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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.02.2021	Pronounced on: 08.03.2021
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CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

S.A.No.285 of 2010

K.Muthu Samy ..Appellant/Respondent/Plaintiff

Vs.

K.Kantha Swamy ..Respondent/ Appellant/Defendant

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the decree and judgment in A.S.No.10/2009 on the file of the District Judge and Appellate Authority of Nilgiris at Udagamandalam dated 08.12.2009 reversing the judgement and decree passed in O.S.No.16/2008 on the file of the Subordinate Judge Udagamandalam, dated 23.04.2009.

For Appellant : Mr.V.Manohar

For Respondent : Mr.K.Thirukumaran

J U D G M E N T

This second appeal has been preferred against the judgment and decree passed in 10/2009 on the file of the District Judge and Appellate Authority of Nilgiris at Udagamandalam dated 08.12.2009 reversing the judgement and decree passed in O.S.No.16/2008 on the file of the Subordinate Judge Udagamandalam, dated 23.04.2009.

2. The Appellant is the plaintiff. The short facts of the plaintiff's case is that the plaintiff lent a loan of Rs.1,50,000/- to the defendant on 22.10.2006. The defendant agreed to repay the same with interest @ 18% p.a. and executed a promissory note on 22.10.2006. Since the defendant failed to repay the said amount, the plaintiff sent a legal notice on 14.02.2007 calling upon the defendant to pay the suit amount. The defendant acknowledged the said notice on 17.04.2007 and he sent a reply after 5 months with false and frivolous allegations. Hence the plaintiff has filed this suit for recovery of a sum of Rs.1,77,000/- together with subsequent interest and cost.



3. The written statement of the defendant in brief is that the defendant never borrowed the amount from the plaintiff and he has not executed the promissory note as alleged by the plaintiff. The plaintiff and the defendant had money transactions between themselves before eight years and during such time, the plaintiff obtained the signature of the defendant on unfilled and revenue stamp affixed promissory notes, blank judicial, non judicial stamp papers, green and white papers on an assurance that he obtained it only as a security. The plaintiff has extorted the signature of the defendant by making use of those papers and filed this suit. The plaintiff should prove the genuineness of the signature by sending it to a handwriting expert. The plaintiff lent a loan to one Yogamani, who is known to this defendant. The said Yogamani failed to repay the loan and because of that the plaintiff got angry and concocted a promissory note by forging the signatures of the defendant. Subsequently, a Panchayat was convened in the presence of three (named) known people and the loan of Yogamani was settled by the defendant for a sum of Rs.45,000/-. Though the plaintiff received Rs.45,000/- as a full settlement, he refused to issue any receipt for the same. The suit promissory note is a fabricated one and the suit itself is vexatious.

4. The Trial Court has decreed the suit as prayed for. Aggrieved over that the defendant has filed the first appeal and the first appellate Court set aside the judgement of the trial Court and allowed the appeal. Hence the plaintiff has filed this second appeal. The second appeal has been admitted on the following substantial question of law :

"Whether the lower appellate Court has misconstrued the provision in Section 12(2) (b) and 12(3) of Indian Stamp Act?"

5. The learned first Appellate Judge had reversed the judgment of the trial court by making an observation that the respondent/defendant has not affixed his signature on the stamp of the promissory note and the stamp has been crossed in a different ink and that would show that stamp has been affixed by the plaintiff himself at a later point of time. By making such an observation, the first appellate Court has come to the conclusion that there was a material alteration done on the promissory note as found under Section 87 of the Negotiable Instrument Act-1881.

6. The learned first Appellate Judge relied on the judgement of this Court passed in K.M.Srinivasan Pillai Vs. R.Kanniappa Pillai (71 LW page 393). In the said judgment it is held that the subsequent affixture of a revenue stamp on a promissory note is a material alteration within the meaning of Sec. 87 of the



Negotiable Instrument Act, 1881. The another judgment relied on by the First Appellate court is the judgement of this Court rendered in Rajammal Vs.Sengava Naicker reported in 92 L. W. Page 384 . In the said judgment, this Court has held that if the stamp is not cancelled at the time when it is affixed, the instrument will be deemed to be not duly stamped and is inadmissible in evidence.

