



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD) .No.962 of 2007

M.S.Kasimayan

..Appellant/Appellant/Defendant

Vs.

M.Muthuramalingam

...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 22.12.2006 made in A.S.No.33 of 2006 on the file of the Subordinate Court, Devakottai, confirming the judgment and decree dated 10.03.2005 made in O.S.No.170 of 2004 on the file of the District Munsif Court, Devakottai.

For Appellant : Mr.Niranjana S.Kumar

For Respondent : Mr.V.R.Shanmuganathan

JUDGMENT

The defendant in O.S.No.170 of 2004 on the file of the District Munsif Court, Devakottai is the appellant in this second appeal.

2.The respondent herein, Thiru.Muthuramalingam, filed the said suit for recovering a sum of Rs.80,960/- with interest at the rate of 24% per annum on the principal amount of Rs.66,000/- from the date of suit till realisation. The suit was laid on the basis of Ex.A1 pro-note, dated 13.01.2003.

3.The case of the plaintiff is that the defendant/appellant herein approached the plaintiff for a loan of Rs.1,00,000/- and that the loan amount of Rs.1,00,000/- was received by the defendant from the plaintiff at Thanicha Oorani, after the defendant executed the suit pro-note. On 18.09.2003, the defendant repaid a sum of Rs.50,000/-. Thereafter, the defendant did not make any payment. Since the defendant was evading to repay, the plaintiff/the respondent herein issued Ex.A2 notice dated 12.06.2004. The same was returned as "unclaimed". According to the plaintiff, due to accumulation of interest, the suit claim was for a sum of Rs.80,960/-.

4.The defendant filed his written statement denying the various allegations made in the plaint. According to the defendant, the transaction took place only at Madurai and not at Thanicha



Oorani in Sivagangai District. According to the defendant, the plaintiff was carrying on finance business at Amman Sannathi in Madurai. The details regarding the office run by the plaintiff have also been set out in the written statement. According to the defendant, he repaid a sum of Rs.50,000/- on 18.09.2003 and the balance amount of Rs.62,000/- in November, 2003. The defendant would claim that the plaintiff issued Exs.B1 and B2 receipts. Thus, the entire loan amount had been settled in full and no further amount was due from the defendant to the plaintiff. The defendant prayed for dismissal of the suit.

5. Based on the rival pleadings, the trial Munsif framed 4 issues. The first issue was whether the plaintiff was entitled to a sum of Rs.80,960/- as prayed for by him. The second issue was whether the defendant had discharged the loan liability. The third issue was whether the trial Court had the territorial jurisdiction to entertain the suit.

6. The plaintiff examined himself as P.W1 and his brother-in-law, Swarnalingam as P.W2. The defendant examined himself as D.W1 and one Muthukumar as D.W2. The trial Court by judgment dated 10.03.2005 decreed the suit and directed the defendant to pay the suit claim of Rs.80,960/- and also to pay interest at the rate of 12% from the date of plaint till the date of payment. Aggrieved by the judgment and decree passed by the trial Court, the defendant filed A.S.No.33 of 2006 before the Sub Court, Devakottai. The appellate Court also sustained the judgment of the trial Court and dismissed the appeal. Questioning the same, this Second Appeal came to be filed. The Second Appeal was admitted on the following substantial questions of law:-

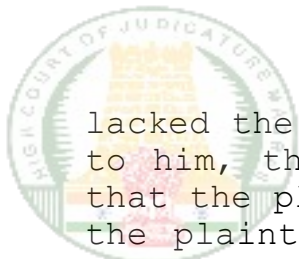
"1. Whether the finding of the Courts below regarding the place wherein the cause of action arose can be termed perverse?

2. Whether the Courts below have committed an error in law in not considering the oral and documentary evidence produced on the side of the appellant/defendant in proof of the plea of discharge?

3. Whether the Courts below have erroneously applied Section 92 of the Evidence Act to negative the contention of the defendant that the suit promissory note was created by filling up the signature of the appellant/defendant had been obtained blank promissory note in which the signature of the appellant/defendant had been obtained? "

7. I heard the learned counsel on either side on the aforesaid substantial questions of law.

8. The learned counsel appearing for the appellant primarily contended that the District Munsif Court, Devakottai completely



lacked the territorial jurisdiction to entertain the suit. According to him, the cause of action arose only at Madurai. It may be true that the plaintiff resided at Thanicha Oorani. But mere residence of the plaintiff within the territorial limits of the Court concerned will not confer any jurisdiction on the said Court. Nor the fact that demand was made from Thanicha Oorani would confer any territorial jurisdiction. He also pointed out that the amount borrowed by the defendant was repaid in two instalments of Rs.50,000/- and Rs.62,000/-. The amount of Rs.50,000/- was paid on 18.09.2003 and the second instalment of Rs.62,000/- was paid on 10.11.2003.

