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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :12.10.2020

Pronounced on :16.10.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1147 of 2010
and
M.P.No.1 of 2010

Anandan .. Appellant/Respondents/Defendant
/versus/

Gajendran .. Respondent/Appellant/Plaintiff

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 30.03.2009 made in A.S.No.42 of 2008 on the file of the Subordinate Judge, Vellore, Vellore District reversing the judgment and decree dated 09.10.2007 made in O.S.No.1745 of 2004 on the file of the Principal District Munsif, Vellore, Vellore District.

For Appellant : Mr.T.Dhanyakumar

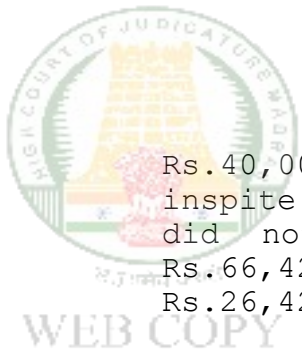
For Respondent : Mr.P.Jagadeesan

J U D G M E N T

(The case has been heard through video conference)

The second appeal is preferred by the defendant, who suffers decree in a suit filed for recovery of money based on pro-note.

2.The respondent herein has filed a suit in O.S.No.1745 of 2004 before the Principal District Munsif Court, Vellore for recovery of money based on the pro-note dated 15.12.2001 alleged to have been executed by the appellant herein. According to the plaintiff/respondent, the appellant/defendant herein borrowed

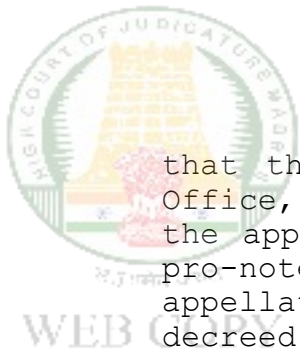


Rs.40,000/- and promised to repay it with 24% interest. However, inspite of issuing legal notice dated 23.07.2004, the defendant did not repay the money. Hence, suit for recovery of Rs.66,425/- being the principal amount Rs.40,000/- and interest Rs.26,425/- at the rate of 24% p.a.

3.The suit was defended by the appellant herein stating that he did not borrow any money from the plaintiff on 15.12.2001 or anyother date. No notice was issued to him demanding the pro-note money. He is an agriculturist cultivating jasmine plants and other flower plants. The plaintiff is having a flower Commission Mandy in Vellore market. The defendant is supplying flowers to the plaintiff. In the course of transaction, the plaintiff used to advance money, which will be deducted from the flower supplied. It is a running account maintained between the plaintiff and the defendant. The plaintiff obtained signed blank stamp paper as a security. When the defendant stopped supplying flowers to the plaintiff, disgruntled the suit is filed utilising the blank signed paper.

4.Before the Trial Court, the plaintiff marked 3 documents and examined 3 witnesses. The defendant has marked 5 documents and examined 2 witnesses. The Trial Court taking note of the fact that the witnesses on behalf of the plaintiff are interested witnesses and their evidence is not reliable, accepted the defence of the appellant that the pro-note was executed as a security for the money received towards future supply of flowers. Relying upon Exs.B1 to B4, which are receipts bearing the name of 'S.L.S. Sri Sarala, Pushpa Viyabaram and Commission Viyabaram and Commission agent' the shop owned by the plaintiff and the phone number mentioned in the exhibits is in the name of the plaintiff, the trial Court held that the denial of PW-1 regarding business transaction between the appellant/defendant and respondent/plaintiff has false. The Trial Court therefore, held that though the execution of the pro-note is proved, the defendant's evidence is sufficient to rebut the presumption regarding of consideration and hence, dismissed the suit.

5.Aggrieved by the dismissal of the suit, the plaintiff preferred appeal before the Subordinate Court, Vellore. The lower appellate Court on re-appreciating the evidence held that the subject pro-note Ex.A1 was executed by the appellant in the presence of the witnesses Mr.A.V.Mageswaran, Mr.A.G.Kuppan. The scribe of the pro-note was Mr.Vitheeswaran. One of the witnesses Mageswaran (PW-2) has deposed about the execution and passing of consideration. Regarding the defence taken by the appellant



that the blank pro-note was obtained from him in the Advocate Office, the lower appellate Court has posed the question, why the appellant has not taken any action immediately if the blank pro-note was obtained under duress. Therefore, the first appellate Court reversed the finding of the Trial Court and decreed the suit.

