

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2020
Date of Verdict: 24.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1472 of 2005
and C.M.P.No.19185 of 2005

1. Bakthavatsalam
2. Balakrishnan

...Appellants/Defendants

Vs.

Rajaram Reddiar

...Respondent/Plaintiffs

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 02.12.2004, in A.S.No.56 of 2004 on the file of the I Additional Subordinate Judge, Cuddalore reversing the judgment and decree dated 29.04.2004 in O.S.No.175 of 2004 on the file of the Principal District Munsiff, Cuddalore.

For Appellants : Mr.R.Muralidharan

For Respondent : Ms.A.Nilapher

For Ms.R.Meenal

JUDGMENT

This second appeal is directed as against the judgment and decree dated 02.12.2004, passed in A.S.No.56 of 2004 on the file of I Additional Subordinate Court, Cuddalore, reversing the judgment and decree dated 29.04.2004 passed in O.S.No.175 of 2004 on the file of the Principal District Munsif Court, Cuddalore.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for recovery of money on the promissory notes. The defendants incurred expenses for their father's treatment and it was a recurring expenditure. They are indebted to Agricultural Co-operative Credit Society and they had bank loans. Since the creditors compelled them for repayment, to meet the urgent expenses and to repay the loans, the defendants borrowed various loans from third persons. Thereafter, they could not repay the same. Therefore, they

approached the plaintiff and the plaintiff advanced a sum of Rs.40,000/- on 05.01.1995 at Cuddalore. On the same day, the defendants executed a promissory note in favour of the plaintiff and agreed to repay the same with interest at the rate of 12% per annum. As agreed by them, the defendants did not pay any interest or the principal amount towards the promissory note. Again the defendants borrowed a sum of Rs.19,000/- on 25.01.1995 and also executed another promissory note in favour of the plaintiff on 25.01.1995 and agreed to repay the same with interest at the rate of 12% per annum. Thereafter, the defendants failed to pay the said amount and the plaintiff issued legal notice dated 03.07.1995 to the defendants. On receipt of the same, the defendants replied vide reply notice with false allegations. Therefore, the plaintiff filed the suit for recovery of money on the promissory notes executed by the defendants.

4. Resisting the plaintiff's case, the defendants filed written statement stating that the suit itself is false and the same is liable to be dismissed. It is also their case that the suit is not maintainable, as there is no cause of action for the suit. The defendants never borrowed any amount and never executed any promissory notes dated 05.01.1995 and 25.01.1995 as alleged by the plaintiff.

4.1. The first defendant's wife one Bhuvaneswari, got divorced and her father name is Vankatakrisnan Reddiyar. The said Vankatakrisnan Reddiyar's brother-in-law is the plaintiff herein, who is a Government employee and a permanent resident of Bangalore in the State of Karnataka. Hence, the defendants never had any transaction with the plaintiff. Since the said Bhuvaneswari deserted the first defendant, the first defendant opted for restitution of his conjugal rights in which, there was a mediation on 25.01.1995. In the mediation, the father-in-law of the first defendant and the plaintiff obtained signatures of the defendants in two blank stamp papers to shut out the claim of conjugal rights by the first defendant. Utilising those stamp papers obtained from the first defendant, they concocted the promissory notes dated 05.01.1995 and 25.01.1995 and filed the present false and frivolous suit. The plaintiff is never living in the address mentioned in the plaint and he is a permanent resident of Bangalore. Therefore, the plaintiff is not entitled to seek any relief as prayed for and sought for dismissal of the suit.

5. In support of the plaintiff's case, P.W.1 and P.W.2 were examined and four documents were marked as Ex.A.1 to Ex.A.4. On the side of the defendants D.W.1 and D.W.2 were examined and Ex.B.1 and Ex.B.2 were marked. Ex.C.1 was marked as Court document.

6. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit filed by the plaintiff. Aggrieved over the judgment and decree of the trial Court, the plaintiff preferred an appeal suit in A.S.No.56 of 2004 before the I Additional Subordinate Court at Cuddalore. The first appellate Court on appreciating the materials placed on records, allowed the appeal and decreed the suit in favour of the plaintiff by reversing the judgment and decree passed by the trial Court. Challenging the same, the defendants have come forward with the present second appeal.

7. At the time of admission of the second appeal, the following substantial questions of law were framed :-

a) Whether the first appellate Court's finding that the defendants have admitted the execution of the Pro-notes in favour of the plaintiff is legally sustainable in view of the inconsistent versions given in respect of the execution of the pro-notes?

b) Whether the finding of the first Appellate Court that the reasons given by the defendants for putting their signatures in the blank papers containing Revenue Stamps is not tenable, is legally sustainable?

c) Whether the finding of the first Appellate Court that once the signatures are admitted there is a legal presumption in respect of due execution of pro-notes is correct?

d) Whether the finding of the first Appellate Court reversing the finding of the Trial Court in respect of the non-passing of consideration under the pro-notes is sustainable?

8. The learned counsel appearing for the appellants/defendants and the respondent/plaintiff are present and they are reiterated the averments set out in the plaint as well as the written statement.

9. Heard Mr.R.Muralidharan, learned counsel appearing for the appellants and Ms.A.Nilapher, learned counsel appearing for the respondent.

