

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1056 of 2019
and
C.M.P.No.22786 of 2019

D.Sridhar ..Appellant/Appellant/Defendant

Vs.

S.Ravichandran ..Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree as made in A.S.No.50 of 2016, dated 31.01.2019, on the file of the District Court, Cuddalore District, Cuddalore, confirming the judgment and decree as made in O.S.No.159 of 2015, dated 01.04.2016, on the file of the Principal Sub-Ordinate Court, Cuddalore.

For Appellant : Mr.M.Aravind Subramanyam

J U D G M E N T

The defendant in O.S.No.159 of 2015 having suffered a decree concurrently at the hands of the courts below for payment of money has come forward with this Second Appeal.

2. The suit was filed by the plaintiff seeking recovery of a sum of Rs.5,40,199/- with subsequent interest at 12% per annum on the principal sum of Rs.4,00,000/- due on four promissory notes dated 02.10.2012, 08.10.2012, 15.10.2012 and 25.10.2012.

3. According to the plaintiff, the defendant borrowed a sum of Rs.1,00,000/- each under the 4 promissory notes agreeing to pay interest at 12% per annum. Since the defendant failed to repay the monies, the plaintiff had issued a notice on 01.09.2015 which was duly acknowledged by the defendant. Since the defendant did not come forward to comply with the demand made in the notice and also did not chose to send a reply, the plaintiff had come forward with the above suit.

4. The suit was resisted by the defendant contending that the promissory notes are not supported by consideration. While admitting the signatures in the promissory notes, the defendant claimed that the promissory notes were executed in blank for certain borrowings which were made by his mother from the brother of the plaintiff, who is a Government employee. According to the defendant, the promissory notes came to be executed at the instance of the brother of the plaintiff as security for the borrowings made by his mother.

5. The courts below on a consideration of the evidence on record, concluded that the presumption under Section 118 of the Negotiable Instruments Act would be available to the plaintiff, inasmuch as the defendant has admitted the signatures in the promissory notes. Though, it was the case of the defendant that the suit promissory notes were executed in blank, the same was disbelieved by the courts below.

6. Apart from the evidence of PW2 and PW3 the Attestor and Scribe of the documents, the courts below also invoked Section 20 of the Negotiable Instruments Act which enables the holder/holder in due course of promissory note to fill up the same and sue up on it. On the above conclusions, the courts below decreed the suit. Aggrieved the defendant is on appeal.

7. I have heard Mr.M.Aravind Subramanyam, learned counsel appearing for the appellant.

8. Mr.M.Aravind Subramanyam, learned counsel appearing for the appellant would submit that the courts below have overlooked certain discrepancies in the evidence of PW3, Scribe of the instrument regarding the date on which the promissory notes came to be written by him.

9. The promissory notes were of the year 2012 and the witness deposed before the court during the year 2016 i.e., nearly after 4 years of the execution of the instrument. When the witnesses depose after lapse of some time, there are bound to be certain discrepancies. Both the courts below have adverted to the evidence and concluded that nothing has been brought about in the cross examination of these witnesses in order to discredit their entire testimony.

10. I do not find that the conclusions of the courts below are perverse or based on no evidence. I do not find any question of law much less a substantial question of law arising in the appeal so as to enable me to entertain the appeal under Section 100 of the Code of Civil Procedure.

11. Though the contention of the counsel for the appellant is that the lack of consideration of the contradictions in the evidence of PW3 would render the findings of the courts below perverse, I am unable to agree with the said contention, in view of the fact that the courts below have analyzed the evidence and reached a plausible conclusion which cannot be interfered with in the Second Appeal.

12. Hence, the appeal fails and it is accordingly dismissed without being admitted. No costs. Consequently, the connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

dsa

To

1. The District Judge,
Cuddalore District, Cuddalore.
2. The Principal Sub-Ordinate Judge,
Cuddalore.
3. The Section Officer, V.R. Section,
High Court of Madras, Chennai 600 104.

+1 CC to Mr.M.Aravind Subramanyam, Advocate sr 89118

+1 CC to Mr.T.S. Baskaran, Advocate sr 89336.

सत्यमेव जयते

S.A.No.1056 of 2019

RJI (CO)
SP(03/03/2020)

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