

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 676 of 2014

Krishnamoorthy

..Appellant/ Defendant

Vs.

Santhosham

...Respondent/ Plaintiff

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree dated 20.04.2011 made in A.S.No.10 of 2010 on the file of Sub-Ordinate Judge, Kallakurichi reversing the judgment and decree dated 21.10.2009 in O.S.No. 14 of 2006 on the file of the First Additional District Munsif Court, Kallakurichi.

For Appellant : Mr. R.Sunilkumar

For Respondent : Mr.R.Rajavel

J U D G M E N T

The defendant in O.S.No. 14 of 2006 who succeeded in convincing the Trial Court to dismiss the suit laid by the plaintiff / respondent for recovery of money based on a promissory note upon its reversal by the lower Appellate Court has come up with this second appeal.

2. The suit was laid by the plaintiff/ respondent for recovery of a sum of Rs.40,000/- said to have been borrowed by the defendant upon execution of a promissory note on 10.01.2003. According to the plaintiff, the defendant had borrowed the said sum on 10.01.2003 and had executed the suit promissory note and the same was attested by two witnesses. Since the defendant failed to pay the amounts due under the promissory note and claimed that he had never executed the promissory note, the plaintiff was constrained to file the suit.

3. The suit was resisted by the defendant contending that he never knew the plaintiff and he did not borrow any amount from the plaintiff. It was claimed that the suit promissory note is

a forged instrument fabricated by the plaintiff. At trial, the plaintiff was examined as P.W.1 and one of the attesting witnesses to the promissory note was examined as P.W.2. Exs.A1 to A4 were marked. The defendant was examined as D.W.1. No documentary evidence has been filed on the side of the defendant. The Trial Court, upon consideration of the evidence on record concluded that the plaintiff has not proved the execution of the document namely, promissory note(Ex.A1) by the defendant. The evidence of P.W.2 was disbelieved solely on the ground that he was the maternal uncle of the plaintiff. The Trial Court also took into account the suggestion made to P.W.2 to the effect that there was some land dispute between the defendant and P.W.2. The Trial Court also concluded that the plaintiff in her evidence as P.W.1 has admitted that she does not know the defendant.

4. Considering the above evidence, the learned Trial Judge concluded that the plaintiff has not proved the execution of promissory note. On the said findings, the Trial Court dismissed the suit. Aggrieved, the plaintiff preferred an appeal in A.S.No. 10 of 2010 on the file of the Sub-Court, Kallakurichi. The learned Sub-Ordinate judge upon re-consideration of the evidence concluded that the so called contradictions in the evidence of P.W.1 and P.W.2 are not strong enough to rebutt the presumption under Section 118 of the Negotiable Instruments Act. The lower Appellate Court also found that there was no reason for the plaintiff to have fabricated the promissory note more so, when it was alleged the plaintiff is an illiterate lady. The failure of the defendant to have the signatures compared by expert was also pointed as a reason for disbelieving the evidence of the defendant. The lower Appellate Court particularly, found that the evidence of P.W.2 is cogent and convincing. The lower Appellate Court also faulted the defendant for not stating any reason for the plaintiff to have created and fabricated promissory note. On the above conclusions, the lower Appellate Court reversed the judgment and decree of the Trial Court and decreed the suit as prayed for. Aggrieved the defendant has come up with this second appeal.

5. At the time of admission, the following substantial questions were framed for consideration:-

" i) Whether the lower Appellate Court did not erred in decreeing the suit on the ground that minor contradiction in the evidence adduced by P.W.1 & P.W.2 were not such as to dispel the presumption under Section 188 of the Negotiable Instruments Act when infact it was the case of the appellant that no consideration had passed under the instruments which were fabricated ?

ii) Whether the First Appellate Court erred in not referring to all the evidence that were well considered by the Trial Court particularly those that have been relied upon by the Trial Court in coming to the conclusion that the promissory note is not supported by consideration ?”

6. I have heard Mr.R.Sunilkumar, learned counsel appearing for the appellant and Mr.R.Rajavel, learned counsel appearing for the respondent.

7. Mr.R.Sunilkumar, while elaborating on the question of law framed would submit that the evidence of P.W.1 and P.W.2 are not sufficient to conclude that execution of the promissory note by the defendant. He would also take me through the evidence of P.W.1 wherein, she had admitted that she does not know the defendant. The Trial Court has also pointed out the said portion of the evidence in support of its conclusion that the plaintiff has not proved the execution of the promissory note. A reading of the evidence would show that the impression gathered by the Trial Court is correct. The relevant portion of the evidence reads as follows:-

“இந்த வழக்கைப் பற்றி ஒன்றும் தெரியாது கிருஷ்ணமூர்த்திக்குத் தான் தெரியும். பிரதிவாதியாருளே தெரியாது என்றும் அவர் என்னிடம் பணம் வாங்கவே இல்லை என்றும் வாங்கியதாக பொய் சாட்சி சொல்லுகிறேன் என்றும் சொன்னால் சரியல்ல.”

8. A wholesome reading of the evidence would show that it was one suggestion to the effect that she does not know who is the defendant and she does not know about the case, the defendant did not borrow any monies from her and she is deposing falsely that was denied by P.W.1 As regards the evidence of P.W.2, as rightly pointed out by the lower Appellate Court, through a suggestion has been made regarding existence of land dispute between P.W.2 and the defendants and the same is projected as the motive for creation of the promissory note by P.W.2 in the name of the plaintiff, the said suggestion was stoutly denied by the P.W.2. Nothing has been elicited in the cross-examination of P.W.2 in order to discredit his evidence in chief-examination. The lower Appellate Court has also faulted the plaintiff for not pleading the motive in the written statement. It has also pointed out that even in the reply notice, the defendant has not stated anything about the so called land dispute between him and P.W.2. It is also seen from the evidence that the defendant has denied his signatures in the suit summons, written statement and Vakalat. This denial has been taken note of by the lower Appellate Court to draw an adverse inference against the defendant. The lower Appellate Court has analysed the evidence on record and has arrived at the

factual conclusion that the execution of the promissory note has been proved. Once execution of the promissory note is proved, it is for the defendant to prove absence of consideration. There is no evidence worth mentioning on the side of the defendant to prove absence of consideration. Hence, the first question of law is answered against the appellant. As regards the second question of law also, once the findings of the lower Appellate Court regarding execution of the promissory note is found to be acceptable and it cannot be termed as perverse. The lack of the evidence on the side of the defendant to show absence of consideration would militate against the defendant. There is no pleading regarding the motive that impelled the plaintiff to create a promissory note.

9. In the light of the above, I do not think that the findings of the Appellate Court would be termed as perverse. Both the questions of law are answered as against the appellant. In fine, this second appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:-

1. The Sub-Ordinate Judge, Kallakurichi
2. The First Additional District Munsif Court, Kallakurichi.
3. The Section Officer
VR Section,
High Court, Madras

1 cc to Mr.P.Rajavel, Advocate, Sr. 19383

S.A.No. 676 of 2014

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