

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.07.2019

PRONOUNCED ON : 16.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No.69 of 2016

1. S.P.Kumarasamy Mudaliar

2. K.Kumaravel Pandian ... Appellants/Defendants 1, 2

Vs.

J.Vidya nathan ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 15.07.2015, made in A.S.No.439/2014, on the file of XIX Additional District Judge, City Civil Court, Chennai in reversing the well considered judgment and decree dated 14.10.2014, in O.S. No.5886/2011, on the file of IIIrd Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.A.Gowthaman

For Respondent : Mr.J.Nandagopal

JUDGMENT

In this second appeal, challenge is made to the the judgment and decree dated 15.07.2015, passed in A.S.No.439/2014, on the file of XIX Additional Judge, City Civil Court, Chennai reversing the judgment and decree dated 14.10.2014, passed in O.S. No.5886/2011, on the file of the III Assistant Judge, City Civil Court, Chennai.

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, in brief, is that the defendants borrowed a sum of Rs. 1,00,000/- from the plaintiff on 02.07.2007 and paid a lumpsum of Rs.24,000/- on 05.08.2008, representing the arrears of interest on the said sum for 12 months at the rate of 24% per annum and again, the defendants made request to the plaintiff and her husband to lend a further sum of Rs.1,48,000/- for the purpose of clearing their sundry debtors and also represented that they were planning to sell some of their lands to prospective buyers and promised to settle

the entire amount due and based on the said promise, on 28.05.2010, the defendants borrowed a sum of Rs.1,48,000/- from the plaintiff and also executed, on demand, a promissory note promising to repay the said sum together with interest at the rate of 24% per annum and contrary to the promise, the defendants failed to pay any sum either towards the principal or the interest amount in respect of both the promissory notes and the plaintiff had learnt that the defendants had mortgaged their properties with Indian Bank on 11.11.2010 for a sum of Rs.25,00,000/- and the plaintiff caused a legal notice on 28.05.2011 to the defendants demanding the borrowed sums and despite the receipt of the same, the defendants have not chosen to reply to the same nor come forward to settle the amount to the plaintiff as demanded and hence the suit.

5. The defendants resisted the plaintiff's suit contending that the suit laid by the plaintiff is not maintainable either in law or on facts and it is stated that in the application preferred by the defendants seeking leave to defend the plaintiff's suit, as per the order of the High Court in C.R.P.No.2017/2012, they had deposited a sum of Rs.1,00,000/- in the suit and admitted that they had borrowed Rs.1,00,000/- from the plaintiff on 02.07.2007 and executed a promissory note in favour of the plaintiff agreeing to repay the said sum with interest at 24% per annum and further stated that on 05.08.2008, they had paid a sum of Rs.24,000/- representing the interest amount for a period of 12 months towards the debt incurred by way of the promissory note dated 02.07.2007 and also made necessary endorsement with reference to the same on the promissory note and subsequent thereto, they had not paid any amount towards the principal or interest in respect of the promissory note dated 02.07.2007 and contended that it is false to state that they had not paid the amount to the plaintiff in respect of the debt incurred by way of the promissory note dated 02.07.2007, inspite of the repeated demands on the part of the plaintiff, the defendants had not issued reply to the legal notice dated 28.05.2011, in respect of the promissory notes dated 02.07.2007 and 28.05.2010, as the plaintiff and her husband are close relatives to the defendants, further according to the defendants, they had visited the plaintiff's house on 28.10.2010 and requested some time for paying the principal and interest towards the promissory note debt dated 02.07.2007 and the plaintiff agreed to the same and requested them to execute a new promissory note including interest due by them from 05.08.2008 and accordingly, they had executed a promissory note dated 28.05.2010 and asked the plaintiff to return the earlier promissory note dated 02.07.2007, but the plaintiff's husband had informed them to pay the principal and interest towards the promissory note dated 02.07.2007 and to get back the promissory notes dated 02.07.2007 and 28.05.2010 and believing his words, the defendants had not pressed for the return of the earlier promissory note dated 02.07.2007 and the defendants never received any amount from the plaintiff on 28.05.2010 and no

