



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 662 of 2020

A.Kaliyaperumal

...Appellant/Appellant/Defendant

Vs.

G.Sasikumar

...Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 31.01.2020 passed in A.S.No. 111 of 2018 on the file of the 3rd Additional District and Sessions Judge, Vridhachalam confirming the judgment and decree passed in O.S.No. 35 of 2012 dated 14.11.2017 on the file of the Sub-Ordinate Judge, Neyveli.

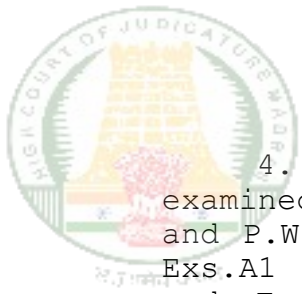
For Appellant : Mr.R.Thanigaiarasu

J U D G M E N T

The defendant in O.S.No. 35 of 2012 who suffered a decree for payment of money upon confirmation of the said judgment and decree in A.S.No. 111 of 2018 has come up with this second appeal.

2. The suit was laid by the plaintiff seeking recovery of a sum of Rs.6,79,834/- with subsequent interest on the principle of Rs.5,00,000/-. According to the plaintiff, the defendant had borrowed a sum of Rs.5,00,000/- from the plaintiff on 15.03.2009 agreeing to pay interest at 12% per annum. Since the defendant did not repay the money, despite repeated demands, the plaintiff constrained to issue legal notice on 09.01.2012. The defendant has not replied to the said legal notice hence, the plaintiff came up with the suit on 14.03.2012.

3. The defendant resisted the suit contending that he never borrowed money from the plaintiff and he does not know who the plaintiff is. According to the defendant, he had enmity with some of his colleagues and they had with an object of harrasing him created the suit promissory note in the name of the plaintiff and filed this suit. It is also claimed that the reply notice was issued to the suit notice on 16.04.2012.



4. At trial, the plaintiff was examined as P.W.1 and he also examined the attesting witnesses to the promissory note as P.W.2 and P.W.3. The scribe of the instrument was examined as P.W.4. Exs.A1 to A4 were marked. The defendant was examined as D.W.1 and Exs.B1 and B2 were marked. The Trial court, upon a consideration of the evidence on record concluded that the defendant having admitted the signature in the promissory note, the presumption under Section 118 of the Negotiable Instrument Act stood attracted. The learned Trial court found that the defendant did not let in sufficient evidence to dislodge the presumption. The Trial Court also found that the defendant has taken varying stands at various stages of the litigation. While he had in the written statement contended that he has not executed a promissory note and he never borrowed money from the plaintiff, in the evidence, he admitted the signature in the promissory note and had claimed that it was handed over to one Jayadevan namely, P.W.3 who had created the promissory note with the help of the plaintiff. Noticing the above discrepancies in the case of the defendant, the Trial Court felt compelled to decree the suit. Aggrieved, the defendants preferred an appeal in A.S.No. 111 of 2019. The Additional District Judge at Virudhachalam who heard the appeal upon a reconsideration of the evidence on record concurred with the findings of the Trial Court and dismissed the appeal. Hence, this second appeal.

5. I have heard Mr.R.Thanigaiarasu, learned counsel for the appellant.

6. Mr.R.Thanigaiarasu, learned counsel for the appellant would vehemently contend that despite the plea having been raised by the defendant regarding the financial capacity of the plaintiff, the Courts have not gone into the question. He would also contend that the plea that the promissory note was signed and handed over to Jayadevan namely, P.W.3 and the same was used has been raised in the affidavit filed in support of the petition seeking rejection of the plaint which was dismissed. Therefore, the learned counsel would submit that the Courts below were not right in concluding that the defendant has taken different stands at different point of time and applying the presumption under Section 118 of the Negotiable Instruments Act. I have considered the submissions.

7. Reading of the written statement shows that the defendant had never raised a plea regarding the ability of the plaintiff to advance a sum of Rs.5,00,000/- as loan. All that is stated in the written statement is that the defendant does not know the plaintiff and the plaintiff is a stranger. The suit has been brought about by the plaintiff in collusion with some of his colleagues who are inimical to him since he had certain financial disputes with them.



8. Though the defendant would make a specific plea that he had issued a reply notice on 16.04.2012, the said reply notice was not produced. Ex.B2 dated 25.06.2012 has been marked that is after the issuance of notice by the plaintiff and after filing of the suit. Even Ex.B1, the reply notice dated 18.04.2012 has been issued after the suit was filed by the plaintiff.

9. Therefore, I do not see any illegality or perversity in the findings of the Courts below in as much as they have concluded that the defendant had not let in sufficient evidence to dislodge the presumption under Section 118 of the Negotiable Instruments Act. Despite his best efforts, Mr.R.Thanigaiarasu, learned counsel for the appellant is unable to make out a question of law much less a substantial question of law in order to enable me to entertain this appeal. This second appeal, therefore, fails and it is accordingly dismissed without being admitted. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkn

To

1. The 3rd Additional District and Sessions Judge,
Vridhachalam.
2. The Sub-Ordinate Judge,
Neyveli.

+1CC to Mr.R.Thanigai Arasu, Advocate, Sr.No.41279

S.A.No.662 of 2020

GJ(CO)
GMV(26/08/2021)