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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2021

PRONOUNCED ON: 08.10.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

A.S.No.487 of 2013

N.M.Velusamy

... Appellant/Defendant

Vs.

R.Murugesan

... Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure Read with Order 41 Rule 1 of C.P.C against the judgement and decree passed in O.S.No.231 of 2012, dated 25.07.2013, on the file of the learned Principal District Judge, Erode.

For Appellant : Mr.K.S.Jayaganeshan

For Respondents : Mrs.Yogalakshmi  
for Mr.M.Guruprasad  
for sole respondent.

#### JUDGEMENT

The defendant who has been directed by a Judgment and Decree of the Principal District Judge, Erode in O.S.No. 231 of 2012 to pay a sum of Rs. 11,13,344/- together with the interest at 6% on a sum of Rs. 10,00,000/- from the date of filing of the suit till the date realization, has filed the above appeal challenging the said Judgment and Decree. The parties are referred to in the same array as before the Trial Court.

#### Plaintiff's Case:

2. The suit in O.S.No.231 of 2012 has been filed by the plaintiff on the file of the District and Sessions Judge, Erode for recovery of a sum of Rs. 11,13,344/- together with the interest at 12% per annum on the sum of Rs. 10,00,000/-. It is the case of the plaintiff that on 28.11.2011 the defendant had



borrowed a sum of Rs. 10,00,000/- from the plaintiff to meet his urgent needs. As security for the said sum the defendant has executed a promissory note in favour of the plaintiff promising to repay the same with the interest at 18% per annum on demand either by the plaintiff or his order. Despite repeated demand the defendant had not come forward to clear the dues.

3. Therefore, the plaintiff had issued a legal notice dated 20.10.2012 calling upon the defendant to clear his dues. After issue of the notice, the plaintiff noticed that in the legal notice dated 20.10.2012, the year of the promissory note had been mentioned as 2012 instead of 2011, therefore, the plaintiff had issued a corrigendum on 30.11.2012 stating that the error was only an inadvertent one and that the date should be read as 28.11.2011. Since the defendant had not come forward to clear the amount the plaintiff had filed the above suit.

#### Defendant's Case:

4. The defendant had denied the execution of promissory note as well as the borrowing. The defendant would contend that after obtaining the orders of the Court he had inspected the promissory note. On inspection he found that what was shown as his signature and the signature of his son N.V.Paramasivam was a rank forgery. Therefore, he would submit that no right would flow to the plaintiff under the said promissory note. The defendant had also come forward with the case that the plaintiff's father Ramasamy had borrowed huge sums of money not only from the defendant but also from other persons in the village. Ultimately, he had filed an insolvency petition as he was unable to repay the amount borrowed.

5. He would further submit that since the said Ramasamy and the plaintiff were envious of the defendant's prosperity they had created the suit promissory note by forging not only the defendant's signature but also the signature of his son. The defendant would further contend that the 2nd attester to the promissory note is the maternal uncle's son of the plaintiff and likewise the scribe of the promissory note was the elder brother of the plaintiff's wife. The defendant therefore contended that both the second attester Palanisamy as well as N.V.Paramasivam have actively connived with the plaintiff to forge the signature of the defendant and his son. The defendant had also raised the plea that the plaintiff did not have the means to pay such a huge sum of Rs. 10,00,000/-. It is the case of the defendant that the promissory note has been created after the issue of the suit notice. Therefore he would seek to have the suit dismissed.



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6. The learned Principal District Judge, Erode has framed the following issues:

- 1) Whether the plaintiff is entitled to recovery of suit amount as prayed for?
- 2) Whether the plaintiff is entitled to the interest as prayed for?
- 3) Whether the signatures of the defendant is not forged one?
- 4) To what relief?

7. The parties who had entered trial examined their respective witnesses and had marked documents in support of their respective cases. On the side of the plaintiff, the plaintiff has examined himself as P.W.1, the attesor as P.W.2 and the scribe as P.W.3. The plaintiff had also marked Ex.A1 to Ex.A5. On the side of the defendant the 1st defendant had examined himself as D.W.1 and his son N.V.Paramasivam as D.W.2, Exs.B1 to B.4 were marked by the defendants in support of their contentions.

8. The learned Judge on a perusal of the documents held that the plaintiff has proved the execution of the promissory note as well as the passing of consideration and the defendant who had taken out a plea that the signatures found in the promissory note were forged and did not belong to him and his son had not taken any steps to prove this contention by sending the document for an expert's examination. In fact, the learned Judge has observed that the defendant has not proved any of the allegations made in the written statement and even the documents that had been filed on their side were subsequent to the filing of the suit. Challenging the said Judgment and Decree the defendant is before this Court.

9. Mr. Jeyaganesh learned counsel appearing on behalf of the defendant would make the following submissions:

- a) The plaintiff has not proved his wherewithal to advance such a huge sum of Rs. 10,00,000/-.
- b) The plaintiff has not explained as to how he has kept such a huge sum of Rs. 10,00,000/- in his house.
- c) Though the defendant had categorically denied his signature contained in the promissory note, Ex.A-1 and also the signature of his son, the plaintiff has not taken steps to send the documents for an expert examination.

10. He would therefore, contend that in the absence of the above the learned Judge has totally mis-directed himself into accepting the case of the plaintiff. He would submit that a



perusal of the evidence of the witnesses would clearly prove that they have accepted that the plaintiff owned lands and was running a liquor store and therefore, he had no necessity to borrow money from the plaintiff. He would further submit that D.W.1 had gone in the box and stated how the plaintiff's father had borrowed money extensively not only from the plaintiff but also from the other persons in the village, in which he has caused a huge loss forcing him to undertake proceedings for filing an application to declare himself as insolvent.

