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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.02.2021	Pronounced on: 02.03.2021
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CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

S.A.No.388 of 2010

And

M.P.No. 1 of 2010

S.M.Sigamani ...Appellant/Appellant/Defendant
Vs.

Ramathal .. Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of C.P.C, to set-aside the judgment and decree dated 26.10.2009 made in A.S.No.28 of 2009, on the file of the Principal Subordinate Court, Gobichettipalayam, Erode district, confirming the judgment and decree dated 30.01.2009 made in O.S.No.66 of 2005, on the file of the District Munsif Court, Sathyamangalam, Erode District.

For Appellant : Mr. Titus
for M/s. I.C.Vasudevan, R.Nirmala
For Respondent: Mr.M.Roshan Atiq

J U D G M E N T

This second appeal has been preferred against the judgment and decree passed in A.S.No.28/2009, on the file of Principal Subordinate Court, Gobichettipalayam, Erode district and dated 26.10.2009 in confirming the judgement and decree made in O.S.No.66/05, on the file of the District Munsif Court, Sathyamangalam, Erode District.

2. The defendant is the appellant. The short facts of the plaintiff's case is that on 29.12.1997 the appellant/ defendant borrowed a sum of Rs. 76,500/- from the plaintiff for his personal expenses and executed a promissory note in her favour. He agreed to pay an interest @ 12% p.a. and repay the principal and interest as and when demanded. On 20.12.2000, the defendant made a part payment of Rs.10,000/- and made an endorsement on



the backside of the empty promissory note. Thereafter, the defendant did not pay any amount despite several demands made by the plaintiffs. The plaintiff issued a pre-suit legal notice on 02.07.2001. The defendant received the notice, but did not pay the amount. Hence the plaintiff has filed this suit for recovery for a sum of Rs.99,981.50 which being the principal and interest due to the plaintiff along with subsequent interest and cast.

3. The short facts of the written statement of the defendant is that he did not borrow a sum of Rs.76,500/- and executed the suit promissory note. He neither made a part payment of Rs.10,000/- on 20.12.2000 as alleged by the plaintiffs. The suit is barred by limitation. Hence the endorsement has been forged just in order to save limitations. Since the suit promissory note is a forged one, he did not opt to send any reply. The plaintiff's husband is known to the defendant and he borrowed a sum of Rs.10,000/- from him in the year 1994. In any event, the plaintiff's husband got an empty signed promissory note from the defendant and now that has been concocted for this case. There is no cause of action for the suit and the plaintiff is not entitled to the relief as prayed for.

4. During the course of trial, the plaintiff examined 2 witnesses and marked 4 documents as Ex.P1 to P4. On the side of the defendant 2 witnesses have been examined and no document has been marked.

5. After the completion of the trial the learned Trial Judge has decreed the suit in favour of the plaintiff. Aggrieved over the same the defendant has filed a first appeal and the first appeal was dismissed. Hence this defendant has filed this second appeal before this Court and the second Appeal has been admitted on the following substantial questions of law:-

"(1) Whether the lower appellate Court has committed an error in law in drawing an adverse inference regarding the Ex.A2- endorsement found in the suit promissory note on the ground that no reply was sent to the notice issued by the respondent/plaintiff?

(2) Whether the finding of the Courts below regarding proof of Ex.A1-suit promissory note can be stated to be perverse in the light of the admission made by PW.1 that the pronote was executed by the appellant/defendant in favour of the husband of the respondent/plaintiff?"

6. It is seen from the judgement of the trial court that the trial court has framed specific issues as to the genuineness of the suit promissory note and the endorsement alleged to have



been made by the appellant on 20.12.2000 by making a part payment of Rs.10,000/-. Though the appellant has not admitted his liability, he has admitted that he has given a signed empty promissory note in favour of the plaintiff's husband. The contention of the appellant is that the said promissory note has been misused by the plaintiff for the purpose of this suit and that Ex-A2 endorsement seen on the backside of Ex.A1 suit promissory note has been forged for the purpose of saving limitation.

7. As per Section 20 of the Negotiable Instrument Act-1881, if a person signs and delivers to another a paper stamped in accordance with law relating to the Negotiable Instrument Act-1881, the holder in due course has got an authority to complete the same by filling any amount specified therein and not exceeding the amount covered by the stamp. In that case the person who has signed on the Negotiable Instrument is liable for the said amount. For the purpose of convenience, Section 20 of the Negotiable Instrument Act-1881, is extracted as below:

"Section 20 in The Negotiable Instruments Act, 1881

20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1[India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."

