



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.07.2019

DELIVERED ON : 30.10.2019

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THE HONOURABLE MRS. JUSTICE R. THARANI

A.S.(MD)No.206 of 2010

A.Manoharan

.. Appellant /Plaintiff

Vs.

1. Alamalu

2. M.Ravi

3. A.Ramesh

.. Respondents/Defendants

Prayer : This Appeal Suit is filed under Section 96 of the Civil Procedure Code, against the judgment and decree made in O.S.No.23 of 2007 dated 02.07.2009 on the file of the District Judge, Karur, partly decreeing the suit for only Rs.1 lakh with interest instead of Rs.5 lakhs with interest with cost.

For Appellant : Mr.V.Meenakshi Subdaram
For Respondents : Mr.K.Sreekumaran Nair
for Mr.P.Subbiah

J U D G M E N T

This appeal is preferred against the judgment and decree made in O.S.No.23 of 2007 dated 02.07.2009, on the file of the learned the District Judge, Karur, who partly decreed the suit.

2.The appellant herein is the plaintiff and the respondents herein are the defendants in the suit. The plaintiff filed a suit for recovery of a sum of Rs.5,00,000/- [Rupees Five Lakhs only] with interest at the rate of 18%. The trial Court partly decreed the suit for a sum of Rs.1,00,000/- [Rupees One Lakh only]. Against the same, the plaintiff/ appellant herein preferred this first appeal.

3.The case of the plaintiff is that on 15.04.2006 the defendants jointly borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) from the plaintiff and executed a promissory note, agreeing to repay the principal amount with interest at the rate of 18% per annum. The defendants did not either pay the principal or the interest. Therefore, the plaintiff caused a registered notice, through his counsel, on 26.04.2007. The defendants sent a reply notice, with false allegation, on 07.07.2007. Hence, the plaintiff filed this suit for recovery of money.



4.The case of the defendants is that the promissory note produced by the plaintiff was concocted one. The defendants jointly borrowed only a sum of Rs.1,00,000/- from the plaintiff during February - 2006 to met out their urgent expenses and they handed over the signed blank promissory note. The defendants paid the interest regularly till 2008. The defendants borrowed a sum of Rs.2,00,000/- from one K.M.Kumarappan and executed a simple mortgage deed, dated 03.10.2005. The amount was borrowed only through the plaintiff and the plaintiff was one of the attesting witnesses. The said Kumarappan and the plaintiff colluded together and forged the promissory note and filed this suit.

5.On the above said pleadings, the trial Court framed the following issues:-

1.whether the plaintiff advanced a loan of Rs.5 lakhs to the defendants on 15.04.2006 as claimed by the plaintiff (or) whether the defendants borrowed only Rs.1 lakh from the plaintiff in the month of February - 2006 and executed blank signed unfilled promissory note?

2.Whether the plaintiff has proved the borrowing of Rs.5 lakhs by the defendants?

3.To what relief, the plaintiff is entitled to?

6.Before the trial Court, two witnesses were examined [P.W.1 & P.W.2] and six documents were marked [Exs.A1 to A6] on the side of the plaintiff. Two witnesses were examined [D.W.1 & D.W.2] and one document was marked [Ex.B1] on the side of the defendants.

7.The trial Court, after considering the documents and oral evidence decided that the defendants borrowed only Rs.1,00,000/- (Rupees One Lakh only) and partly decreed the suit. Against which, the plaintiff/ appellant herein preferred this first Appeal.

8.In the grounds of appeal, it is stated that the Court below is wrong in decreeing the suit only for Rs.1,00,000/- with interest instead of Rs.5,00,000/- with interest. The trial Court failed to consider that the transaction with Kumarappan, has nothing to do with the case of the plaintiff. The trial Court failed to consider that the execution of the promissory note was admitted by the defendants.

9.On the basis of the said grounds of appeal, this Court framed the following substantial issues:

i.Whether the appellant is entitled for the entire amount as prayed for?



- ii. Whether the appeal is to be allowed?
- iii. What are the reliefs?

Issue No.I:

10. The case of the plaintiff is that on 15.04.2006 the defendants borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) from the plaintiff and executed a promissory note and that the defendants agreed to pay interest at the rate of 18% per annum. On the side of the appellant, it is stated that the plaintiff proved the case by examining P.W.2, who attested the promissory note. It is stated that the defendants admitted the execution of the promissory note. The impugned promissory note was marked as Ex.A1. Since the defendants did not repay either the principal or the interest, the plaintiff sent a legal notice on 26.04.2007. A copy of the notice was marked as Ex.A2. Postal acknowledgment cards were marked as Exs.A3 to A5. The defendants sent a reply notice, the reply notice was marked as Ex.A6.

11. On the side of the respondents, it is stated that the defendants borrowed only a sum of Rs.1,00,000/- (Rupees One Lakh only) and handed over an unfilled signed promissory note as a security. It is stated that the defendants borrowed a sum of Rs.2,00,000/- (Rupees Two Lakh only) from one Kumarappan and executed a mortgage deed on 03.10.2005 and the said Kumarappan and the plaintiff colluded together and they filled up the unfilled promissory note for the said amount (Rs.5,00,000/-). The mortgage deed in favour of Kumarappan was marked as Ex.B1.

12. It is seen that the trial Court considered that there is contradiction between the evidence of P.W.2 and the evidence of the plaintiff regarding the place of execution. When the execution of promissory note was accepted by the defendants there is no necessity for the trial Court to look into the contradiction regarding the place of execution.