consideration was passed on by the plaintiff in respect of the promissory note dated 28.05.2010 and no ordinary person would lend a loan in a sum of Rs.1,48,000/- and on the other hand, normally loans are given only in round figures and further, according to the defendants, after receiving the legal notice from the plaintiff, they had negotiations with the well wishers of the family and it was decided that they should repay Rs.1,00,000/- as per the promissory note dated 02.07.2007 with interest thereon and the act of the plaintiff in filing the two suits on the basis of the two promissory notes is nothing but a fraudulent act and the plaintiff and her husband used to institute such similar suits against the debtors on the basis of utilizing the signatures in blank promissory notes. In fact, he has levied the suit against his own brother for recovery of money based on the promissory note in O.S. No.209/2010 and the abovesaid suit has been laid by the plaintiff's husband on account of the partition suit laid by his brother against him and hence, according to the defendants, the plaintiff is not entitled to recover any amount from them based on the promissory note dated 28.05.2010 and prayed for the dismissal of the suit.

6. It is found that the two suits levied by the plaintiff, based on the promissory notes dated 02.07.2007 and 28.05.2010, in O.S. Nos.5886/2011 and 5887/2011 were taken up for trial jointly and the trial Court, on the basis of the materials placed on record, dismissed the plaintiff's suit laid in O.S.No.5886/2011, which has been laid based on the promissory note dated 28.05.2010 and decreed the suit laid by the plaintiff as prayed for in O.S. No.5887/2011, which is based on the promissory note dated 02.07.2007. Impugning the judgment and decree passed by the trial Court in O.S.No.5886/2011, the plaintiff had preferred first appeal in A.S.No. 439/2014. The first appellate Court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial Court and granted the relief in favour of the plaintiff as prayed for, for the suit sum with interest at 6% per annum from the date of the plaint till the date of realisation and accordingly, granted the decree in favour of the plaintiff. Challenging the same, the second appeal has been preferred.

7. In support of the plaintiff's case, PW1 was examined, Exs.A1 to A11 were marked. On the side of the defendants, DW1 was examined, Exs.B1 to B3 were marked.

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

- (i) Whether the lower appellate Court is right in decreeing the suit only based on the presumption under Negotiable Instruments Act ignoring the law that the presumption was rebutted by the defendants by placing

reliable evidence on what situation, the second promissory note had been executed by the defendants?

(ii) Whether the lower appellate Court is right in decreeing the suit on the ground that the burden of proof with regard to non-passing of consideration was lying on the defendants ignoring the law that the burden of proof would not stand on the single side and when admittedly, the defendants proved the fact of non-passing of consideration and under what situation the second promissory note had been executed by them, would it not the burden of proof with regard to passing of consideration on the plaintiffs?

(iii) Whether the lower appellate Court was right in decreeing the suit on the ground that admitted facts need not to be proved as per section 58 of the Indian Evidence Act ignoring the facts of the case that the defendants are admitting just the signature but they deny passing of consideration, and would not the burden of proof be shifted on the plaintiff with regard to passing of consideration, when admittedly the defendants rebutted the presumption under Negotiable Instruments Act?

9. It is found that the plaintiff has levied two suits against the defendants based on the promissory notes dated 02.07.2007 and 28.05.2010. As regards the execution of the promissory note dated 02.07.2007 and the passing of consideration under the same, the defendants have not challenged the case put forth by the plaintiff qua the abovesaid promissory note and accordingly, it is found that the said suit ended in a decree in favour of the plaintiff as prayed for. It is found that the defendants have also not preferred any appeal challenging the judgment and decree of the trial Court in the abovesaid suit i.e., 5887/2011 tried along with O.S.No.5886/2011. The plaintiff has also levied the suit for recovery of money based on the promissory note dated 28.05.2010 said to have been executed by the defendants in her favour for a sum of Rs.1,48,000/- promising to repay the borrowed sum with interest at 24% per annum. Briefly stated, according to the plaintiff, the defendants represented that they needed a sum of Rs.1,48,000/- for clearing their sundry debtors and accordingly, it is stated that the plaintiff had lend the abovesaid sum to the defendants and in evidence of the borrowal of the said sum, according to the plaintiff, the defendants had executed the suit promissory note dated 28.05.2010, promising to repay the said sum with interest at 24% per annum and further, according to the

plaintiff, despite repeated demands and the issuance of the legal notice dated 28.05.2011, the defendants had not come forward to pay the amounts due to the plaintiff and also not issued any reply to the legal notice, hence, according to the plaintiff, she has been necessitated to institute the suits against the defendants for appropriate reliefs.

