IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03/01/2020
Delivered on	03/02/2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1265 of 2019 &
C.M.P.No.27454 of 2019

1.Ramasamy
2.Sivagami .. Appellants/Defendants 1 & 2

Versus

M.Palaniappan (died)
Chinnathangam (died)

1.P.Kannan
2.B.Komathi .. Respondents/Plaintiffs 3 & 4

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree in A.S.No.45 of 2017, dated 08.04.2019, on the file of Principal District Judge, Namakkal, confirming the Judgment and Decree in O.S.No.523 of 2008, dated 16.09.2017, on the file of Sub Judge, Tiruchengode.

For Appellants : Mr.S.Kalyanaraman

JUDGMENT

The suit in O.S.No.523 of 2008 was filed by M.Palaniappan against the defendants, who are husband and wife for recovery of a sum of Rs.3,60,125/- on the basis of a promissory note, dated 21.05.2006. It is his case that on 21.05.2006, the defendants borrowed a sum of Rs.3,00,000/- from him for their urgent family and business expenses and promised to repay the said amount along with interest at Rs.1.25% per month. It is alleged that despite repeated demands made by him in person and the legal notice, dated 23.07.2008, the defendants have failed to repay the principle as well as interest, a reply notice, dated 27.07.2008, was sent with false allegations and hence, the suit.

During the pendency of the suit, the sole plaintiff died and his legal-heirs were brought on record as plaintiffs 2 to 4.

2. In the written statement filed by the defendants, the entire allegations made in the plaint were disputed and denied. It has been stated that the defendants never executed any promissory note in favour of the plaintiff at any point of time and no amount was borrowed from the plaintiff. It is further stated that the present suit is filed only at the instigation of Guru Ragavendra Finance Corporation, in which, the first defendant alone borrowed loans in the year 1998. In the additional written statement, it is contended that the plaintiffs 2 to 4 are not the legal-heirs of the original plaintiff and they are not entitled to pursue the suit.

3. Based on the above pleadings, the trial Court framed necessary issues. On behalf of the plaintiffs, two witnesses P.W.1 and P.W.2 were examined and Exs.A1 to A3 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Ex.B1 was marked. Ex.C1 is the opinion of the Finger Print Expert.

4. The trial Court, after considering the oral and documentary evidence adduced by the parties, decreed the suit. On the appeal in A.S.No.45 of 2017, the Principal District Judge, Namakkal, confirmed the finding of the trial Court. Aggrieved over the same, the present appeal has been filed.

5. Mr.S.Kalyanaraman, learned counsel appearing for the appellants would argue that the Courts below gravely erred in decreeing the suit in favour of the plaintiffs. It is the contention of the learned counsel that the plaintiffs 3 and 4 are not entitled to get the decree in the suit, since they have not produced the succession certificate as mandated under Section 214 of the Indian Succession Act. According to the learned counsel, the Courts below have overlooked the material evidence and hence, the findings are perverse.

6. Heard the learned counsel for the appellants and perused the materials available on record.

7. In the matter on hand, admittedly that the suit in O.S.No.523 of 2008 was instituted originally by M.Palaniappan, however during the pendency of the suit, he passed away and his legal-heirs were brought on record as plaintiffs 2 to 4. According to the plaintiffs, the defendants borrowed a sum of Rs.3,00,000/- from the original plaintiff on 21.05.2006 on execution of Ex.A1-promissory note. The defendants have

categorically denied the execution of Ex.A1-promissory note and passing of consideration in the reply notice and in the written statement. Hence, the burden of proof was on the plaintiffs to prove the execution of Ex.A1 promissory note. In order to discharge the burden, the plaintiffs examined P.W.2, the scribe to Ex.A1. PW2 deposed in support of the case of the plaintiff. Nothing has been elicited during the cross-examination to discredit the witness.

8. It is apposite to mention here that though in the written statement, the execution of promissory note is denied, D.W.1 in his cross-examination has categorically admitted his signature. The opinion of the handwriting expert Ex.C1 shows that the first defendant had put his thumb impression in Ex.A1-promissory note. Since D.W.1 has admitted his signature in the promissory note, a presumption under Section 118 of the Negotiable Instruments Act was righly drawn in favour of the plaintiffs, but the defendants failed to produce any materials to rebut the presumption.

9. Insofar as the plea of production of succession certificate as per Section 214 of the Indian Succession Act, in the written statement, it is stated that no proof was filed to show that the plaintiffs 2 to 4 are legal-heirs of the deceased plaintiff. However, in evidence, D.W.1 has admitted that the plaintiffs 2 to 4 are the legal-heirs of the deceased plaintiff. It is to be noted that the creditor himself had initiated proceedings against the debtor to recover the money under Ex.A1 promissory note. In the instant case, as observed supra, D.W.1 has admitted that the plaintiffs 2 to 4 are the legal-heirs of the deceased plaintiff. In the case of Venkatalakshmi v. The Central Bank [(1956) 2 MAD.L.J.114], this Court has held as follows:-

> "The object of taking out a succession certificate under Section 214 of the Indian Succession Act is to give security to the debtors paying the debts due to the deceased and thus facilitate the collection of debts on succession. The purpose of the Act is not to enable litigant parties to have an opportunity of litigating contested questions of title to property. When a Bank is satisfied that the applicant is entitled to collect the debt it should not prescribe onerous conditions which are in no way necessary for its safety."

10. It is true that as per Section 214 of the Indian Succession Act, if the suit instituted by the creditor died, his legal-heirs can pursue the suit, only after getting succession Certificate. Indisputably, in the case on hand, D.W.1 himself had admitted in the cross-examination that the plaintiffs 2 to 4 are the legal-heirs of the deceased plaintiff. Hence, the appellants are estopped from raising this issue in the present appeal. These aspects were considered by the Courts below and rejected the same, in my view, appropriately.

11. In such view of the matter, this Court is of the opinion that no substantial question of law arises, warranting interference in the appeal. In fine, the Second Appeal fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

r n s
To
1. The Principal District Judge,
Namakkal.

2. The Sub Judge,
Tiruchengode.

+1 cc to M/s.S.Kalyanaraman Advocate sr7967

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