



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1135 of 2008

and

M.P.No.1 of 2008

Balamayilvaganan,
S/o, Balasubramanian,
No.9, Pakkuppettai Street,
Mannargudi.

... Appellant/Respondent/Defendant

Vs.

Lickmichand,
S/o, Jasraj,
No.3, Balakrishna Nagar,
Mannargudi.

... Respondent/Appellant/Plaintiff

Prayer:Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree allowed in A.S.No.48 of 2006 on the file of the Subordinate Court, Mannargudi, dated 24.01.2007, reversing the judgment and decree passed in O.S.No.30 of 2004 on the file of the District Munsif, Mannargudi dated 12.10.2004.

For Appellant : Ms.S.T.P.Kuilmozhi

For Respondent: Mr.Srinath Sridevan

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 24.01.2007 passed in A.S.No.48 of 2006 on the file of the Subordinate Court, Mannargudi, reversing the judgment and decree dated 12.10.2004 passed in O.S.No.30 of 2004 on the file of the District Munsif Court, Mannargudi.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The suit has been laid by the plaintiff for recovery of money.

4. Briefly stated, according to the plaintiff, in relation to the purchase of an Ambassador car bearing registration



No.TNU5535, a hire purchase agreement was entered into between the plaintiff and the defendant on 15.12.1992 and on that basis, advanced a sum of Rs.60,000/- to the defendant and though the plaintiff had been making periodical demands towards the loan received, the defendant still owed a sum of Rs.20,000/- as on 17.06.1993 and accepted to repay the abovesaid sum, further the defendant executed a promissory note in favour of the plaintiff, agreeing to repay the abovesaid sum with interest as recited therein and on the other hand, the defendant failed to honour the promise and furthermore also gave a letter to the plaintiff on 10.06.1996 that he will discharge the amount within a particular point of time and also issued a cheque dated 18.02.1997 drawn on Laxmi Vilas Bank, Mannargudi for Rs.45,000/- and on the presentation of the cheque, the same having been returned for the reason "account closed", hence, according to the plaintiff, he has been necessitated to lay the suit against the defendant for appropriate relief.

5. The defence taken by the defendant is that in connection with the purchase of the car, the plaintiff had secured the signatures of the defendant in unfilled/blank promissory notes and also obtained blank cheques and also secured signatures in white papers and the loan secured in connection with the purchase of the car has been discharged and the plaintiff had failed to handover the documents containing the signatures of the defendant. In connection with the transaction between the plaintiff and the defendant qua the car bearing registration No.TNU5535, dispute arose between the plaintiff and the defendant and on that basis, the plaintiff had created the papers entrusted by the defendant containing his signatures and filed a false suit and therefore the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A11 were marked. On the side of the defendant, D.W.1 was examined. Exs.B1 to B4 were marked.

7. On an appreciation of the materials available on record and the submissions made, the trial court was pleased to dismiss the plaintiff's suit. On appeal, the first appellate court, on an appreciation of the materials available on record, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiff, granted the decree in favour of the plaintiff as prayed for. Impugning the same, the defendant has preferred the second appeal.

8. Considering the pleas put forth by the respective parties and the materials placed on record, as rightly concluded by the first appellate court, it is found that the defendant has not disowned the borrowal of Rs.60,000/- from the plaintiff in



respect of the hire purchase agreement entered into between the parties qua the purchase of the car and furthermore, despite certain payments made by the defendant towards the said loan, still a sum of Rs.20,000/- was due and the defendant had executed a promissory note, which has been marked as Ex.A2. The Voucher has also been secured, which has been marked as Ex.A3. However, the defendant has failed to pay the amount with interest as agreed to and accordingly, it is found that on the insistence of the payment by the plaintiff, a cheque has been given by the defendant marked as Ex.A5 and the cheque having been bounced on presentation, it is noted that the criminal action has also been initiated against the defendant by the plaintiff.

9. The only defence taken by the defendant is that he has discharged the amount borrowed from the plaintiff. However, the defendant has failed to establish that he had discharged the amount borrowed from the plaintiff. When the defendant had admitted his signatures available in the suit documents marked as Exs.A1 to 10 and if really the defendant had discharged the amount received from the plaintiff, nothing prevented the defendant from securing the documents said to have been entrusted to the plaintiff at the time of the receipt of the loan. Therefore, considering the abovesaid facts in toto, the first appellate court is found to be justified in rejecting the defence version put forth by the defendant. In addition to that, the defendant is also found to have not responded to the legal notice sent by the plaintiff marked as Ex.A6 and the defendant has also further failed to establish that in connection with the purchase of car from the plaintiff, the plaintiff had secured his signatures in various blank promissory notes, white papers, and also secured blank cheques, and as above pointed out, if the abovesaid version projected by the defendant has any element of truth, as to why the defendant had not endeavored to retrieve the same on the discharge of the loan, there is no proper explanation forthcoming on the part of the defendant. As above noted, the alleged discharge of the loan has also not been established by the defendant. The first appellate court for the reasons assigned by it, has upheld the genuineness of Ex.A8 receipt and the plaintiff has rightly laid the suit for recovery of the amount due to him and accordingly the reasonings and conclusions of the first appellate court for accepting the plaintiff's case, drawn in the proper perspective based on the correct appreciation of the materials available on record both on factual matrix as well as on the point of law and accordingly I do not find any valid reason to interfere with the same. No substantial question of law is found to be involved in this second appeal.



10. In the light of abovesaid discussions, the judgment and decree dated 24.01.2007 passed in A.S.No.48 of 2006 on the file of the Subordinate Court, Mannargudi, reversing the judgment and decree dated 12.10.2004 passed in O.S.No.30 of 2004 on the file of the District Munsif Court, Mannargudi are confirmed. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Subordinate Court,
Mannargudi.

2.The District Munsif,
District Munsif Court,
Mannargudi.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mrs.S.T.P.Kuilmozhi, Advocate, S.R.No.8701

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.8881

S.A.No.1135 of 2008

and

M.P.No.1 of 2008

PA(CO)
CB(30/09/2021)