10. According to the defendants, they had only borrowed a sum of Rs.1,00,000/- from the plaintiff on 02.07.2007 and had executed a promissory note in favour of the plaintiff on the same date and further, it is represented that they had paid Rs.24,000/- in respect of the interest on the debt incurred by way of the abovesaid promissory note till 05.08.2008 and also made an endorsement in the said promissory note and according to the defendants, they had approached the plaintiff to provide further time for the payment of interest and principal amount in respect of the promissory note dated 02.07.2007 and it is put forth that the plaintiff and her husband had obtained a fresh promissory note from them for a sum of Rs.1,48,000/- which represented the principal amount and interest due to be paid to the plaintiff by the defendants in respect of the promissory note dated 02.07.2007 and therefore, according to the defendants, they had not borrowed any sum from the plaintiff on 28.05.2010 and the promissory note dated 28.05.2010 is bad for non passing of consideration and according to the defendants, as the plaintiff and her husband are the close relatives of the defendants, they had not insisted them to return back the promissory note dated 02.07.2007 when they executed the promissory note dated 28.05.2010 in favour of the plaintiff and the same reason is also adduced by the defendants for not sending any reply to the legal notice sent by the plaintiff on 28.05.2011 and hence, according to the defendants, the suit promissory note dated 28.05.2010 is bad for want of consideration and therefore, the suit is liable to be dismissed.

11. Considering the pleas put forth by the respective parties and as rightly found by the first appellate Court, in particular, the defendants without any ambiguity having admitted the execution of the suit promissory note dated 28.05.2010 for a sum of Rs.1,48,000/-, the presumption would be only in favour of the plaintiff that the suit promissory note is drawn for consideration as recited therein as per Section 118 of the Negotiable Instrument Act and it is only the defendants who have to place materials worth acceptance to the contrary and until the defendants rebut the presumption, the onus of proof would remain only with the defendants for establishing that the promissory note in question is not supported by consideration as recited therein.

12. The very basis of the defence projected by the defendants is found to be totally unacceptable. The defendants having accepted the execution of the promissory note dated 02.07.2007 and also having accepted their liability to pay the

principal sum and the interest amount to the plaintiff with reference to the said debt, particularly, the interest amount from 05.08.2008 onwards, in such view of the matter, if really they had approached the plaintiff and her husband for extension of time to pay the said principal sum and interest and if the plaintiff and her husband had obtained any fresh promissory note from them again in respect of the principal amount and interest due, as prudent persons, the defendants would have objected the execution of the promissory note dated 28.05.2010 or otherwise would have insisted the plaintiff and her husband to return the earlier promissory note executed by them on 02.07.2007. On the other hand, the version of the defendants that though they had requested the plaintiff and her husband to return the earlier promissory note dated 02.07.2007, however, the plaintiff and her husband assured that they can get back both the promissory notes on discharging the debt under the promissory note dated 02.07.2007 and on that assurance, they had not endeavoured to get the earlier promissory note, from the plaintiff and her husband, dated 02.07.2007. As held by the first appellate Court, the abovesaid defence version cannot at all be believed and accepted. For that theory, the defendants would only plead that they have reposed confidence on the plaintiff and her husband with reference to the same and also on account of the close relationship with them. However, if the above case represented by the defendants has any semblance of truth, no new promissory note would have been executed by them for the principal amount and interest due. No ordinary person would execute a fresh promissory note without the return of the earlier promissory note executed by him. On the other hand, to say that on account of the close relationship between the parties, the defendants without endeavouring to get the earlier promissory note, had executed a fresh promissory note in respect of the principal sum and interest due on the earlier promissory note, cannot at all be believed and accepted in any manner.