13. The trial Court has considered that since the first defendant got pension after the death of her husband, there was no necessity for her to borrow any amount in the year 2006, and the trial Court came to a conclusion that the defendants borrowed only a sum of Rs.1,00,000/-, (Rupees One Lakh only) as admitted by them. The trial Court failed to consider that the defendants had admitted that they borrowed Rs.1,00,000/- (Rupees One Lakh only) from the plaintiff and that they borrowed Rs.2,00,000/- (Rupees Two Lakhs only) from one Kumarappan, which proves that there was necessity for the defendants to borrow money. When there was a necessity to borrow a sum of Rs.1,00,000/- (Rupees One Lakh only), there is no reason for the trial Court to decide that there was no necessity to borrow Rs.5,00,000/- (Rupees Five Lakhs only).



14.The trial Court considered another factor that P.W.1 in his chief examination denied knowledge regarding the mortgage stated in Ex.B1, but he has admitted in his cross-examination that he signed as an attesor in the simple mortgage deed, executed by the defendants in favour of Kumarappan. This contradiction in the evidence of P.W.1, was viewed seriously by the trial Court, but the trial Court failed to consider that the defendants failed to prove any connection between this suit and the mortgage in favour of one Kumarappan.

15.The trial Court considered the evidence of P.W.2 as invalid, on the ground that P.W.2 did not know the defendants at the time of execution of the pro-note and that there were contradictions whether P.W.2 prepare any notes before writing the pronote. Since the execution of the pronote was admitted by the defendants, the findings of the trial Court is not correct.

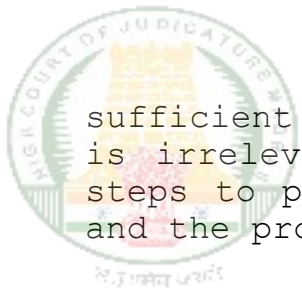
16.In a case of promissory note, the execution of pro-note and borrowal from the plaintiff are to be proved. In this case, the signature and execution of pronote was admitted by the defendants. The presumption is that a promissory note was given for a valuable consideration. The defendants admitted a consideration of Rs.1,00,000/- (Rupees One Lakh only) but denied a consideration of Rs.5,00,000/- (Rupees Five Lakhs only). It is for the defendants to prove that sufficient consideration was not passed on the pro-note.

17.A perusal of the entire evidence and documents reveals that the defendants have not taken any steps to prove the exact consideration passed on the promissory note. The contradictions in the evidence of P.W.2 is negligibile as the defendants have admitted the execution of the pro-note.

18.On the side of the appellant, it is stated that under Section 118 of the Negotiable Instruments Act, it should be presumed that the promissory notice was executed on receipt of consideration and that when the defendants signed a promissory note, they gave authority to the plaintiff to fill up the promissory note. A judgment of this Court made in **Thangarasu Vs. Arumugam** reported in **2012 (3) MLJ 655** is cited.

19.On the side of the appellant, similar judgments made in (i) **Ganapathy thevar Vs. Shanmuga Thevar (2008 (3) CTC 470)**, (ii) **Kamalam Vs. Kumarasamy (2008 (2) CTC 177)**, (iii) **Mani Vs. Elumalai (2002 (3) CTC 598)**, and (iv) **Samikannu Naicker Vs. Sigamani (2002 (2) CTC 140)** were cited.

20.Ex.B1 was handed over to one Kumarappan and not to the plaintiff and Ex.B1 was executed in the year 2005, whereas Ex.A1 was executed in the year 2006. Time of execution of Ex.A1 was not denied by the defendants and contradiction in the evidence of P.W.1 is not



sufficient to prove any connection between Ex.B1 and Ex.A1. Ex.B1 is irrelevant to this suit, as the defendants have not taken any steps to prove the connection between the mortgage stated in Ex.B1 and the promissory note.

21.In the above circumstances, this case cannot be decided on the basis of Ex.B1. Ex.A2 to A6 are documents regarding the exchange of notices and the suit cannot be decided on the basis of Exs.A2 to A6. The signature and the execution in Ex.A1 were admitted by the defendants. Borrowing from the plaintiff was also admitted by the defendants. The loan transaction is thereby admitted and only the quantum is questioned. When a person accepts the signature in the document, it is presumed that he accepted the contents of that document. More over, under Section 118 of the Negotiable Instruments Act, a presumption is given in favour of the holder of the promissory note. In the aforesaid circumstances, the genuineness of Ex.A1 is proved. In the above circumstances, it is decided that the plaintiff had proved that a consideration of Rs.5,00,000/- (Rupees Five Lakhs only) was given to the defendants at the time of execution of the promissory Note. The appellant is entitled for the entire principal amount mentioned in the pronote.

Issue Nos.II and III:

22.As discussed in the earlier issue, it is decided that the plaintiff is entitled for the principal sum of Rs.5,00,000/- The defendants did not question the rate of interest. But, this is not a commercial transaction. In the above circumstances, it is decided that the plaintiff is entitled for interest at the rate of 12% from the date of execution of the promissory note till the date of filing of the suit. The plaintiff is entitled for interest at the rate of 6% from the date of suit till the realisation of the loan amount.

23.The defendants are jointly and severely liable to repay for the principal amount Rs.5,00,000/- (Rupees Five Lakhs only) along with interest at the rate of 12% from the date of execution of the promissory note till the date of filing of the suit and with an interest at the rate of 6% from the date of the suit till the date of realisation of the amount due and the cost of the suit. With the above observations, the Appeal Suit is allowed and the judgment and decree of the trial Court is accordingly modified. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)



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To

1.The District Judge,
Karur.

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2.The Section Office,(2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.D.NALLATHAMBI, Advocate (SR-94968[F] dated 30/10/2019)

+1 CC to Mr.P.SUBBIAH, Advocate (SR-95090[F] dated 31/10/2019)

order made in

A.S.(MD)No.206 of 2010

30.10.2019

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