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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2021

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THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.309 of 2008

S. Kumaraswamy

...Appellant /Plaintiff

Vs.

Kanniappan

...Respondent /Defendant

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 29.01.2007 passed in A.S. No.82 of 2006, on the file of the Subordinate Judge, Maduranthakam, Kanchipuram District, upholding the decree and judgment dated 27.10.2004 passed in O.S. No.94 of 2004, on the file of the District Munsif, Maduranthakkam, Kanchipuram District.

For Appellant

: Mr. Nagusah

For Respondent

: Mr. Govi Ganesan

JUDGMENT

The unsuccessful plaintiff before both the courts below has filed the present second appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranking in the present appeal would also be indicated.

3. The case of the appellant/plaintiff is that the respondent/defendant borrowed a sum of Rs.40,000/- on 15.11.1998, promising to repay the principal together with interest @ 12% per annum and that despite repeated demands made by the plaintiff, the defendant did not pay any amount due under the promissory note Ex.A1. Therefore, a notice dated 31.10.2000, a copy of which is marked as Ex.A2, was issued by the plaintiff to the defendant, for which the defendant sent a reply notice dated 17.11.2000, a copy of which is marked as Ex.A3, containing false allegations. He, therefore, filed a



suit for recovery of a sum of Rs.54,373-70 together with interest @ 12% per annum from the date of plaint till the date of realisation.

4. The suit was resisted by the defendant on the following grounds.

- 1) The defendant borrowed a sum of Rs.50,000/- on 11.11.1998 and executed three promissory notes each for a sum of Rs.40,000/- aggregating to Rs.1,20,000/-.
- 2) He had paid a sum of Rs.44,000/- towards the same.
- 3) The promissory notes were not supported by consideration.
- 4) Since his wife was admitted in the hospital, he had signed on revenue stamped papers to meet his wife's urgent medical expenses.
- 5) The defendant had also issued a reply notice dated 17.11.2000 (Ex.B1) to the notice of the plaintiff dated 31.10.2000 (Ex.B2).
- 6) The suit promissory note has also been materially altered by changing the date from 11.11.1998 to 15.11.1998.

5. On the basis of the above pleadings, the Trial Court framed the following issues.

- 1) Whether the suit promissory note is materially altered?
- 2) Whether the promissory note is supported by consideration?
- 3) Whether the plaintiff is entitled to the suit claim as prayed for?
- 4) To what relief the plaintiff is entitled??

6. In the Trial Court the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A3. The defendant examined himself and Ex.B1 to Ex.B3 were marked. After full contest, the learned District Munsif, Maduranthakam, dismissed the suit filed by the plaintiff holding that

- 1) The suit promissory note Ex.A1 is materially altered.
- 2) The suit is barred by limitation.

Aggrieved over the same, the plaintiff filed an appeal in A.S. No.82 of 2006 before the Subordinate Judge, Maduranthakam. The learned Subordinate Judge, Maduranthakam, after analysing the evidence on record, dismissed the appeal filed by the plaintiff.



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7. Now the second appeal is filed on the following substantial questions of law.

- (1) Whether the courts below erred in law and mis directed themselves by wrongly presuming that the suit filed on 12.11.2001 was time barred and even assuming that the suit promissory note was dated 11.11.1998 as per the defendant, the suit was rightly filed on time with the preceding dates 10.11.2001 and 11.11.2001 were holidays.
- (2) Whether the courts below erred in law and mis directed themselves in not considering Ex.A2 notice and Ex.A3 reply notice when the issuance of the above notices were expressly admitted by the defendant himself in his written statement.
- (3) Whether the courts below erred in law and mis directed themselves in shifting the burden on the plaintiff to prove that the alteration was not done by him when they concurrently held that the defendant had executed the suit promissory note.
- (4) Whether the courts below erred in law and mis directed themselves by not noticing that the alteration of date in the suit promissory note cannot be held to be material alteration if the suit was filed within the limitation period.

8. Normally, this court sitting in Second Appeal is not expected to reassess the evidence and to interfere with the findings of facts rendered by the courts below concurrently. But, when the court finds prima facie that the appreciation of evidence is perverse and the findings are not supported by materials on record, this Court has not only power but also the duty to interfere with such findings.

