



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) No. 1094 of 2008 and

M.P. (MD) No. 2 of 2008

WEB COPY

K.Arunagiri

... Appellant/Respondent/
Plaintiff

Vs.

1. Rajappan
2. Backiyam

... Respondents/Appellants/
Defendants

Prayer: Second appeal filed under Section 100 of C.P.C., to allow the second appeal and set aside the Judgment and Decree dated 27.03.2007 made in A.S.No.28 of 2006 passed by the learned Principal District Judge, Dindigul, reversing the Judgment and Decree dated 07.04.2006 made in O.S.No.643 of 2002 passed by the learned Principal Sub Judge, Dindigul.

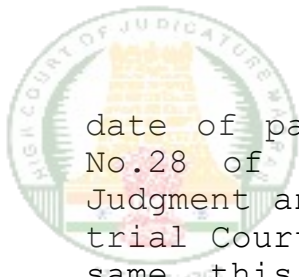
For Appellant	: Mr.N.Shanmuga Selvam
For Respondent No.2	: Mr.K.Rajeshwaran
R-1	: Died

* * *

J U D G M E N T

The plaintiff in O.S.No.643 of 2002 is the appellant in this second appeal.

2. The case of the plaintiff is that one R.Ramesh Kannan had borrowed a sum of Rs.1,00,000/- from the plaintiff and executed Ex.A.1 promissory note. It was attested by one Palanivel and Velusamy on 09.12.1999. The plaintiff came to know that the said Ramesh Kannan died in an accident on 01.01.2001. The parents of the said Ramesh Kannan had inherited his estate and therefore, they were liable to answer the claim. Therefore, the said suit came to be instituted. The defendants filed written statement denying the plaint averments. The plaintiff examined himself as P.W.1 and the attesting witnesses were examined as P.W.2 and P.W.3. On the side of the defendants, Ramesh Kannan's father Rajappan was examined as D.W.1. The trial Court by Judgment and Decree dated 07.04.2006 decreed the suit as prayed for. The defendants were directed to pay a sum of Rs.1,26,000/- with interest at the rate of 6% on the principal amount of Rs.1,00,000/- from the date of plaint till the



date of payment. Aggrieved by the same, the defendants filed A.S. No.28 of 2006 before the Principal District Court, Dindigul. By Judgment and Decree dated 27.03.2007, the Judgment and Decree of the trial Court was reversed and the appeal was allowed. Challenging the same, this second appeal came to be filed.

WEB COPY

3. This second appeal was admitted on the following substantial questions of law:-

"1. Whether the first appellate Court is right in allowing the appeal for the reason that relief is not prayed against the estate of the predeceased son of the defendants?

2. Whether the first appellate Court is right in overlooking the fact that the plaintiff has filed an application to amend the plaint to recover money from the estate of the predeceased son is dismissed and the suit decreed and thereby closing the option of challenging the order of dismissal of the amendment petition?

3. Whether the first appellate Court is right in allowing the appeal when the defendants have not pleaded or specifically denied that they have not inherited the estate of their predeceased son?"

4. Heard the learned counsel appearing for the appellant who reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellant and restore the decision of the trial Court.

5. Per contra the learned counsel appearing for the respondents submitted that the Judgment and Decree passed by the first appellate Court does not warrant any interference and he wanted this Court to dismiss the second appeal.

6. I carefully considered the rival contentions and went through the evidence on record.

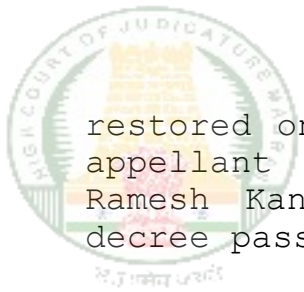
7. The learned counsel appearing for the respondents informs that Rajappan, the first defendant passed away on 02.06.2019. There is no need to bring the legal heirs on record. The wife of Rajappan was already on record as one of the defendants. In fact the



defendants were arrayed as parties only in their capacity as legal representatives of the deceased executant.

8. The case of the appellant is that the son of the defendants Ramesh Kannan had borrowed a sum of Rs.1,00,000/- on 09.12.1999. He had also executed Ex.A.1 suit promissory note. No doubt, the defendants in their written statement have denied the plaint averments. Therefore, the burden to prove due execution of Ex.A.1 promissory note lay squarely on the plaintiff. The question is whether the plaintiff had discharged the said burden. The plaintiff had not only examined himself but also both the attesting witnesses as P.W.2 Palanivel and P.W.3 Velusamy. The trial Court has given a categorical finding that the execution of Ex.A.1 promissory note has been proved. The defendants have not adduced any evidence rebutting the said presumption under Section 118 of the Negotiable Instruments Act. The first appellate Court chose to reverse the decision of the trial Court only on the ground that the plaintiff has not sought relief from the estate of the executant. No exception can be taken to the aforesaid reason given by the appellate Court. In fact in paragraph No.9 of the appellate Court Judgment, the first appellate Court had stated that only from the estate of Ramesh Kannan, the plaintiff can get relief. However after observing, the appellate Court had completely reversed the Judgment of the trial Court. This is not correct. Therefore, the Judgment and Decree of the first appellate Court has to be modified. This is because in the plaint itself, the plaintiff had categorically averred that the executant had left behind properties and that the defendants who are the parents had inherited the same. This averment has not been specifically denied in the written statement. Likewise the trial Court has observed that D.W.1 had stated in the cross examination that he had inherited the property of the deceased Ramesh Kannan.

9. Be that as it may, the fact remains that the suit schedule properties have not been set out in the plaint schedule. However, the first appellate Court ought to have moulded the relief. It is seen that the plaintiff took out an application for amending the plaint for proceeding against the property of the deceased Ramesh Kannan. But the said amendment petition was dismissed by the trial Court. Therefore, the appellant cannot be left high and dry. The substantial questions of law are answered in favour of the appellant. If the second respondent had not inherited any property from Ramesh Kannan or if the estate is no longer available as on date, obviously, the appellant herein cannot enforce the suit decree against the second respondent. If any property of Ramesh Kannan has been inherited by the second respondent and if it is still available, the appellant can proceed against the same for enforcing the liability. The Judgment passed by the appellate Court is set aside and the Judgment and Decree passed by the trial Court is



restored on the lines above mentioned. The suit is decreed and the appellant is permitted to proceed against the estate of deceased Ramesh Kannan if the surviving respondent fails to satisfy the decree passed by the trial Court.

10. This second appeal is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Principal District Judge,
Dindigul.
2. The Principal Sub Judge,
Dindigul.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2C)

S.A.(MD)No.1094 of 2008
26.04.2021

—
KK(15.06.2021) 4P 5C