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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.962 of 2008

Thangaraju ...Appellant/Respondent
Vs.
Govindasamy ...Respondent/Plaintiff

Prayer: The second appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 12.08.2005 passed in A.S.No.50 of 2002 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 28.02.2002 passed in O.S.No.231 of 1996 on the file of the Principal District Munsif Court, Ariyalur.

For Appellant : Ms.P.Mahalakshmi
for Mr.K.Sathishkumar

For Respondent : No Appearance

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 12.08.2005 passed in A.S.No.50 of 2002 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 28.02.2002 passed in O.S.No.231 of 1996 on the file of the Principal District Munsif Court, Ariyalur.

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

3.The defendant in O.S.No.231 of 1996 is the appellant in the second appeal.

4.Suit for recovery of money.

5.The case of the plaintiff, in brief, is that the defendant borrowed a sum of Rs.20,000/- for his family expenses on 15.06.1993 and in evidence thereof, executed the suit promissory note Ex.A1 in favour of the plaintiff promising to repay the sum with interest as recited therein and subsequent thereto, failed to repay the borrowed sum as promised, despite several reminders and also the issuance of notice dated 27.12.1995 and not even responded to the legal notice sent by the plaintiff as



aforestated and hence, according to the plaintiff, the suit has been laid.

6.The defence has been taken by the defendant contending that the defendant had not received the sum of Rs.20,000/- from the plaintiff on 15.06.1993 and executed the suit promissory note as put forth in the plaint and according to the defendant, the defendant's father Vadamalai Udaiyar had approached the plaintiff, who is well versed in the Court affairs, in connection with the family problems and the plaintiff had introduced him to one Advocate by name K.S.R.Edison and at that point of time, for meeting the Court expenses and advocate fees etc., as the defendant's father was required to part with the sum of Rs.10,000/- and as the plaintiff had parted with the abovesaid sum on his own to the advocate and thereafter, as the family problems of the defendant's father had come to be settled out of the Court and there was no necessity for institution of the suit, accordingly, the plaintiff, for the purpose of the advancement of the sum of Rs.10,000/- as aforestated, obtained a promissory note from the defendant's father by doubling the amount advanced by the plaintiff and also for the purpose of security, obtained the defendant's signature in the blank stamped papers and the plaintiff, with an ulterior motive and to make unlawful gain, laid the suit against the defendant's father on the basis of the abovesaid promissory note for a sum of Rs.20,000/- and thereafter, the matter was discussed with the Village Panchayat and the plaintiff in the abovesaid Panchayat had agreed to withdraw the suit laid by him, if the defendant's father pay a sum of Rs.10,000/- and the defendant's father had also paid the sum of Rs.10,000/- to the plaintiff and the plaintiff had also withdrawn the suit laid against the defendant's father in O.S.No.331 of 1997 and on the other hand, proceeded to continue the prosecution of the present suit instituted by him on the strength of the promissory note created based on the signature obtained by the plaintiff in the blank stamped papers and therefore, the plaintiff's suit is not maintainable in law and according to the defendant, the plaintiff has also received a sum of Rs.4,500/- from the Advocate K.S.R.Edison, which amount had been handed over by the defendant's father to the advocate and when the defendant demanded to return the said amount, the plaintiff enraged over the same, is continuing with the present suit and therefore, the plaintiff has no cause of action to lay the suit and the suit is liable to be dismissed.

7.In support of the plaintiff's case, PWs1 & 2 were examined and Exs.A1 to A3 were marked. On the side of the defendant, DWs1 & 2 were examined and Ex.B1 was 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 plaintiff's suit. On appeal preferred by the plaintiff, the first appellate Court, on an appreciation of the materials available on record and the submissions projected by the respective parties, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendant, decreed the suit in favour of the plaintiff as prayed for. Impugning the judgment and decree of the first appellate Court, the present second appeal has been preferred by the defendant.

9. In this matter, though notice has been sent to the plaintiff, the plaintiff, despite the receipt of the same, has not chosen to enter appearance either in person or through counsel. When the matter is taken up for hearing, accordingly, the respondent/plaintiff, being called and remaining absent, has been set *ex parte*.

10. The suit has been laid by the plaintiff based on the promissory note. According to the plaintiff, the defendant borrowed a sum of Rs.20,000/- from him on 15.06.1993 and in evidence thereof, executed the suit promissory note Ex.A1 in his favour promising to repay the borrowed sum with interest as recited therein. The signature contained in the suit promissory note Ex.A1 has not been controverted by the defendant. It is also noted that the plaintiff has sent the legal notice calling upon the defendant to pay the borrowed sum as promised, which has been marked as Ex.A2. The defendant has not been disputed the receipt of the legal notice and the acknowledgment card received from him has been marked as Ex.A3. The defendant has not responded to the legal notice nor complied with the demand made by the plaintiff therein. Hence, it is seen that the plaintiff has been necessitated to institute the suit against the defendant.

