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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.1355 of 2005

T.Natarajan

...Appellant / Appellant /
Defendant

Vs

T.Subramaniam (died)

2.Valarmathi

3.Sivakumar

4.Vijayalakshmi

5.Purkodi

...Respondents / LR's of Plaintiff

(R2 to R5 brought on record as
LRs of the deceased sole
respondent vide order dated
24.01.2020 made in
CMP.Nos.1112, 1114 and 1117 of
2020 in SA.No.1355 of 2005)

PRAYER: Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree of the Court of the court of the District Court, Tiruvannamalai in A.S.No.13 of 2003 dated 25.11.2004 in confirming the judgment and decree of the court of the Principal Sub Judge, Tiruvannamalai in O.S.No.286 of 1999 dated 6.1.2003.

For Appellant : Ms.R.Sripriya
for Mr.V.Raghavachari

For Respondents 2 to 5 : Mr.Bharath Gowtham
Mr.T.R.Rajaraman

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the courts below. The Appellant is the defendant in the suit O.S.No.286 of 1999 on the file of the Principal Sub Court, Tirunelveli.

2. The suit was filed by the respondent/plaintiff seeking recovery of a sum of Rs..40,000/- together with interest and costs based on the demand promissory note dated 3.10.1996



alleged to have been executed by the Appellant/defendant in his favour which was marked as Ex.A1 before the Trial Court. It is the case of the respondent/plaintiff that the Appellant/defendant borrowed a sum of Rs.40,000/- for his family necessity.

3. However, as seen from the written statement filed by the Appellant/defendant, he has denied any such borrowal and he has stated that the respondent/plaintiff who is his brother along with another brother purchased the property and only pertaining to the said transaction, certain sums of money are due and payable by him to the respondent/plaintiff.

4. The Trial Court framed issues based on the pleadings as well as the written statement. By Judgment and decree dated 06.01.2003 passed by the Principal Sub Court, Tirunelveli in O.S.No.286 of 1999, the suit filed by the respondent/plaintiff came to be decreed against the Appellant/defendant. Aggrieved by the same, the Appellant/defendant preferred a regular first appeal before the lower appellate court namely District Court, Tirunelveli in A.S.No.13 of 2003. By Judgement and Decree dated 25.11.2004, the lower appellate court in A.S.No.13 of 2003 confirmed the findings of the trial court and dismissed the appeal filed by the Appellant/defendant. Aggrieved by the same, the present second appeal has been filed by the Appellant/defendant before this court.

5. Heard Ms.R.Sripriya, learned counsel for the Appellant/defendant and Mr.Bharath Gowtham, learned counsel representing Mr.T.R.Rajaraman, learned counsel for the respondents 2 to 5. During the pendency of this appeal, the first respondent who is the plaintiff in the suit was dead and the respondents 2 to 5 were brought on record as his legal representatives.

6. This Court has perused and examined the judgment and decree of the courts below as well as the evidence available on record. As seen from the deposition of the Appellant/defendant who was examined as DW1 before the trial court, he has deposed that he only executed the demand promissory note in favour of the respondent/plaintiff and he has also not disputed his signature found therein.

7. Before the Trial court, the Appellant/defendant has filed the following documents namely (a) Sale deed dated 03.10.1996 marked as Ex.B1; (b) Sale deed dated 29.10.1998 marked as Ex.B2; (c) Sale deed dated 27.07.1998 marked as Ex.B3.

8. The trial court has given due consideration to the documents filed by the Appellant/defendant which were marked as Ex.B1 to Ex.B3 and only thereafter, has rejected the contention



of the Appellant/defendant as pleaded in his written statement.

9. The trial court by applying section 118 of the Negotiable Instrument Act has given a finding that the plaintiff has proved his debt in view of the fact that the Appellant/defendant has not disputed the execution of the demand promissory note dated 03.10.1996 which was marked as Ex.A1 and he has also not disputed his signature though he may say that the same was executed for a different purpose and not for the suit transaction.

10. The learned counsel for the Appellant before this court submitted that since the demand promissory note does not mention about the rate of interest at which the Appellant/defendant will have to repay to the respondent/plaintiff, the demand promissory note cannot be acted upon. This contention is unsustainable in view of the fact that there is no necessity to mention the rate of interest in a demand promissory note for its validity.

11. The issues raised by the Appellant before this Court have been adequately considered by the trial court as well as the lower appellate court which has confirmed the findings of the trial court and they are basically factual issues. The issues have been considered only in accordance with law and there is no scope for interference by this Court. There is also no substantial question of law involved.

12. This court at the time of admission of this second appeal on 20.01.2006, formulated the following substantial questions of law:

"a. Whether the courts below ought not to have held that under section 43 of the Negotiable Instruments Act casts a duty upon the plaintiff to prove that consideration had passed under the promissory note?

b) Whether the courts below are right in holding that presumption would apply to the case on hand, when it had been established that on the date of the execution of Ex.A1, the appellant had purchased the property from the plaintiff under Ex.B1 and the possibility of borrowal under the promissory note is remote?

c) Whether the courts below ought not to have held that Section 118 of the Negotiable Instruments Act is only rebuttable in nature and in the teeth of Ex.A1, B1 and the admission of PW1, were the courts below right in decreeing the suit presuming borrowal under Ex.A1?

d) Whether the courts below are right in awarding interest on the amount claimed even in the absence of stipulation under Ex.A1?"



13. It cannot be said, from the evidence available on record that the Appellant/defendant does not owe money to the plaintiff. The Appellant/defendant has himself admitted that he owes money to the plaintiff, but that is towards another transaction and not under demand promissory note dated 03.10.1996. The Appellant/defendant has admitted his signature in the demand promissory note. The plaintiff has also taken a consistent stand as seen from the averments as well as from his deposition that the Appellant/defendant borrowed a sum of Rs.40,000/- from him for his family necessity by executing the demand promissory note. The plaintiff has discharged his burden by proving the debt. Therefore, the debt is proved in accordance with section 118 of the Negotiable Instrument Act. No evidence is also available on record to prove that the amount claimed by the plaintiff in the suit is in respect of another transaction involving purchase of the property by the Appellant/defendant from the plaintiff.

14. Therefore, the substantial questions of law formulated by this court on 20.01.2006 referred to supra are answered against the Appellant/defendant as the issues raised by the Appellant/defendant are only factual issues which have been correctly considered by the courts below which has negated the contentions of the appellant/defendant in accordance with law.

15. For the foregoing reasons, there is no merit in this second appeal. Accordingly, the second appeal is dismissed and the findings of the courts below is hereby confirmed. No costs.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The District Judge,
Tiruvannamalai.

2.The Principal Sub Judge,
Tiruvannamalai.

+1cc to Mr.V.Raghavachari, Advocate SR.No.33411

S.A. No.1355 of 2005

GPL(CO)
RVM(17/09/2021)