7. The first Appellate Court observed that the stamp in Ex.A1 - Promissory Note could not have been cancelled by the defendant at the time when it was signed and hence it should not be considered as a promissory note. Though the substantial question of law arose in this Appeal is with regard to the understanding of the learned first appellate judge about Sec. 12 of the Indian Stamp Act, 1899, the answer requires a little examination of the facts proved before the Trial Court. If it has been proved before the trial Court that the stamp of the promissory note has been affixed at a later point of time, then it is correct to hold that the plaintiff has committed a material alteration in Ex.A1. If not, the understanding of the first appellate Court that there is a material observation in Ex.A1 promissory note is not correct and hence Ex-A1 pro note ought not to have been categorized as the one falling under Sec. 87 of the Negotiable Instruments Act, in order to render it inadmissible.

8. The respondent/defendant has filed his first written statement that the suit promissory note was concocted one and his signature was forged and it is not supported by consideration. Only by way of filing an additional written statement, the defendant has pleaded that the stamp has been affixed on the left side of his signature and hence there is a material alteration in the promissory note.

9. It is submitted by the respondent /defendant that a different ink used to cross the stamp affixed on the promissory note and so it is cancelled subsequently. Though the defendant had denied the execution of the promissory note he admitted his signature in Ex.A1 in his additional written statement. During the evidence, the defendant stated that he had a past acquaintance with the plaintiff and during that time the plaintiff has obtained blank stamp and signed papers in the form of judicial stamp papers, white and green papers. The defendant has further stated that a panchayat was held in order to settle the loan availed by one Yogamani and he paid Rs.45,000/- to the plaintiff as a full settlement but the plaintiff refused to issue receipt or return the papers containing his signature. However the defendant did not examine any of the panchayatdars.

10. According to the Section 20 of the Negotiable Instruments Act-1881, once a person affixes his signature on a sufficiently



stamped paper and delivers it to the other, the holder or the holder in due course can fill up the same with any amount covered by the stamp and the person who delivers the stamped instrument is liable to pay the amount covered by the stamp.

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11. Normally when a person executes a promissory note, after getting a loan he would affix his signature on the stamp of the promissory note. Such signatures on the stamp of the promissory note will easily comply two requirements for getting the benefit under sec. 20 of N. I. Act.

(i) execution of the promissory and

(ii) cancellation of the stamp in accordance with Section 12(3) of the Indian Stamp Act.

12. In the case in hand the defendant's signature is not found on the stamp. The stamp is found on the left side of the signature of the defendant. Section 12 of the Indian Stamp Act which speaks about the cancellation of adhesive stamp is extracted below for a better appreciation:

"INDIAN STAMP ACT, 1899

Section 12 - Cancellation of adhesive stamps

(1) (a) Whoever affixes any adhesive stamp to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing or in any other effectual manner."

13. Sub clause 3 of Section 12 of the Indian Stamp Act states



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about the different methods in which a stamp on a negotiable instrument can be cancelled. It appears from the language of the provision that the methods as stated in sec.12(3) are only illustrative and not exclusive. So, the method adopted to cancel the suit promissory note by putting 'x' mark on it also sufficient.

14. The first Appellate court was keen on who had cancelled it and when. The Sub Sec. (1) (a) of the section 12 of the Indian Stamp Act, says that the adhesive stamp should be cancelled by a person whoever affixes the same, if the instrument is chargeable with duty and if it has been executed by any person. So Section 12(1) (a) gives the liberty to cancel the stamp to anyone who affixes the same even if he is not an executant. In case the person whoever affixed the adhesive stamp on an instrument had omitted to cancel it on its execution, then the person who executed the instrument should cancel it at the time of execution itself in order to ensure that the same stamp should not be used once again by someone else on some other instrument. That is the reason why in sub section (1)(b) of Section 12, the words "unless such stamp has been already cancelled in the manner aforesaid" finds place. The words 'aforesaid' refers to the earlier contents of the provision in Section 12(1) (a).

