IN THE HIGH COURT OF JUDICATURE AT MADRAS

29.10.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.534 of 2018

P.Arun Prabhu ... Appellant/Plaintiff

.Vs.

S.N.Udharam ... Respondent/Defendant

PRAYER: First Appeal filed under Section 96 Order 41 Rule 1 of the Code of Civil Procedure against the judgment and decree dated 11.08.2017 in O.S.No.488 of 2015 on the file of V Additional District Judge, Coimbatore.

For Appellant : M/s.P.Jagadeesan

For Respondents : Mr.J.Franklin

JUDGEMENT

The plaintiff whose suit O.S.No.488 of 2015 for recovery of money in was dismissed by the V Additional District Court, Coimbatore, is the appellant before this Court.

2. The facts in brief necessary for disposing of the above appeal is herein below narrated keeping the ranking of the parties the same as before the trial Court.

The plaintiff had filed the above suit for recovery of a sum of Rs.11,43,493/- together with interest at the rate of 24% p.a. on the sum of Rs.11,25,000/-. The plaintiff would contend that the sum of Rs.11,25,000/- was borrowed by the defendant from him on 23.12.2013 and on the same day, he had executed a promissory note promising to repay the same on demand and with interest at 24% p.a. The plaintiff would submit that interest was paid only till the month of August, 2015 and thereafter, no amounts were paid. Therefore, he has come forward with the above suit.

3. The defendant had filed his written statement denying

the borrowal from the plaintiff and the execution of the promissory note in favour of the plaintiff. It is the case of the defendant that in the year 1994, he had joined three chits conducted by one P.Rajendran at Door No.32/1B-1, Ramakrishnapuram, Ponnaiahrajapuram, Coimbatore Town. Under the above chits, a sum of Rs.1 lac was paid to the defendant which was repayable in equated monthly installments of Rs.2500/-. He had paid 23 installments to the chit fund run by the said P.Rajendran in the name and style of Edmends Chit Funds (P) Limited. When he had taken the money in the bidding, he was directed to furnish security in the form of blank security documents including the blank promissory notes. In the year 1997, the said Rajendran had requested the defendant to execute a general power of attorney with reference to the schedule mentioned property in his favour and accordingly, a registered general power dated 28.02.1997 was executed by the defendant in favour of the said Rajendran. Once the chit transaction got over in the year 1997, he had demanded the return of the blank promissory note and other documents. The said Rajendran informed him that he was sick and was not in a condition to trace out the documents and that the same would be returned to him. Believing these words, the defendant kept quiet. However, the general power of attorney was cancelled by the defendant under a document dated 15.03.1997. Thereafter, the defendant came to learn that the said Rajendran passed away. The plaintiff who is related to the said P.Rajendran has misused the blank promissory note given to the said Rajendran in the year 1994 to create the suit promissory note. The defendant would submit that there is no privity of contract with the plaintiff. Therefore, he sought for dismissal of the suit.

4. The V Additional District Judge, had framed the following issues:

1. Whether the suit promissory note dated 23.12.2013 is true?

2. Whether the plaintiff is entitled for the suit claim as prayed?

3. To what relief, is the plaintiff entitled to?

5. The parties had gone to trial on the above issues. The plaintiff examined himself as PW1 and one Praveen, one of the attesting witness of Ex.A1 promissory note as PW2. On the side of the defendant, the defendant had examined himself as DW1 and one Arumugam @ Arukutti as DW2. Ex.B1 to B5 were marked in support of their contentions.

6. The learned Additional District Judge on perusing the documents and the oral evidence, came to the conclusion that the plaintiff has not produced any material to show his

wherewithal for extending such a huge loan of Rs.11,25,000/- and had also not proved the execution of Ex.A1, promissory note. On the contrary, the defendant through Ex.B1 to B5 was able to establish the transaction that he had with the said P.Rajendran. Considering the fact that the plaintiff has not been able to prove his case of passing of consideration, the Court below has dismissed the suit. Challenging the same, the plaintiff is before this Court.

7. Mr.P.Jagadeesan, who appeared on behalf of the plaintiff would contend that the plaintiff has proved the execution of the promissory note, Ex.A1 by examining PW2. He would further submit that the document Ex.B3 which is the letter dated 17.03.1999 said to have been executed by P.Rajendran in favour of the defendant appears to be a concocted document. The letterhead would describe the concern to be a Private Limited Company, however, P.Rajendran is described as the Managing Partner on the top of the letterhead. However, while signing the same, he has signed as its Managing Director. Therefore, he would contend that the document cannot be relied upon. Likewise, he would contend that Ex.B1, chit passbook series would show that the details of the chit taken in auction has not been filled up and remains blank but has been signed by the defendant. He would submit that all these would show that the documents were nothing but created for the sake of making out a defence. He would further argue that the evidence of DW2 cannot be relied upon, since he was deposing only on the basis of information supplied by the defendant. That apart, he would submit that if really the defendant had handed over the documents, signed blank promissory notes etc., to the said Rajendran on the settlement of the amounts to the chit fund company, he would have insisted upon getting a return of the documents. The defendant has not proved that he has taken a return of the same. He would draw the attention of this Court to the chief-examination of DW2, who would state that the facts relating to the repayment of the chit amounts, etc., were all informed to him by the defendant herein and this would show that the witness has no personal knowledge about the same. He would further argue that the Court below has totally misdirected itself in holding that the plaintiff did not have the wherewithal, though the plaintiff has pleaded that the the sum of Rs.11,25,000/- was available to him from the sale of the coconuts from his mother's land. He would therefore pray that the judgment and decree of the trial Court be set aside.

