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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.12.2021

DELIVERED ON : 23.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R. PONGIAPPAN

S.A.No.962 of 2011

and

M.P.No.1 of 2011

Durairangam

..Appellant/Respondent/Defendant

Vs

Rasu

..Respondent/Appellant/Plaintiff

Prayer : The Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree dated 31.01.2011 in A.S.No.50 of 2010 on the file of the Additional District Court, (Fast Track Court No.2), Cuddalore, reversing the judgment and decree dated 29.01.2010 in O.S.No.68 of 2009 on the file of the I Additional Sub Court, Cuddalore.

For Appellant : Ms.Nilaphar
for Mrs.R.Meenal

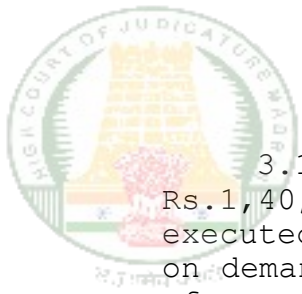
For Respondent : Mr.P.Mani

JUDGMENT

This second appeal is focused as against the judgment and decree dated 31.01.2011 passed in A.S.No.50 of 2010 by the learned Additional District Judge, (Fast Track Court No.2), Cuddalore, reversing the judgment and decree dated 29.01.2010 passed in O.S.No.68 of 2009 by the learned I Additional Subordinate Judge, Cuddalore.

2. For the sake of convenience, hereinafter the parties are called as per their respective litigative status before the trial Court.

3. Bereft and niggard of details, the facts which are absolutely necessary and germane for the disposal of this second appeal would run thus:



3.1. On 28.08.2006, the defendant borrowed a sum of Rs.1,40,000/- from the plaintiff for his family expenses and executed a promissory note, agreeing to repay the said amount on demand, with interest at the rate of 12% per annum. In spite of repeated demands made by the plaintiff, in order to discharge the loan, the defendant neither paid the principal nor the interest. In order to defeat the claim of the plaintiff, the defendant is trying to alienate his properties, so the plaintiff has not served with notice on the defendant. The defendant is not an agriculturist. Hence, he is not entitled to avail the relief under the provisions of the Debt Relief Act.

4. The contentions raised by the defendant in his written statement are as follows:

4.1. On 28.08.2006, the defendant borrowed a sum of Rs.20,000/- from the plaintiff for which, the plaintiff demanded excessive rate of interest. In order to recover the excessive rate of interest, the plaintiff got a pro-note for Rs.40,000/-. The plaintiff got the signature of the defendant in a blank printed form containing stamps. The amount of Rs.40,000/- alone was mentioned at the top of the document in a round column. The body was kept blank at the time of obtaining the signature from the defendant in the pro-note. In view of the strained relationship between the plaintiff and the defendant, the plaintiff has altered the amount of Rs.40,000/- into Rs.1,40,000/- just 10 days prior to the filing of the suit. Without the consent of the defendant, the plaintiff has altered the instrument in respect of the amount. The alteration has done by the plaintiff in the pro-note is nothing but a material alteration. Hence, the suit pro-note becomes a void instrument. On 02.07.2009, the defendant has purchased a house site situated on the eastern side of the plaintiff's house. Since the vendor of the defendant was not agreeable to sell the house site to the plaintiff, the defendant has purchased the same for a valid consideration. Aggrieved over the said transaction, the plaintiff has materially altered the pro-note and filed the present suit. Hence, the suit is not maintainable in law.

5. Based on the above said averments, the trial Court framed necessary issues. Before the trial Court, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3. and two documents are marked as Exs.A1 and A2. Similarly, on the side of the defendant, the defendant himself has examined as D.W.1 and three documents were marked as Exs.B1 to B3.

6. Having considered the materials placed before him, the learned I Additional Subordinate Judge, Cuddalore came to the conclusion that the claim made by the plaintiff is not true and after concluding as above dismissed the suit with
entirely. In the appeal, the learned Additional District



Judge, Cuddalore reversed the finding arrived at by the trial Court and ultimately the suit was decreed as prayed for. Being dissatisfied with the same, the defendant is before this Court with this present second appeal.

