IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.03.2020
CORAM:
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
S.A.No.164 of 2014
and MP No.1 of 2014

K.Raman ..Appellant/Appellant/Defendant

Vs.

L. Francis Victor ..Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 31.07.2013 made in A.S.No.143/2010 on the file of III Additional District and Sessions Judge, Coimbatore confirming the judgment and decree dated 26.10.2010 made in O.S.No.15/2009 on the file of II Additional Subordinate Judge, Coimbatore.

For Appellant : Mr. S.Mukunth for M/s. Sarvabhauman Associates

For Respondent : Mr.Siddharth Govind for M/s. A.E.Ravichandran

J U D G M E N T

The defendant in OS No.15 of 2009 having suffered a decree for payment of money due on the basis of a returned cheque, has come up with this Second Appeal.

2. The suit was laid by the plaintiff contending that the defendant borrowed a sum of Rs.50,000/- from the plaintiff on 16.08.2003 agreeing to repay the same with interest at 24% per annum. It is also stated that the defendant had paid interest till November 2003 and thereafter, issued a cheque for a sum of Rs.70,000/- on 21.07.2005. The cheque was dis-honoured upon presentation. The plaintiff therefore issued a notice on 08.09.2005 demanding repayment of the loan amount. The defendant sent a reply with false allegations. The plaintiff is therefore obliged to file the suit for recovery of money.

3. The suit was resisted by the defendant contending that the cheque was given for a collateral purpose as security for some other transaction. It was also claimed that the defendant had entered into an agreement of sale with one Thangavelu and the said Thangavelu at the instance of the defendant had given a power of attorney in favour of the plaintiff and the plaintiff in exercise of the said power and sold the property for valuable consideration and he has not paid the monies to the defendant. Therefore, according to the defendant, he is not liable to pay any amount towards the suit cheque.

4. At trial, the plaintiff was examined as P.W.1 and the defendant was examined as D.W.1. While Exhibits A1 to A8 were marked on the side of the plaintiff, Exhibits B1 to B9 were marked on the side of the defendant.

5. The Courts below upon a consideration of evidence had come to the conclusion that the suit cheque was issued in discharge of a legally enforceable debt. Therefore, the defendant is liable for the suit claim. The claim of the defendant that the cheque was issued for a collateral purpose in order to secure some other transactions were rejected, taking into account the time gap between the issuance of the cheque and the alleged transaction which is said to have taken place in the year 2003 itself. On the said conclusions, the Courts below decreed the suit as prayed for.

6. Aggrieved, the defendant has come with this Second Appeal.

7. The following question of law was framed at the time of admission:

Whether the suit is barred by limitation?

8. The said question of law was framed on the basis of the statement found in the copy of the decree issued by the Trial Court stating that the suit was filed on 06.01.2009. The cheque is in the date 21.07.2005, since it appeared on the face of it that the suit is barred by limitation, the above question of law was framed and the records were summoned from the trial Court.

9. The original plaint has been produced and it shows that the suit has been instituted even on 18.07.2008 that is well within the period of three years. In view of the same, the sole question of law framed in the second appeal is answered against the appellant and in favour of the respondent.

10. The learned counsel for the appellant would however vehemently contend that the Courts below were not right in decreeing the suit solely on the ground that the issuance of the cheque is admitted by the defendant. He would also contend that the Courts below had not taken into account the surrounding circumstances which would go a long way to show that the cheque in question was issued as security for some other transaction.

11. The transaction that is relied upon by the defendant is a sale agreement that was entered into in 2003 and a power of attorney that was given in favour of the plaintiff by Thangavelu in the year 2003. A receipt said to have been issued by Thangavel in favour of the defendant was also relied upon. These documents are of the year 2003. The suit cheque has been issued in the year 2005. As rightly pointed out by the Courts below there is no connection or link between the suit cheque and the agreement between Thangavel, plaintiff and the defendant. The Courts below have considered the evidence and arrived at factual finding that the defendant has failed to prove his plea that the suit cheque was issued as collateral security for some other transaction. The said finding is factual in nature the same cannot be interfered with, unless it is shown to be perversed. A close reading of the evidence on record as well as the reasons assigned by the Courts below would show that the factual findings of the Courts below on the validity of the cheque cannot be termed as perverse.

12. In the light of the above the Second Appeal is dismissed, confirming the judgment and decree of the lower Appellate Court. However, in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jv

To

1. The III Additional District and Sessions Judge,
   Coimbatore

2. The II Additional Subordinate Judge,
Coimbatore.

3. The Section Officer,
V.R.Section,
Madras High Court.

+1 cc to Mr.A.E.Ravichandran advocate sr20146
+1 cc to M/s.Sarvabhuman Associates sr20446

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