9. The defendant did not deny his signatures on the suit promissory note Ex.A1. In fact, it was admitted by him during the course of cross examination that the entire pro-note was written and signed by him. However, in the written statement, he has stated thus:

"This defendant submits that he has borrowed a sum of Rs.50,000/- from the plaintiff for the medical expenses of his wife on 11.11.98 and wherein the defendant has paid a sum of Rs.44,000/- towards the interest to the plaintiff till 30.09.2000. This defendant further submits that on 11.11.98 the defendant has obtained two promissory notes for



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Rs.40,000/- each and obtained a promissory note for Rs.40,000/- similarly and wherein the said amounts to the tune of Rs.1,20,000/- was never paid by the plaintiff to the defendant. This defendant further submits that since the defendant had to attend to the immediate medical needs of his wife who was admitted at the Krishna nursing home, Pondicherry, the defendant in order to borrow the money had no other option than to sign the revenue stamped papers without having received the consideration since the plaintiff had demanded the signing of the said papers by the defendant to make payment of the amount to satisfy the medical needs of his wife. This defendant further submits that the plaintiff has also issued a suit notice dated 31.10.2000 and for which the defendant has suitably replied by his reply notice dated 17.11.2000 and wherein the defendant has set out the facts categorically in his reply."

In the reply notice Ex.A3/Ex.B1, the defendant had stated that he borrowed a sum of Rs.50,000/- from the plaintiff on 11.11.1998 and that he paid a sum of Rs.44,000/- for which he executed two promissory notes for Rs.30,000/- and Rs.12,500/- and a sum of Rs.1,500/- was paid by way of cash. Therefore, it is clear from the above that the defendant had taken a different stand in his written statement that he signed on revenue stamped papers on two promissory notes for Rs.40,000/- on 11.11.1998 to meet the urgent medical expenses of his wife. This is in sharp contrast to the contents of the legal notice.

10. Ex.A1 promissory note is dated 15.11.1998. The date '15' appears to be over written/smudged. Based on this, both the courts below concurrently held that the suit promissory note Ex.A1 is materially altered. But a careful perusal of the entire promissory note Ex.A1 shows that in many places, the words appear to have been over written/smudged. It is pertinent to point out that the defendant was the author of the instrument having written it in his own hand and signed the same. It is admitted by the defendant in the written statement that notice dated 31.10.2000 (Ex.A2) sent by the plaintiff was received by him for which he sent a reply on 17.11.2000 (Ex.A3). However, both the courts below had concluded that the plaintiff did not state anything about Ex.A2 in his plaint and therefore, it has to be construed that there was no demand from the plaintiff. Such an observation of both the courts below cannot be accepted since in the instant case, the defendant himself had admitted that he received the notice of demand dated 31.10.2000 from the



plaintiff. Significantly, it is also found in the written statement that the defendant had also borrowed a sum of Rs.50,000/- from the plaintiff on 11.11.1998 for which a separate promissory note was executed by him similar to Ex.A1.

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11. As already observed, the suit promissory note Ex.A1 shows that there are over writings in several places and D.W.1, the defendant, admitted that he wrote the entire Ex.A1 in his own hand and signed the same. This aspect was not at all considered by both the courts below. Even assuming that the defendant executed Ex.A1 only on 11.11.1998 and not on 15.11.1998, the suit is not barred by limitation since the suit is filed on 12.11.2001 with the preceding two days 10.11.2001 and 11.11.2001 were holidays. Therefore, the over writing of date on Ex.A1 does not make the entire document void as it could not serve any purpose other than extending the limitation period. Both the courts below did not advert their attention to the pleading in the written statement as well as the deposition of the defendant as D.W.1 properly and therefore, the same warrant interference by this Court. The substantial questions of law are answered in favour of the appellant.

12. In the result,

- i. the appeal is allowed. No costs.
- ii. the decree and judgment dated 29.01.2007 passed in A.S. No.82 of 2006, on the file of the Subordinate Judge, Maduranthakam, Kanchipuram District, upholding the decree and judgment dated 27.10.2004 passed in O.S. No.94 of 2004, on the file of the District Munsif, Maduranthakkam, Kanchipuram District, are set aside.
- iii. The suit filed by the appellant/plaintiff in O.S. No.94 of 2004 is decreed with costs, directing the defendant to pay a sum of Rs.54,374/- together with interest @ 6% per annum from the date of plaint till the date of realisation.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



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To

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1. The Subordinate Judge,
Maduranthakam,
Kanchipuram District.
2. The District Munsif,
Maduranthakkam,
Kanchipuram District.

+1cc to M/s.K.Govi Ganesan, Advocate Sr.49217

+1cc to Mr.N.Nagusah, Advocate Sr.48838

S.A.No .309 of 2008

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