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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.01.2021

CORAM

THE HONOURABLE MR. JUSTICE T. RAVINDRAN

S.A.No. 1234 of 2008

and

M.P. No.1 of 2008

1.K. Kamalakannan

S/o. (late) Krishnamurthy

2.Sankar

S/o. Balapathirasamy

... Appellants/Defendants

Vs.

Elangovan

... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code praying to set aside the judgment and decree dated 28.09.2007 passed by the III Additional District Judge, Pondicherry in A.S. No.131/2006 reversing the judgment and decree dated 04.02.1997 passed by the I Additional Subordinate Judge, Pondicherry in O.S. No.76 of 1996.

For Appellants : Mr. A. Tamilvanan

For Respondent : No appearance.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.09.2007 passed in A.S. No.131/2006 on the file of the III Additional District Judge, Pondicherry, reversing the judgment and decree dated 04.02.1997 passed in O.S. No.76 of 1996 on the file of the I Additional Subordinate Judge, Pondicherry.

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

3. The defendants in O.S. No.76 of 1996 are the appellants in the Second Appeal.

4. Suit for recovery of money.



5. Briefly stated, according to the plaintiff, the defendants borrowed a sum of Rs.1,80,000/- from the plaintiff on 10.06.1992, for their business purpose and in evidence thereof, executed a promissory note in favour of the plaintiff on the same date agreeing to repay the borrowed sum with interest on demand with interest at the rate of 24% per annum. Despite several repeated demands made on the part of the plaintiff, the defendants have not chosen to pay any sum towards the borrowed sum and hence, the plaintiff issued a legal notice on 25.11.1992, calling upon them to pay the borrowed sum as promised and despite the receipt of the notice, the defendants have neither paid the sum nor responded to the legal notice. Hence, according to the plaintiff, the suit has been laid.

6. The defendants in their written statement contended that the first defendant's wife and mother borrowed some money from the plaintiff's father Pandurangan in the year 1991 and towards the security for the said loan, Pandurangna obtained the signatures of the defendants in several blank non judicial stamp papers and in blank printed promissory note forms and subsequently, the said Pandurangam converted one such paper into the suit promissory note and therefore, according to the defendants, the plaintiff is not entitled to maintain the suit as the defendants have not borrowed any sum from the plaintiff and executed the suit promissory note as averred in the plaint. The suit promissory note is devoid of consideration and hence, the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.Ws.1 to 3 were examined and Exs.A1 to A6 were marked. On the side of the defendants, D.Ws. 1 to 5 were examined and Exs. B1 to B4 were marked. Exs.X1 to X7 were also marked.

8. On an appreciation of the materials placed on record, both oral and documentary, and the submissions put forth by the respective parties, the trial court was pleased to dismiss the suit laid by the plaintiff without costs.

9. On an appeal preferred by the plaintiff, the first appellate court, on an evaluation of the materials placed on record, both oral and documentary and the submissions projected by the respective parties, was pleased to set aside the judgment and decree and by way allowing the appeal preferred by the plaintiff, decreed the suit in favour of the plaintiff with costs as determined by it. Impugning the same, the present second appeal has been preferred by the defendants.

10. In this matter, the second appeal has not been admitted. Only notice has been ordered to the respondent/plaintiff.



Despite service of notice, the respondent/plaintiff has not entered appearance through counsel and also not appeared in person when the matter is taken up for consideration.

11. Considering the pleas put forth by the respective parties and the materials placed on record, it is found that the defendants have admitted their signatures in the Suit Promissory note marked as Ex.A2. But, according to them, no consideration has been passed under the suit promissory note. It is the case of the defendants that the first defendant's wife and mother borrowed some amount from the plaintiff's father Pandurangan by way of the mortgage, and at that point of time, the signature of the defendants were obtained in various blank stamp papers and blank printed promissory notes and making use of the said documents, the suit promissory note had been created. Therefore, according to the defendants, the suit promissory note is devoid of consideration.