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7. At the time of admission, this Court had formulated the following substantial questions of law:

(i) Whether in law the lower appellate Court was right in overlooking that the presumption under Section 118 of the Negotiable Instruments Act would not enure to the respondent as the appellant had pleaded and proved that there was material alteration in the suit pronote.

(ii) Whether in law the lower appellate Court was right in failing to note that a materially altered Negotiable Instrument was void under Section 87 of the Negotiable Instruments Act?

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. It is the submission by the learned counsel for the appellant/defendant that the Lower Appellate Court, without appreciating the evidence given by D.W.1 in correct perspective, erred in holding that the execution of the promissory note was proved by the respondent/plaintiff. He would further contend that, after adding the word 40,000/- in the top of the pro-note, the plaintiff had obtained signature from the defendant in the stamp affixed in the pro note. Afterwards, he materially altered the word Rs.40,000/- into Rs.1,40,000/- and filed the suit. He has further submitted that being the reason that the defendant has purchased the neighbouring land, in order to take vengeance, the plaintiff had filed this false suit.

10. Per contra, the learned counsel appearing for the respondent/plaintiff would contend that the first Appellate Court after applying Section 20 of the Negotiable Instruments Act, correctly appreciated the case of the plaintiff and reversed the finding arrived at by the trial Court. The reasoning given by the Lower Appellate Court do not want any modification.

11. The submissions made by the counsels appearing on either side are considered.

12. It is not in dispute that the signature found in the pro-note is belongs to the defendant. In otherwise in relates to execution, during the time of trial, he had given evidence as, on the top of the pro-note, the word 'Rs.40,000/-' was written by him. In this occasion the present suit has been



13. In the said occasion, before the trial Court in order to prove the execution of the pro-note, the plaintiff was examined as P.W.1 and the witness, who attested the pro-note and the scribe who had written the pro-note were examined as P.W.2 and P.W.3, respectively. Both of them gave a similar evidence as, after the receipt of Rs.1,40,000/-, the defendant had signed in the pro-note and after giving such evidence in his cross examination, P.W.2 admitted that the letter '4' is having some corrections, further, in respect of the said correction, he gave explanation as, the pen used by the defendant at that time is having some problem and therefore, while at the time of writing the word 'Rs.1,40,000/-', he pressed his pen and therefore, the said correction has been occurred.

15. Accordingly, applying the said observation with the case in hand, if the story put forth by the defendant is found to be correct, no doubt that the case instituted by the plaintiff falls under the category that after materially altered the pro-note, the suit has been filed.

17. Here, it is the case of the plaintiff that the defendant himself written the word 'Rs.40,000/-' in the pro-note. Further in respect of the same, while at the time the defendant gave evidence as D.W.1, he himself admitted that the word '4' was written by him in the pro-note. After admitting as above, now without any substantial evidence, arguing before this Court that the suit pro-note was materially altered, cannot be accepted. During the time of transaction the defendant was a contractor in Municipality, so, naturally he would have the wide knowledge in respect of the instrument and also he knows the value of his signature.



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18. Hence, being the reason that the defendant admits the signature found in the pro-note is his signature under Section 20 of the Negotiable Instruments Act, it was understood that the defendant gave authority to the plaintiff to fill up the same as a complete Negotiable Instrument.

19. The first Appellate Court has mainly relying on Section 20 of the Negotiable Instruments Act and after referring various judgments came to the conclusion that the defendant is liable to pay the said suit amount. I am of the same opinion that before the trial Court the factum of material alteration is not proved and accordingly, in order to rebut the presumption raised under Section 118 of the Negotiable Instruments Act, the defendant has not produced any relevant evidence to show that the suit pro-note is not upon due consideration. Though it was contended on the side of the defendant that the alleged transaction is a loan transaction, in order to prove the same he has not produced the substantial evidence. Therefore, the substantial Questions of Law raised are answered in favour of the respondent.

20. In the result, this second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

rsi

To

1.The Additional District Judge,
(Fast Track Court No.2), Cuddalore.

2.The I Additional Subordinate Judge,
Cuddalore.

Copy to:

The Section Officer,
V.R.Section,
High Court,
Chennai - 104.

+1cc to Mrs.R.Meenal, Advocate SR. No. 69178

+1cc to Mr.P.Mani, Advocate SR. No. 69465

S.A.No.962 of 2011