, absolutely there is no material on the part of the defendant and therefore, the abovesaid motive adduced by the defendant on the part of the plaintiff for fabricating the suit promissory note has been rightly disbelieved by the Courts below and I do not find any reason to interfere with the reasonings and conclusions of the Courts below with reference to the same.

18.The defendant's counsel would also put forth the contention that the plaintiff had failed to send the suit promissory note for expert's scrutiny and on that score, the plaintiff's suit should be rejected. When the plaintiff has established his case by tendering acceptable evidence as PW1 as well as examined the scribe of the suit promissory note as PW2 and when the consideration recited in the suit promissory note had been accepted to be received by the defendant by way of Ex.A4 promissory note and when the defendant has not established the discharge of the promissory note marked as Ex.A4 and also not chosen to repudiate the pre-suit notice issued by the plaintiff as well as the notice issued by the plaintiff marked as Ex.A5 in connection with the Ex.A4 promissory note and accordingly, when the plaintiff is found to have established his case in all aspect, if according to the defendant, despite the same, he is sure and definite that his signature is not available in Ex.A1 promissory note, as rightly put forth by the plaintiff's counsel, nothing prevented the defendant from taking appropriate steps to subject the said promissory note for expert's opinion. When the plaintiff has come forward with the case and also established the same, as above discussed, to rebut the said case of the plaintiff, it is only the defendant, who has to adduce further evidence and when with reference to the same, the defendant has not endeavoured to place any material whatsoever other than his interested and Ipse dixit testimony and when his testimony is found to be not acceptable and trustworthy, in such view of the matter, considering the

principles of law outlined in the decisions relied upon by the plaintiff's counsel reported in (1999) 3 Supreme Court Cases 35 (Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Payrelal) and 2018 (3) MWN (Civil) 182 (T.Hemachalam Vs. S.Srinivasan (deceased) and 4 others) and applying the same to the case at hand, in all, it is found that when the plaintiff has established the execution of the suit promissory note as well as the passing of the consideration as recited therein, the onus is only upon the defendant to establish the absence of consideration or the non execution of the suit promissory note as alleged by him and when with reference to the same, the defendant has not placed any material to rebut the legal presumption that could be taken in favour of the plaintiff, in such view of the matter, the Courts below are found to be justified in accepting the plaintiff's case and rejecting the defence version and in my considered opinion, there is no valid reason to interfere with the judgment and decree of the Courts below. For the reasons aforesaid, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly, answered against the defendant and in favour of the plaintiff.

In conclusion, the second appeal fails and is accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

sms

To

1.The Principal District Court, Ariyalur.

2.The District Munsif Court, Ariyalur.

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

+lcc to Mr.P.Valliappan, Advocate, S.R.No. 57209

+lcc to Mr.Baskaran, Advocate, S.R.No. 56686

S.A.No.32 of 2016

SJ(CO)

GN(16/12/2019)