



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

S.A.(MD) No.538 of 2019

and

C.M.P(MD)No.10633 of 2019

WEB COPY

1.Chellayee
2.Ilavarasi
3.Gunasekaran
4.Aruppuli

... Appellants/Respondents/Defendants
vs.

M.Karunanithi ... Respondent/Appellant/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 16.08.2019 passed in A.S.No.45 of 2018 on the file of the 1st Additional District Court (PCR), Tiruchirappalli reversing the judgment and decree dated 13.08.2018 passed in O.S.No.38 of 2017 on the file of the Subordinate Judge, Thuraiyur.

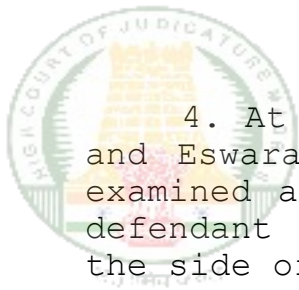
For Appellants : Mr.K.Chengiz Khan
For Mr.G.Prabhu Rajadurai

JUDGMENT

The defendants in O.S.No.38 of 2017 on the file of the Sub Court, Thuraiyur, who were successful in a suit for recovery of money based on promissory note before the trial Court having suffered a reversal judgment in A.S.No.45 of 2018 at the hands of the learned Additional District Judge (PCR), Trichy have come up with this second appeal.

2. The suit was laid by the respondent / plaintiff claiming repayment of a sum of Rs.8,00,000/- advanced by him on the security of promissory note, dated 25.10.2014 along with interest at 18% per annum. According to the plaintiff, the defendants borrowed a sum of Rs.8,00,000/- on 25.10.2014 and had executed a promissory note. Since the defendants did not come forward to repay the money, the plaintiff instituted the suit for recovery of money.

3. The suit was resisted by the defendants contending that they have borrowed only a sum of Rs.5,50,000/- from the plaintiff and they did not give any document as security for such borrowing, since the parties were close relatives. The defendants denied the execution of the promissory note.



4. At trial, the plaintiff was examined as P.W.1, one Rajendran and Eswaran being scribe and witness to the promissory note were examined as P.Ws.2 and 3. Exs.A1 and A2 were marked. The fourth defendant was examined as D.W.1 and no documents were produced on the side of the defendants.

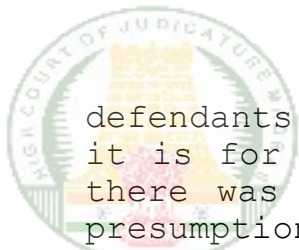
5. The trial Court upon consideration of the evidence, took note of certain discrepancies in the evidence of the witnesses P.Ws.2 and 3 with regard to the time, at which money was paid and the statement made by P.W.3 that he had not counted the money and therefore, he does not know how much was paid held that execution of the promissory note by the defendants has not been proved. On such conclusion, the trial Court dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal in A.S.No.45 of 2018.

6. The lower appellate Court on re-appreciation of the evidence, concluded that the plaintiff has established the execution of the promissory note. Having held that the execution of the promissory note has been established, the lower appellate Court found that the burden is on the defendants to prove the failure of consideration. Having said so, the lower appellate Court found that the so-called discrepancies in the evidence of P.Ws.2 and 3 were not on the very material facts. The lower appellate Court also concluded that the discrepancies will not have any effect on the presumption created under Section 118 of the Negotiable Instruments Act. On the aforesaid findings, the lower appellate Court reversed the judgment and decree of the trial Court and decreed the suit in O.S.No.38 of 2017. Aggrieved by the same, the defendants have come up with this second appeal.

7. I have heard Mr.K.Chengiz Khan, learned counsel for the appellants.

8. The learned counsel for the appellants would contend that the lower appellate Court was not right in reversing the well considered judgment of the trial Court, more so when the decision turns on the oral evidence. According to the learned counsel for the appellants, the discrepancies in the evidence of P.Ws.2 and 3, with regard to the payment of consideration as well as the time, at which consideration was paid would go long way to show that the alleged borrowing was not true.

9. I have considered the submissions of the learned counsel. I have gone through the evidence of P.Ws.2 and 3 extracted by the Courts below. Of course, there are certain discrepancies with regard to the time, at which money was paid. While P.Ws.1 and 3 would state that the money was paid at 04.00 p.m., P.W.2 would state that the same was paid at 02.00 p.m., P.W.3 has deposed that he does not know how much money was paid, since he did not count the same. On the basis of P.W.2's evidence, the lower appellate Court



defendants has been established. Once the execution is established, it is for the defendants to prove the failure of consideration and there was no evidence, much less evidence capable of effacing the presumption under Section 118 of the Negotiable Instruments Act on the side of the defendant. The lower appellate Court also found that the discrepancies regarding time of payment will not have the effect of rebutting the presumption under Section 118 of Negotiable Instruments Act. This conclusion of the lower appellate Court is based on the material evidence. I do not think that it can be termed as perverse. I do not find any question of law, much less a substantial question of law enabling me to entertain this second appeal. Accordingly, this second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The 1st Additional District Court (PCR),
Tiruchirappalli.

2.The Subordinate Judge,
Thuraiyur.

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-105052[F] dated 16/12/2019)

S.A. (MD) No. 538 of 2019
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