13. Furthermore, it is seen that the plaintiff had caused a legal notice dated 28.05.2011, calling upon the defendants to pay the sum due to him in respect of the promissory notes dated 02.07.2007 and 28.05.2010. The receipt of the legal notice is not disputed by the defendants. At least thereafter, the defendants should have been very very cautious and if their case has any truth or is acceptable, in the normal course, the defendants would have endeavoured to give a reply to the abovesaid legal notice sent on behalf of the plaintiff. On the other hand, it is admitted by the defendants that they have not sent any reply to the legal notice issued by the plaintiff. The reasons given for the same is that as the plaintiff and her husband were close relatives to them, they had not endeavoured to issue any reply to the notice. However, the abovesaid version cannot at all be believed and accepted, particularly, when it is seen that the plaintiff had insisted the amount due in respect of both the promissory notes dated 02.07.2007 and 28.08.2008 by way of the legal notice dated 28.05.2011 issued by

her. Therefore, the very same lame excuse that they had not responded for the legal notice is on account of the plaintiff's close relationship with the defendants cannot at all be accepted in any manner. On the other hand, as put forth by the plaintiff, inasmuch as the defendants had borrowed the amounts from the plaintiff in respect of the first promissory note as claimed by her, unable to challenge the case put forth by the defendants under the legal notice, the defendants had not endeavoured to issue any reply to the same.

14. The defendants would further plead that following the receipt of the legal notice, they had made negotiations with the plaintiff and her husband through the well wishers of the family and it was amicably settled in the negotiations that the defendants are to pay only the amount under the promissory note dated 02.07.2007. However, with reference to the said course, the defendants have not come forward as to through which well wishers they had approached the plaintiff and when the matter was amicably settled and if so, atleast at that point of time, the defendants would have requested the return of the second promissory note executed by them dated 28.05.2010. On the other hand, their conduct in not evincing interest to obtain the second promissory note executed by the plaintiff dated 28.05.2010 would only go to belie their case and accordingly, it is found that the defendants have projected a false case as if the second promissory note had been secured by them in lieu of the principal and interest due to be paid by them under the earlier promissory note dated 02.07.2007.

15. The abovesaid case and the materials had been rightly assessed and analysed by the first appellate Court by giving cogent and plausible reasons and it is found that the trial Court was carried away by the consideration recited for the second promissory note and as the same represents the principal and interest due under the first promissory note, proceeded to hold that the second promissory note is bereft of consideration as put forth by the defendants. As rightly held by the first appellate Court, the quantum of amount received by the borrower from the lender, is based on the agreement or understanding entered into between them with reference to the borrowal of the same and merely because the sum of Rs.1,48,000/- has been recited in the second promissory note, on that basis, it cannot be insisted that the said sum is an unnatural figure and not a round figure and therefore, the second promissory note is not supported by any consideration. If that be so, as above pointed out, the defendants would have endeavoured to get back either the first promissory note or the second promissory note from the plaintiff and her husband and on the other hand, their conduct in keeping mum without putting forth any response to the issuance of the legal notice by the plaintiff, in such view of the matter, it is found that the defendants had failed to establish that the second promissory note is not supported by any consideration by adducing acceptable and convincing

materials and accordingly, the presumption raised in favour of the plaintiff, not having been rebutted by the defendants in any manner as per law, in such view of the matter, the first appellate Court is found to be wholly justified in upholding the plaintiff's case by setting aside the judgment and decree of the trial Court and the reasonings and conclusions of the first appellate Court for arriving at the abovesaid determination is found to be based on the correct principles of law and sound foundation and in my considered opinion, there is no reason warranting any interference to the abovesaid judgment and decree of the first appellate Court.

16. In support of his contentions, the plaintiff's counsel placed reliance upon the decision reported in (1996 Law Suit (Mad) 13 (Meenakshisundaram Vs. N.Rangasami). Per contra, in support of his contentions, the defendants' counsel placed reliance upon the decisions reported in Manu/SC/2881/2006, AIR 2006SC3366 (M.S.Narayana Menon Vs. State of Kerala and Ors.) and Manu/TN/0317/2017, II(2017)BC477(Mad.), 2017-1-LW722 (Kathirvel Vs. Purushothaman). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

17. In the light of the above discussions, 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 this second appeal are accordingly answered in favour of the plaintiff and against the defendants.

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

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The XIX Additional Judge,
City Civil Court, Chennai.