11. The defendant would plead that his father had approached the plaintiff in connection with the family problems and the plaintiff had introduced him to one Advocate K.S.R. Edison and for meeting the Court expenses and advocate fees etc., the plaintiff had, at that point of time, paid a sum of Rs.10,000/-. However, the family problems got settled without the necessity of the institution of the suit and in connection with the payment of Rs.10,000/-, according to the defendant, the plaintiff had obtained the signature in the promissory note from the defendant's father by doubling the amount lent by the plaintiff and also for the security purpose, obtained the signature of the defendant in the blank stamped papers and thus,



according to the defendant, utilising the said signature of the defendant in the blank stamped papers, the suit promissory note had been created by the plaintiff and falsely has instituted the suit. It is thus noted that the defendant has not disputed the signature available in the promissory note. According to the defendant, the suit promissory note is devoid of consideration as he had not received a sum of Rs.20,000/- from the plaintiff on 15.06.1993 as put forth in the plaint.

12. Even according to the defendant, the plaintiff had withdrawn the suit laid against the defendant's father in O.S.No.331 of 1997 following the Panchayat settlement. However, with reference to the Panchayat Settlement, the plaintiff has disputed the defence version and would state that he has not agreed to withdraw the suit levied against the defendant and despite the abovesaid position, there is no material placed on record worth acceptance on the part of the defendant about the convening of the Panchayat and the plaintiff's consent for the withdrawal of the suit laid against the defendant. In such view of the matter, the abovesaid defence version, as such, cannot be countenanced. If, according to the defendant, his father had paid a sum of Rs.10,000/- lent by the plaintiff, nothing prevented the defendant's father or the defendant from retrieving the documents said to have been given by them to the plaintiff as put forth in the written statement. In the event of the plaintiff refusing to hand over the same, nothing prevented the defendant from initiating necessary action against the plaintiff in the manner known to law. The defendant has not endeavored to move his little finger against the plaintiff with reference to the retriement of the documents containing the signature said to have been handed over by the defendant as put forth in the written statement. As above noted, the defendant has also failed to establish the Panchayat, whereunder, the plaintiff had agreed to withdraw the present suit laid against the defendant. The defendant would only produce the letter said to have been given by the advocate marked as Ex.B1. Ex.B1 is not at all related to the present suit as such and when the author of Ex.B1 has not been examined and when Ex.B1's authenticity is being seriously contested by the plaintiff and when adding further the defendant has also not responded to the legal notice sent by the plaintiff by sending a reply notice, all put together, it is found that Ex.B1 would be of use to sustain the defence version.

13. Considering the materials available on record, as rightly concluded by the first appellate Court and considering the evidence of the plaintiff as PW1 and the attessor, who has been examined as PW2, when it is noted that they have clearly deposed about the borrowal of the suit amount by the defendant from the plaintiff and the execution of the suit promissory note by the



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defendant in favour of the plaintiff and the defendant has failed to respond to the legal notice sent by the plaintiff and the defendant has not established the defence version as put forth by him in the written statement and when there is a presumption that the suit promissory note is supported by consideration as provided under Section 118 of the Negotiable Instrument Act, it is for the defendant to place acceptable materials to rebut the said presumption. Considering the abovesaid factors and when the defendant has failed to rebut the presumption by placing reliable and convincing materials as rightly concluded by the first appellate Court, the judgment of the trial Court relying upon the defence version without any material to sustain the same and thereby, rejecting the plaintiff's case, as such, cannot be upheld in the eyes of law.

14.The first appellate Court, on a proper appreciation of the materials available on record, both on the factual matrix and on the point of law, has rightly decided that the defendant has failed to rebut the presumption raised against him under Section 118 of the Negotiable Instruments Act and consequently, rightly decreed the suit in favour of the plaintiff by setting aside the judgment and decree of the trial Court. No valid reason is projected warranting interference in the judgment of the first appellate Court.

15.For the reason aforesaid, no substantial question of law is found to be involved in this second appeal. In conclusion, the judgment and decree dated 12.08.2005 passed in A.S.No.50 of 2002 on the file of the Subordinate Court, Ariyalur, reversing the judgment and decree dated 28.02.2002 passed in O.S.No.231 of 1996 on the file of the Principal District Munsif Court, Ariyalur are confirmed and consequently, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Deputy Registrar(CS)

True Copy

Sub-Assistant Registrar

sms
Copy to

1.The Subordinate Judge
Subordinate Court, Ariyalur.



2. The District Munsif
The Principal District Munsif Court, Ariyalur.

Copy to
The Section Officer,
V.R.Section, High Court,
Madras.

S.A.No.962 of 2008

VGI (CO)
SP(07/09/2021)