8. According to the above provision, if any one delivers an empty promissory note, the holder in due course is entitled to make it completed and the person who delivered the promissory note is liable on such promissory note to any holder in due course for such amount. Though the appellant has pleaded that he has given the promissory note to the husband of the plaintiff, the fact remains that he did not deny his signature on the stamp of the promissory note. If the signature on the promissory note is admitted, then as per section 118 of the Negotiable Instrument Act, a presumption can be made in favour of the plaintiff that the promissory note is supported by the consideration as specified in it. In that case, the burden will



shift upon the defendant to rebut that the suit promissory note is not supported by consideration. It is seen from the records that the plaintiffs have stated in her evidence that the promissory note was given by the appellant to her husband. However she has given detailed evidence as to the loan transaction basing on the promissory note.

9. The trial Court has dealt on these points and on the basis of the evidence available on record, it had arrived at a conclusion that the suit promissory note is supported by the consideration. Despite the appellant having admitted his signature on the stamp of the promissory note he denied his signature on the backside of the promissory note for making a part payment of Rs.10,000/- made towards the loan on 20.12.2000. By denying his said signature which is marked as Ex.A2, the appellant claimed that the suit itself is barred by limitation. Since the promissory note is dated 29.12.1997 and the suit is filed on 23.08.2001, it is obligatory on the part of the plaintiff to prove that the appellant had made the part payment of Rs. 10,000/- on 20.12.2000 and endorsed his signature and thereby acknowledged his liability. Only by proving the acknowledgment vide Ex.A2, the plaintiff can save his suit from getting that barred by limitation. The appellant has filed an application for sending the alleged signature to the handwriting expert and get his report. The said petition was dismissed by the learned trial Judge and the appellant has challenged the same by way of filing the Civil Revision Petition and the same was allowed. Subsequently the Court has sent summons to the handwriting expert to compare the signature and offer his opinion. Since the handwriting expert requested the Court to send the disputed signature with the admitted signatures of the appellant, the document containing the disputed signature was sent to him to get his opinion. However the same could not be examined by the handwriting expert for want of the contemporary admitted signatures of the appellant.

10. The learned counsel for the appellant submitted that the plaintiff has not proved the genuineness of the Ex.A2 endorsement and hence he cannot claim that the suit is within limitation. It was not the plaintiff who wanted a report from the expert by alleging that the signature on Ex.A2 was a forged one. Since the appellant has claimed that the report of the handwriting expert would disprove the contentions of the plaintiff, he should have offered his contemporary sample signatures to be sent along with the disputed signature. In fact those documents could have been submitted along with the petition filed by the Appellant for this purpose.

11. The Plaintiff has opted to prove Ex.A2 endorsement by way of oral evidence. Apart from that, the learned trial Judge has also compared the signature in Ex. A2 with the other admitted



signatures of the defendant available on record and got convinced that the signature on Ex.A2 is the signature of the appellant only. Though the Court is not a handwriting expert to make a scientific comparisons of signatures, the trial court is not precluded to make such examination if the differences or similarities of the signatures are patently visible to the bare eye observation itself. The standard of proof required in the suits of this nature is preponderance of probabilities. One among such probabilities is the similarity of signatures noticed by the court. The omission of the appellant to send a reply to the pre-suit notice might be an another probability. Hence it can not be argued that the courts below have recorded their findings in favour of the plaintiff solely for the reason that the appellant omitted to send a reply to the pre-suit notice.

12. The defendant is not a total stranger to the family of the plaintiff and he has got the acquaintance with the husband of the plaintiff. While appreciating the holistic evidence on record, the Trial Court has also observed the similarities in the admitted signatures of the appellant in the vakalat, written statement etc., and the signature on Ex.A2 endorsement and weighed the probabilities in favour of the plaintiff. Hence the exercise of the trial court in appreciating the genuineness of Ex. B2 does not suffer from any illegality. If the defendant claims that he has not borrowed any amount from the plaintiff, he has to prove the same by another set of probabilities in his favour. Just because the plaintiff has stated that the Appellant has delivered the pro note to her husband, the Appellant cannot claim that he has discharged his burden of rebutting the initial presumption that arose under Section 118 of the Negotiable Instruments Act-1881.

13. The factual and legal analysis of the trial Court and the first appellate Court basing on the oral and documentary evidence and other attending circumstances are well within the ambit of law and it does not suffer from any perversity. Hence it does not warrant any interference. Thus the substantial questions of law No. 1 and 2 are answered against the Appellant.

In the result, this second Appeal is dismissed and the Judgement and the decree of the lower courts are confirmed. No costs. The connected Miscellaneous Petitions if any are also closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

jrs



To

1.The Principal Subordinate Court,
Gobichettipalayam, Erode district.

2.The District Munsif Court,
Sathyamangalam, Erode District.

3.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.13799

S.A.No.388 of 2010

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