15. According to Section 12 (2), if the stamp on the instrument is not cancelled, it has to be construed as an unstamped document. That means if a stamp is not canceled by anyone it will be available easily for a reuse. Such possibilities would naturally result in revenue loss. So the earlier document on which the stamp was originally affixed but not cancelled should be treated as an unstamped one.

16. If there is no such strict provision as seen in section 12 (2), persons who execute such instrument will be careless and leave the stamps as such without cancelling it. So the object is clear from the very language of the section 12. It also makes clear that the legislation does not make it compulsory that only the executants of a promissory note should cancel the stamp on the pro note.

17. What really matters is whether the stamp has been cancelled either by the defendant or anyone else at the time when it was executed. In the case in hand the signature of the defendant is admitted. The fact that the stamp has also got cancelled by making a mark on it is also not denied. That means Ex.A1 promissory note is a stamped instrument on which the defendant has affixed his signature. This itself is sufficient for the plaintiff to get an initial presumption under Section 118 of the Negotiable Instruments Act 1881 in his favour. If the defendant pleads that the suit promissory note is not supported by



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consideration and that there are material alterations in the promissory note by way of affixing the stamp on it at a later point of time, then the burden would shift upon the defendant to prove the same and thereby rebut the initial presumption taken under sec.118 N.I. Act.

18. In the case in hand, the defendant did not deny his signature. He only contends that the mark on the stamp of the promissory note was not made by him, since it is in a different ink and that the stamp should have been affixed later. But the said self-statement of the defendant alone is not sufficient to discharge his burden to rebut the presumption drawn infavour of the plaintiff under sec.118 N.I. Act. The defendant has admitted the fact that he had acquaintance with the plaintiff and he had money dealings with him. During his evidence, he has stated that he only would borrow loan from the plaintiffs and he had not lent any loan to the plaintiff. So in the money transaction that happened between the plaintiff and the defendant, the liability was always on the defendant. Then the defendant has to prove that all his liabilities have been discharged and Ex.A1 promissory note is not supported by consideration. Had the defendant examined any of the panchayatars as his witnesses and if their evidence also supported his claim then there are reasons to consider the probabilities infavour of the contentions of the defendant. But the first appellate court has got influenced by the mere facts that the signature of the defendant was not put on the stamp and the stamp has been affixed on the left side of his signature and it was not cancelled by him.

19. It has been already observed that section 12 of the Indian Stamp Act does not mandate that the executants should always put the signature on the stamp or the stamp should always be cancelled by the executant. Putting the signature on or across the stamp is one among the several ways to cancel the stamp in order to prevent it from being used once again. Unless the facts and circumstances of a specific case improbabilize the fact that the suit promissory note is not supported by consideration, the Courts need not hesitate to give the advantages of secs. 20 and 118 of the Negotiable Instruments Act to the holder.

20. Had the learned first appellate Judge read sections 12 (2) & (3) conjointly with Section 12(1)(a) and (1)(b), he would have come to a different conclusion. Since the defendant did not rebut the initial presumption with acceptable evidence, the trial court is right in accepting the evidence of the plaintiff and allowing the initial presumption to evolve into a conclusive proof. Hence I feel that the judgment of the first Appellate



court is liable to be set aside and the judgement of the trial court should be upheld. Thus the substantial Question of law is answered in favour of the Appellant.

In the result, this second Appeal is allowed and the judgement and decree of the first appellate court is set aside and the judgement and decree of the trial court is upheld. No costs. The connected miscellaneous Petitions if any are also closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

jrs

To

- 1.The Subordinate Judge Udagamandalam.
- 2.The District Judge and Appellate Authority of
Nilgiris at Udagamandalam
- 3.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.V.Manohar, Advocate, S.R.No.15276

S.A.No.285 of 2010

SSD(CO)
CB(18/11/2021)