10. This Court considered the rival submission made by the learned counsel on either side.

11. The suit is filed for recovery of money on the promissory notes dated 05.01.1995 and 25.01.1995. According to the plaintiff, the defendants' father was suffering from kidney problem and as such they incurred expenses for his treatment. They also borrowed various loans from Agricultural Co-operative Credit Society and also from third parties. In order to repay those loans, the defendants approached the plaintiff for loan and the plaintiff paid a sum of Rs.40,000/- on 05.01.1995 and a sum of Rs.19,000/- on 25.01.1995 on the execution of promissory notes by the defendants. The defendants also agreed to pay the principal amount with interest at the rate of 12% per annum. Whereas, the defendants submitted that they never executed any promissory note as alleged by the plaintiff and the plaintiff is stranger to them and they never borrowed any amount from the plaintiff.

12. The first defendant got married with one Bhuvaneswari and due to strained relationship, they got separated. During the mediation, her father Venkatakrishnan Reddiyar obtained signed blank stamp papers from the defendants. The plaintiff is none other than the own brother-in-law of the said Venkatakrishnan Reddiyar and as such utilising the circumstances had concocted the alleged promissory notes. On the said promissory note, the present suit has been laid. The promissory note dated 05.01.1995 was marked as Ex.A1 and the another promissory note dated 25.01.1995 was marked as Ex.A2. The exchange of notices were marked as Exs.A3 and A4. The signatures found in the promissory notes were admitted by the defendants. But they contended that the said promissory notes were not executed for any consideration. The father-in-law of the first defendant is close relative of the plaintiff, namely, brother-in-law and as such while in the mediation between the first defendant and his wife, they obtained signed blank stamp papers from the defendants and concocted the promissory notes, which were marked as Exs.A1 and A2.

13. Though the plaintiff categorically pleaded that the defendants incurred expenses on the treatment of their father for his renal failure and he died in the year 1993. After a period of two years, the defendants borrowed loan from the plaintiff for the expenses of their father's treatment. Further, there are contradictions between P.W.1 and P.W.2's evidence in respect of executing the alleged promissory notes. The defendants marked Ex.B1, the petition filed in O.P.No.36 of 1995 on the file of the Additional Subordinate Court, Tindivanam, which was filed by the wife of the first defendant, who is none other than the daughter of P.W.2. Her father was examined as P.W.2 to support the case of the plaintiff. The petition filed

by the first defendant against the said Bhuvaneswari was marked as Ex.B2 in O.P.No.8 of 1996 on the file of the Additional Subordinate Court, Tindivanam. Thereafter, divorce was granted between the first defendant and the said Bhuvaneswari. Therefore, it is proved that there was family disputes between the first defendant and the said Bhuvaneswari. The father-in-law of the first defendant is P.W.2. He deposed in favour of the plaintiff, who is none other than his own brother-in-law. Further, the plaintiff also resides at Bangalore and he failed to prove the loan borrowed by the defendants except marking Exs.A1 and A2. Therefore, the Trial Court did not believe the case of the plaintiff and dismissed the suit.

14. The first Appellate Court reversed the findings of the Trial Court for the only reason that the defendants admitted their signatures in Exs.A1 and A2. Once the signatures found in the promissory notes are admitted by the defendants, it is presumed that the promissory notes were executed by the defendants for the loans borrowed by them. Therefore, the burden is shifted on the shoulder of the defendants to establish that they have not borrowed the promissory note amount. On perusal of the evidence of P.W.1 and P.W.2, there are contradictions between them and except the promissory notes they did not produce any other documents to prove their case. At the same time, the defendants' specific stand is that during mediation in respect of the dispute between the first defendant and his wife Bhuvaneswari, Exs.A1 and A2 were obtained by the father-in-law of the first defendant and the same were fabricated and utilised to file the suit.

15. Admittedly, the father-in-law of the first defendant is none other than the own brother-in-law of the plaintiff. When there was a family dispute between the first defendant and his wife, there is absolutely no possibility for them to borrow money from the brother-in-law of the first defendant's father-in-law. Further, the defendants also proved their case by marking Exs.B1 and B2 showing that there was a family dispute between the first defendant and his wife and thereafter, they got divorced. Therefore, the reasonings and findings rendered by the first Appellate Court are perverse and against the evidence on record and they are liable to be interfered with. Accordingly, all the substantial questions of law formulated by this Court in this Second Appeal, are answered in favour of the defendants and as against the plaintiff.

16. The learned counsel appearing for the appellants submitted that at the time of admitting this Second Appeal, this Court by an order dated 09.12.2005, granted interim stay on condition that the appellants shall deposit a sum of Rs.20,000/- to the credit of O.S.No.175 of 2004 on the file of the District

Munsif Court, Cuddalore. The appellants are permitted to withdraw the said amount by filing proper application before the concerned Court.

17. In view of the above discussion, this Second Appeal is allowed and the judgment and decree dated 02.12.2004 passed in A.S.No.56 of 2004 on the file of I Additional Subordinate Court, Cuddalore, is hereby set aside and consequently, the judgment and decree dated 29.04.2004 made in O.S.No.175 of 2004 on the file of the Principal District Munsif Court, Cuddalore is restored. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

rsi

To

1. The I Additional Subordinate Judge,
Cuddalore.
2. The Principal District Munsif,
Cuddalore.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1 CC to M/s.R. Meenal, Advocate sr 15940.

+ CC to Mr.R.Muralidharan, Advocate sr 15736.

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SJ(CO)
SP(07/09/2020)