6. In the second appeal, the learned counsel appearing for the appellant/defendant would contend that Ex.A1-pro-note was not supported by consideration. The plaintiff failed to produce his statement of accounts inspite of establishing business transaction between the respondent and the appellant. The lower appellate Court failed to note that the blatant lie of the plaintiff that he has no flower business in the Nethaji Market, has been disproved by the appellant through Exs.B1 to B4. While so, taking adverse inference against the plaintiff for not producing the accounts, the lower appellate Court ought to have confirmed the judgment of the Trial Court. The witnesses examined by the plaintiff in his support are interested witnesses and the trial Court has rightly rejected their evidence suspecting their credibility. While so, the lower appellate Court judgment and decree is liable to be set aside.

7. Heard learned counsel appearing for the appellant and the respondent.

8. On the close examination of the pro-note Ex.A1 and the deposition of the witnesses, it is clear that Ex.A1-pro-note was executed by the defendant/appellant. The appellant though had taken pain to establish that the plaintiff is a flower merchant at Nethaji Market Vellore, he could not establish the fact that he is an agriculturist and supplier of flower to the plaintiff/respondent and the pro-note was executed without consideration in the course of the business transaction. Even the trial Court, which has dismissed the suit has held against the appellant in respect of the Issue No.2 which reads as below:

"Whether the interest claimed is illegal and against the mandatory provisions of Tamil Nadu Agriculturist Relief Act?"

9. To the said issue, the Trial Court has observed that the defendant claims that he owns agricultural land and he is entitled for the benefits under the Tamil Nadu Agriculturist Relief Act. But, no evidence is let in by the defendant to show proof of ownership of agricultural lands. Therefore, Issue No.2 is answered against the defendant.



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10.The specific case of the plaintiff is that the defendant is working as a Government Employee in Anaicut Panchayat Union, Vellore. In the course of examination, the appellant herein/defendant admits that he is working in Panchayat Union Office, Anaicut. However, the lawyer notice Ex.A3 sent to that address was not received by him and no reason was given by him for not receiving the lawyer notice.

11.However, as pointed out by the learned counsel appearing for the appellant/defendant, the plaintiff/respondent will not be entitled for any interest for a period from 20.09.2004 to 09.10.2008 since the plaintiff, after loosing the suit before the Trial Court has not included the interest for the said period in his appeal and the suit claim of Rs.66,425/- alone been the subject matter of the appeal. Taking note of the fact that the transaction is not a commercial transaction, the interest at the rate of 24% is also held to be exorbitant. While preferring the first appeal, the plaintiff has not claimed any interest for the period from 20.09.2004 to 09.10.2008 and also not paid Court Fee for the interest accrued during the said period. Hence, he is not entitled for any interest for the said period.

12.For all the reasons stated above, while dismissing the second appeal and confirming the judgment and decree of the lower appellate Court, this Court decrees the money claim of Rs.66,425/- with interest at the rate of 12% p.a. from 18.02.2008(date of filing A.S.No.42 of 2008) till the date of realisation.

13.In the result, this Second Appeal is dismissed with costs confirming the judgment and decree passed by the lower appellate Court viz.,the Subordinate Judge, Vellore, Vellore District made in A.S.No.42 of 2008 dated 30.03.2009, reserving the Judgment and decree passed by the trial Court viz., the Principal District Munsif, Vellore, Vellore District made in O.S.No.1745 of 2004 dated 09.10.2007. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To:

1. The Subordinate Court,
Vellore.

2. The Principal District Munsif Court,
Vellore.

Pre-delivery judgment made in
S.A.No.1147 of 2010
and
M.P.No.1 of 2010

SS(CO)
SU(11/10/2021)