

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2019

PRONOUNCED ON : 30.07.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No. 743 of 2019

and

CMP No.14124 of 2019

Kaladevi

:Appellant/Appellant/Defendant

Vs.

K.Vijayarajan

:Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 28/03/2019 made in A.S. No. 54/2017 on the file of the Principal District Judge Namakkal confirming the judgment and decree dated 01/09/2017 made in O.S. No.196/2007 on the file of the Sub Court, Namakkal.

For Appellant : Mr.T.Dhanyakumar

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28/03/2019, passed in A.S. No. 54/2017, on the file of the Principal District Court, Namakkal confirming the judgment and decree dated 01/09/2017, passed in O.S. No.196/2007, on the file of the Subordinate Court, Namakkal.

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. Briefly stated, according to the plaintiff, the defendant borrowed Rs.5,00,000/- from him on 10.06.2007 and executed the suit promissory note agreeing to repay the borrowed sum with interest as recited therein and further, it is stated that the defendant has deposited the title deeds of her property on 09.06.2007 and also executed the confirmation letter with reference to the same on 11.06.2007 and as the defendant had failed to repay the borrowed sum despite several demands, according to the plaintiff, he has been necessitated to institute the suit against the defendant for appropriate reliefs.

5. The defendant resisted the plaintiff's suit contending that the plaintiff's wife is engaged in chit transaction and the defendant had requested loan from the plaintiff's wife for a sum of Rs.30,000/- and the plaintiff's wife had demanded the title deeds of her property to verify whether the same is standing in her name and accordingly, the defendant entrusted the title deeds of her property to the plaintiff's wife and thereafter, when the defendant approached the plaintiff's wife for the requested sum, it is put forth that the plaintiff's wife had obtained her signature and thumb impression in stamp affixed pronote and blank white papers and gave a sum of Rs.30,000/- and when the defendant demanded to return the title deeds, the plaintiff's wife had assured that she would return the same as it had been kept in the bureau of her husband and believing her words, the defendant went away. Furthermore, it is put forth that the defendant has paid Rs.10,000/- along with one month interest to the plaintiff's wife and she did not get any receipt with reference to the same and the plaintiff demanded the defendant to sell the suit property, for which the defendant refused and being enraged over the same, the plaintiff's wife in collusion with the plaintiff had levied the false suit against her and therefore, the suit is liable to be dismissed.

6. Based on the materials placed on record and the submissions made by the respective parties, 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.

7. The suit has been laid by the plaintiff for the recovery of money based on the pronote marked as Ex.A1. Now, according to the plaintiff, the defendant borrowed Rs.5,00,000/- from him on 10.06.2007 and executed the suit promissory note promising to repay the said sum as recited in the pronote. It is also seen that the defendant had also created a mortgage by deposit of her title deeds with the plaintiff and also had given a confirmation letter in connection with the same and the abovesaid documents had been marked as Exs.A2 to A4. Per contra, according to the defendant, she has approached the plaintiff's wife for a loan of Rs.30,000/- and at that point of time, for verifying the defendant's title, the plaintiff's wife had sought for the title deeds and believing the same, the defendant had entrusted the same at the time of lending Rs.30,000/-. Despite demands, the title deeds had not been returned and thereafter, the plaintiff's wife demanded the sale of the suit property, which has been refused by the defendant and hence, according to the defendant, being enraged over the same, the plaintiff's wife in collusion with the plaintiff had come forward with the false suit.

8. Based on the materials placed on record, it is found that the defendant has admitted her signature in the suit promissory note Ex.A1. According to the defendant, at the time of lending Rs.30,000/-, the plaintiff's wife had obtained her signature and thumb impression in stamp affixed pronote and blank white papers. With reference to the same, the defendant has examined DWs 2 and 3. However, as rightly found and determined by the Courts below, considering the evidence of DWs 2 and 3, it is found that DW3 has not even whispered as regards the lending of loan of Rs.30,000/- by the plaintiff's wife as averred by the defendant. Though DW2 would state that the plaintiff's wife had lent Rs.30,000/- to the defendant as loan, however, when there are material contradictions with reference to the same between DWs 2 and 3 and on the other hand, the scribe/attestor of Ex.A1 examined as PW2 has clearly deposed about the borrowal of Rs.5,00,000/- by the defendant from the plaintiff and the execution of the suit promissory note by the defendant and that he had witnessed the abovesaid transaction between the defendant and the plaintiff and when the evidence of PW2 is not shown to be unacceptable or untrustworthy on the part of the defendant, in such view of the matter, as rightly found and determined by the Courts below, the defendant having admitted her signature in the suit promissory note and the plaintiff's case has been also buttressed by the reliable evidence of PWs 1 and 2, in such view of the matter, when the defendant has miserably failed to establish that her signature had been obtained by the plaintiff's wife in blank promissory note and in blank white papers as put forth in the written statement and also failed to establish the borrowal of Rs.30,000/- from the plaintiff's wife, in such view of the matter, the onus of proof lies upon the defendant to establish that no consideration had been passed under the suit promissory note as recited therein and when with reference to the same, the defendant has failed to discharge the burden and also when it is noted that the plaintiff's case is also buttressed by the fact of the defendant handing over the title deeds in respect of the property to the plaintiff and the claim of the plaintiff that she has entrusted the same to the plaintiff's wife without any arrangement, as such, cannot be accepted and furthermore, the case of the defendant that she had paid the sum of Rs.10,000/- to the plaintiff's wife towards the alleged amount borrowed also not buttressed by any proof whatsoever, in all, it is found that the Courts below had rightly assessed and analysed the evidence adduced by the respective parties in the matter and come to the conclusion that the defendant had failed to rebut the presumption raised in favour of the plaintiff as provided under Section 118 of the Negotiable Instrument Act and also justified in invoking Section 114 of the Indian evidence Act and in view of the abovesaid discussions, the reasonings and conclusions of the Courts below for upholding the plaintiff's case being founded on proper

appreciation of the materials placed on record, both factual wise and legal wise and not calling for any interference in any manner and not suffering from any perversity or irrationality, in such view of the matter, the second appeal is not fit for admission.

9. For the reasons aforestated, no substantial question of law is involved in the second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

sli

To

1. The Principal District Court,
Namakkal.
2. The Subordinate Court,
Namakkal.

+1cc to Mr.T.Dhanyakumar, Advocate, SR.No.65636.

Judgment in
S.A. No. 743 of 2019
and
CMP No.14124 of 2019

PPA (CO)
CSR:11.01.2020

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