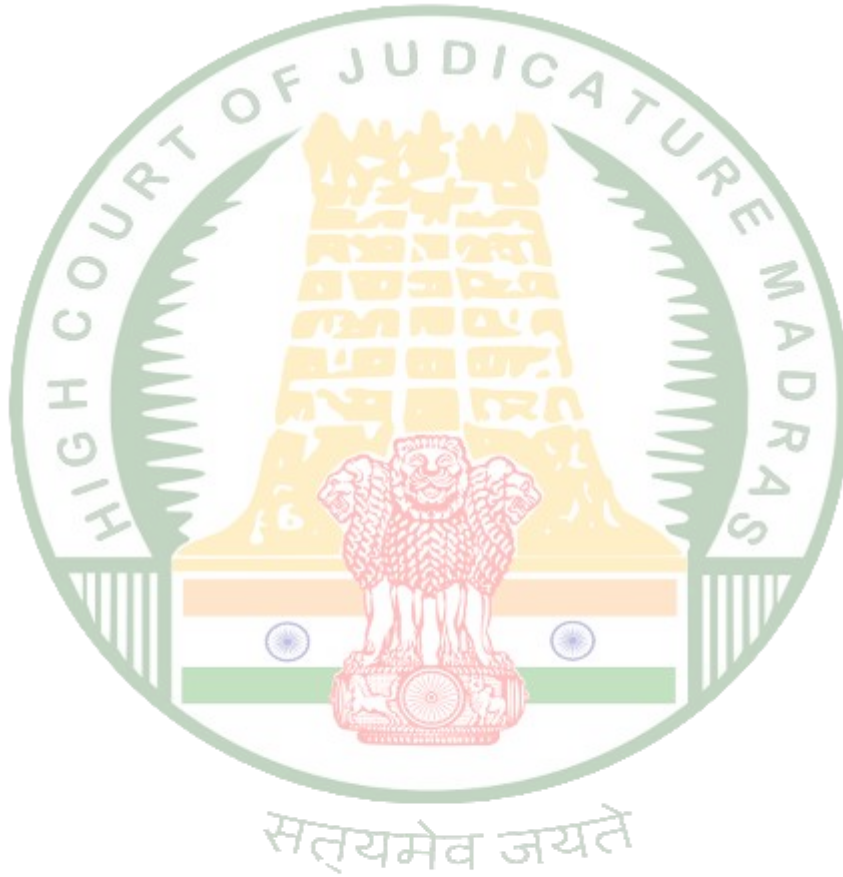
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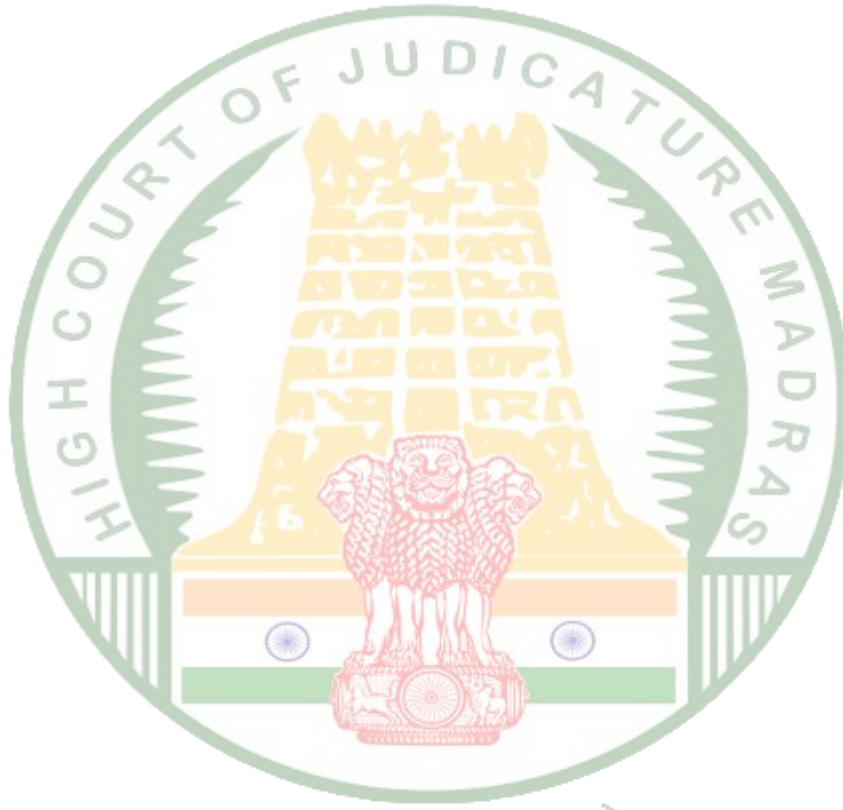
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