12. To sustain the case of the plaintiff, the plaintiff's father / power agent has been examined as P.W.1 and the attester of the suit promissory note and the scribe of the suit promissory note have been examined as P.Ws.2 and 3. Considering the evidence of P.Ws.1 to 3 in toto, it is seen that as pleaded by the plaintiff, the defendants on the borrowal of a sum of Rs.1,80,000/-, had executed the suit promissory note in favour of the plaintiff promising to repay the same with interest as recited in the suit promissory note. As rightly held by the first appellate court, no material has been placed by the defendants during the course of cross examination of P.W.1 to 3 to discredit their evidence and thereby having noted that the evidence of P.Ws.1 to 3 being natural, convincing and trust worthy, it is found that the the first appellate court had rightly relied upon the evidence of P.Ws.1 to 3 to uphold the plaintiff's case.

13. The contention of the defendants is that the defendants would not have been present at the time of execution of the promissory note as put forth by the plaintiff and according to them the defendants were working in their respective office and therefore the case of the plaintiff should be disbelieved. In this regard, reliance is placed on the evidence of D.Ws.4 and 5 and the documents marked as Exs.X1 and X4. Considering the evidence of D.Ws.4 and 5 and the documents marked as Exs. X1 and X4, it is found that the trial court has accepted the defence version. However, as rightly held by the first appellate court, there is every chance of the defendants to leave the office for a short span of time and go over to the house of P.W.1 and execute the promissory note after receiving the consideration recited therein. Therefore, the abovesaid reason of the first appellate court for disbelieving the defence version projected



by the defendants cannot be overturned easily.

14. The main defence of the defendants is that the suit promissory note had been concocted based on the blank signed promissory note given by them at the time of obtaining the loan from the plaintiff's father by way of the mortgage and according to the defendants, they have discharged the mortgage loan. If that be so, what prevented the defendants from retrieving the signed blank stamp papers and the blank promissory notes said to have been handed over to the plaintiff's father at the time of securing the mortgage loan. In the event of refusal of the plaintiff's father to hand over the same, nothing prevented the defendants from issuing a legal notice calling upon him to return the said documents or lodging a police complaint against the plaintiff's father or filing a necessary civil suit against the plaintiff's father in the manner known to law. On the other hand, it is seen that the defendants have been the silent spectators despite their case of the discharge of the mortgage loan. Even with reference to the discharge of the mortgage loan, no plausible material is forthcoming on the part of the defendants. Therefore, the plea of the defendants that the suit promissory note had been created making use of the signed blank promissory notes said to have been given by them to the plaintiff's father at the time of securing the mortgage loan, as such, cannot be countenanced in any manner.

15. Considering the abovesaid factors, it is seen that the defendants have admitted their signature in the suit promissory note. The defendants have failed to establish their defence. As above discussed, the plaintiff has established the execution of the suit promissory note by the defendants on the receipt of the sum recited therein through the evidence of P.Ws.1 to 3. In such circumstances, as rightly held by the first appellate court, the presumption under Section 118(a) of the Negotiable Instruments Act would come into play. Accordingly, the defendants have to establish that the suit promissory note is devoid of consideration. However, pointing to the same, absolutely there is no material forthcoming on the part of the defendants. As above stated, the defendants have not even endeavoured to repudiated the legal notice sent by the plaintiff dated 25.11.1992 marked as Ex.A4. Further as rightly held by the first appellate court, the plaintiff is entitled to fill up the contents in the blank promissory note said to have been signed by the defendants by invoking Section 20 of the Negotiable Instruments Act.

16. The first appellate court has rightly and properly assessed the materials placed on record, both orally and documentary, both on the factual matrix as well as on the question of law and rightly come to the conclusion that the suit



promissory note has been executed by the defendants on the receipt of the amount from the plaintiff recited therein and as the defendants had failed to repay the same as promised, the defendants are liable to pay the suit amount as claimed by the plaintiff.

17. In view of the above, the judgment and decree of the first appellate court do not merit any interference. Considering the abovesaid factors, no substantial question of law is found to be involved in the second appeal.

18. In conclusion, the second appeal is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The III Additional District Judge, Pondicherry
- 2.The I Additional Subordinate Judge, Pondicherry
- 3.The Section Officer,
VR Section, High Court, Madras.

+lcc to Mr.A.Tamilvanan, Advocate, S.R.No.1699

S.A.No.1234 of 2008

CNR(CO)
CB(28/09/2021)