8. Per contra, Mr.J.Franklin, the learned counsel appearing on behalf of the defendant would contend that the

plaintiff as PW1 has admitted to the fact that he lives in Pollachi wheres as the defendant lives in Coimbatore and his acquaintance with the defendant was only during his visits to his friend's workshop near the defendant's shop. He would further submit that the contention of the plaintiff that the defendant had not proved the fact that the Rajendran was conducting a chit fund business has not been categorically denied by the plaintiff as PW1. On the contrary, in answer to the question regarding the running of the chit fund business by the deceased P.Rajendran PW1 has replied not with an emphatic "no" but with an answer that he is not aware of the same. The learned counsel therefore submit that the plaintiff was only hedging the answer. He would submit that the plaintiff who was only an I.T. Professional and that too, aged about 28 years at the time of the alleged execution of the suit promissory note could not have been raised such a huge sum of Rs.11,25,000/-. The plaintiff as PW1 has admitted that he had not been paying income tax at the relevant point of time but was paying income tax only at the time when he came to adduce evidence. Therefore, by no stretch of the imagination could the plaintiff organize and arrange a huge sum of Rs.11,25,000/- that too in cash. The learned counsel would argue that the defendant by filing Ex.B1 to B8 marked by DW2 has established the fact that there was transactions between the defendant and the said P.Rajendran where he had signed the blank promissory notes and the other documents and handed over the same to the said Rajendran as security for the amount bid by the defendant. The learned counsel would submit that the said Rajendran is none other than the father-in-law of the plaintiff herein. He would therefore submit that the appeal be dismissed and the order of the trial court be confirmed.

9. On hearing the arguments, the following points for consideration would arise:

(a) Whether the plaintiff had the wherewithal to extend a huge sum of Rs.11,25,000/- as loan to the defendant and that too in cash?

(b) Whether the promissory note was executed by the defendant towards the above referred loan in favour of the plaintiff?

10. The plaintiff has come to the Court with a case that on 23.12.2013, the defendant had borrowed a sum of Rs.11,25,000/- and executed a promissory note in favour of the plaintiff. The said sum of Rs.11,25,000/- is stated to be the money that the plaintiff had got from out of the sale of coconuts in his mother's land. The mother, who is the owner of

the property, has not been examined to prove this income from the lands and neither has the plaintiff let in any evidence to show the extent of land and the usufructs thereon which would yield a profit of a sum of Rs.11,25,000/-. Further, as on the date of the execution of the promissory note, the plaintiff was just aged about 28 years and from his evidence, it appears that he is B.Tech., (I.T. Graduate) who had not been paying income-tax till the time he entered the witness box. In answer to a specific question, he has responded as follows:

> "நான் வருவாமானவரி செலுத்தி வருகிறேனா என்றால் தற்போது வருமானவரி செலுத்தி வருகிறேன்."

11. Therefore, it is clearly demonstrated that on the date of the alleged promissory note, the plaintiff did not have income which was taxable. This is fortified by his answer which is as follows:

> "இதற்கு முன்பு வருமானவரி செலுத்தவில்லை. ஏனென்றால் நான் விவசாயமும் குறைவான சம்பளத்திற்கு மட்டுமே பணி செய்து வந்தேன்."

12. Therefore, from his own admission, it is clear that on the date of the execution of the promissory-note, the plaintiff did not have income which is taxable and further, his income was very low even as per his own admission and therefore, the payment of Rs.11,25,000/- of the defendant on the said date could not have happened. That apart, the plaintiff has come forward with a case that till August, 2015, the defendant had been paying interest. However, there is no document to prove the same. As argued by the learned counsel for the defendant, the plaintiff has also not examined his mother who is the owner of the land to show that the land yielded such a huge income whereby the plaintiff could lend to third parties after defraying therefrom the expenses on the land and the personal family expenses. The answer regarding the running of the chit fund by his father-in-law is very evasive. The plaintiff has not categorically denied that his father-in-law was running the chit fund but on the contrary, he would only submit that he was not aware of it. The defendant in his written statement filed on 21.03.2016 has given details about the chit fund company which was being run by the said Rajendran. It would only be natural for the plaintiff to get necessary clarification from his wife, the daughter of the said Rajendran. Therefore, the answer does not appear truthful. The defendant had admitted his signature on the documents but however stated that it was the blank promissory notes which he had executed in favour of the said Rajendran in the year 1994 that has been misused and he has

established the same by examining DW2, who has in very clear terms stated that P.Rajendran was running a chit fund business and also by marking Ex.B3 letter. From a reading of the said letter, it is also clear that the defendant had signed in blank documents in favour of the said P.Rajendran and there is a possibility that this promissory note has landed into the hands of the plaintiff. The defendant has been able to establish that the consideration has not passed by clearly demonstrating that the plaintiff did not have the wherewithal to extend the said amount as a loan.

13. In these circumstances, the points of consideration are answered against the plaintiff and consequently, the appeal is dismissed and the judgment and decree of the suit in O.S.No.488 of 2015 dated 11.08.2017 on the file of the V Additional District Court, Coimbatore is confirmed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

The V Additional District Judge,
Coimbatore.

+1cc to Mr.P.Jagadeesan, Advocate SR.No.56088

A.S.No.534 of 2018

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GN(19/01/2022)