11. The learned counsel would argue that in these circumstances it was totally unnecessary for the defendant to borrow such a huge amount from the plaintiff whose only source of income is the agriculture. He would therefore, submit that the Judgment of the Trial Court deserves to be set aside. He would rely on the Judgment reported in 2008 (2) CTC page 580 M.GovindRaj versus Dr.V.Nalasivam in support of the argument that where the defendant had denied the signature in the written statement. It is for the plaintiff to take steps to ascertain the genuineness of the disputed signature by sending it to a hand-writing expert. He would then rely on the Judgment reported in 2012 (8) MLJ page 283, Tamil Nadu Civil Supplies Corporation vs. Manickkammal, 2013 (4) MLJ page 164 G.Govindraaj Vs. Kothandaram GokulDoss (died) and others, in support of his argument that the court can assume the role of an expert to compare the signatures.

12. The learned counsel would submit that the admitted signatures of the defendant is available in the written statement and the vakalat etc., and the same could be compared with the disputed signatures. He would submit that this Court should undertake the said procedure as a mere look at the signatures would show that the same is not the signatures of the defendant. He would therefore pray that the appeal be allowed and the Judgment and Decree of the Court below is set aside.

13. Per contra, Mrs. Yogalakshmi, learned counsel appearing on behalf of Mr. M.Guruprasad would vehemently contend that the plaintiff has proved the execution of promissory note by the defendant and his son by examining the attesting witnesses as well as the scribe who had prepared the promissory note. The witnesses on the side of the plaintiff have cogently deposed about the execution of the deed as well as the passing of consideration. She would further submit that the defendant who had in his written statement stated that the plaintiff's father had borrowed a huge sum of money for which he had not repaid the same and had filed insolvency petition has not proved



the same by a concrete evidence. In fact, the defendant has been developing his case at each stage.

14. In the written statement they had contended that the plaintiff's father had borrowed huge sums of money which he had not repaid. In the written statement the defendant had stated that he and others had extended financial assistance to the father of the plaintiff. However, in the evidence the plaintiff would state that the financial dealings was only been between the father of the plaintiff and the defendant's son N.V.Paramasivam. She would further draw the attention of the Court to the fact that the defendants have not been able to submit any contrary evidence and further a perusal of the evidence of D.W.2 would clearly show that the said witness was not speaking the truth. She would submit that during the cross-examination, defendant had categorically admitted his son's signature in Ex.A-1, promissory note whereas D.W.2 had denied it.

15. On hearing the arguments of the learned counsels, the points arising for consideration in the appeal are:

a) Whether the defendant had borrowed moneys from the plaintiff and executed a promissory note in his favour?

b) Whether the defendant has substantiated his contention?

16. A perusal of the records would indicate that the suit, promissory note, Ex.A.1 has been proved by the plaintiff by examining P.W.2, the attestor and P.W.3, the scribe. Both the witnesses have in very clear terms narrated about the execution of Ex.A.1 and the passing of consideration and their evidence has not been shaken by the defendants.

17. Therefore, the learned District Judge has rightly come to the conclusion that the promissory note has been executed by the D.W.1 and attested by his son N.V.Paramasivam. In fact, the oral evidence of D.W.2 would make interesting reading. D.W.2 without even being confronted with the promissory note had contended that the signature found in Ex.A.1 is a forgery. It is inconceivable as to how a witness could depose on the contents of the documents without perusing the same. The plaintiff had discharged their initial burden of proof by examining the scribe and the attesting witness. Therefore, the finding of the Trial Court that the Ex.A.1 promissory note has been executed by the appellant and his son is correct.



18. The appellant had come forward with a contention that the plaintiff did not have the wherewithal since his father has been borrowing heavily from not only the appellant but also from the third parties as a result of which insolvency proceeding has been initiated by him. To substantiate this allegation the defendant has not filed a single shred of evidence and that apart what was stated in the pleading is sought to be corrected during the oral evidence and later during the arguments. Therefore, it is clearly evident that the defence is only a ruse to overcome the liability. It is needless to state that once the plaintiff has discharged his onus of proving promissory note the burden shifts on the defendant to prove otherwise this burden has not been discharged by the defendant. In the Judgment reported in AIR 1999 SC page 1008 Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Pyarelal, the Hon'ble Supreme Court has observed as follows:

12. Upon considering of various judgments as noted herein above, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour.



19. Though the defendant had taken a defence that the plaintiff did not have the wherewithal to extend such a huge sum of money, however, the witnesses examined on the side of the plaintiff have in very clear terms stated that the money had been given by the plaintiff to the defendant in their presence and the witnesses have also described the manner in which the sum of Rs. 10,00,000/- has been disbursed to the defendant. This statement has not been rebutted by the plaintiff. The defendant has also not shown the proof about the insolvency proceeding initiated by the plaintiff's father which was the reason put forward by the defendant to show that the plaintiff did not have the requisite wherewithal to extend such a huge sum of Rs. 10,00,000/-.

20. Therefore, I do not find any reason to disagree with the finding of the Trial Court. The points for consideration are answered in favour of the plaintiff, in the result the appeal is dismissed and the Judgment and Decree of the Trial Court is confirmed. No costs.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1.The Principal District Judge,  
Erode.

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

+1cc to Mr.M.Guruprasad, Advocate SR.No.53346

+1cc to Mr.K.S.Jeyaganeshan, Advocate SR.No.52944

A.S.No.487 of 2013

AK-II(CO)  
CB(23/11/2021)