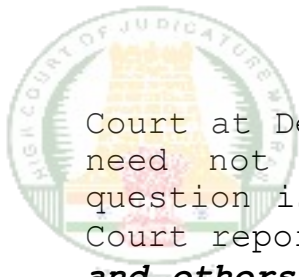
9.The learned counsel for the appellant heavily relied on the testimony of D.W2, Muthukumar. According to him, Muthukumar is not a stranger to the transaction. He had worked under the plaintiff in his finance company. The plaintiff in his cross examination also fairly admitted that there was no ill-will or strained relationship between him and D.W2. It was Muthukumar, who figured as attesting witness in Ex.A1 suit pro-note. It was Muthukumar, who in fact filled the body of the pro-note. Muthukumar had testified at length regarding the services rendered by him for the plaintiff and other financiers. There is absolutely no reason to disbelieve the version of Muthukumar. Therefore, the learned counsel would contend that the Courts below by not considering the testimony of Muthukumar have rendered perverse findings. He therefore pressed for reversing the impugned judgments and for allowing the instant appeal.

10.*Per contra*, the learned counsel for the respondent would contend that no substantial question of law arises for consideration and that the impugned judgments are anchored on solid reasoning and he pressed for dismissal of the second appeal.

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

12.The contention as regards the territorial jurisdiction may be taken up first. The learned counsel for the appellant contended that as per Section 20 of CPC, the suit should have been instituted only in a Court, where the cause of action wholly or in part arose or within whose limits the defendant resided. The defendant resided only at Madurai. According to the testimony of D.W2, the cause of action arose only at Madurai. The appellant's counsel submitted that nothing had taken place within the territorial limits of the District Munsif Court at Devakottai.

13.I went through the contents of Ex.A1. In Ex.A1, there is no recital to the effect that the pro-note was executed at Thanicha Oorani. There is considerable merit in the contention of the respondent's counsel that since demand was made from Thanicha Oorani and that forms part of the cause of action, the District Munsif



Court at Devakottai would definitely have a jurisdiction. However, I need not consider the rival contentions at length since this question is directly concluded by a decision of the Hon'ble Supreme Court reported in **2015 13 SCC 514 (K.P.Ranga Rao Vs. K.V.Venkatesham and others)**. Section 21 (1) of CPC was interpreted in the aforesaid decision. The Hon'ble Supreme Court held as follows:-

"8.Obviously Section 21 will apply in the three situations mentioned therein. The first situation refers to the place of suing. The second situation refers to pecuniary limits of the Court's jurisdiction and the third refers to local limits of the Court's jurisdiction. In each of these cases it is stated that an Appellate Court or Revisional Court shall not allow an objection to the place of suing (which refers to Section 16 in the present case) unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement. What follows is important. An objection as to place of suing cannot be allowed unless there has been a consequent failure of justice.

9.In a classic exposition of the law, in Kiran Singh and Others v. Chaman Paswan and Others, 1955 SCR 117, after stating that a defect of jurisdiction strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties, the law has been laid down as follows:-

"7..... The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act, 1887 is the same, namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reserved purely on technical grounds, unless it had resulted in failure of justice and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits.""

14.In the case on hand, no doubt, objection as to the place of suing has been taken in the written statement itself by the appellant. But the said issue had already been considered by the Courts below. I do not find any consequent failure of justice. Applying the ratio laid down in the aforesaid decision, the 1st substantial question of law is answered against the appellant.

15.The next question that arises for consideration is as to whether Ex.B2 has been proved by the appellant/defendant. The appellant admits the borrowal of Rs.1,00,000/-. The



respondent/plaintiff admits that a sum of Rs.50,000/- was repaid by the appellant. The only question is whether the version of the appellant that he paid a further sum of Rs.62,000/- to the plaintiff can be believed or not. The appellant in support of his claim projects Ex.B2. The plaintiff has denied the signature attributed to him in Ex.B2. Since Ex.B2 is not admitted by the plaintiff, the burden to establish the same lies squarely on the defendant/appellant. To prove the same, the defendant had examined D.W2, Muthukumar. Muthukumar was examined and cross examined at length.

16.The trial Court had dealt with the testimony very elaborately to find out if his testimony is acceptable. The trial Court noted that Muthukumar/D.W2 had left the employment of the plaintiff in June 2003 itself. The Court below found it difficult to believe that the plaintiff would have availed the services of D.W2 for the purpose of filling up Ex.B2. D.W2 had further claimed that Ex.A1 pro-note was filled up only by D.W2 in July 2003. The Court below found that D.W2 is figuring at an attesting witness. According to his own claim, he only filled up the body of the pro-note. Ex.A1 is dated 18.09.2003. Invoking Section 92 of the Indian Evidence Act, it was held that D.W2 cannot depose contrary to what has been written down in Ex.A1. The trial Court has given many more reasons as to why the testimony of D.W1 could not be believed. More than anything else, if according to the defendant, the entire loan amount was settled in 10.11.2003 itself, nothing stopped him from getting back the suit pro-note. In fact, I can take judicial notice of the fact that whenever borrowal takes place on the strength of a pro-note and the amount is repaid, the pro-note is either taken back or cancelled. The defendant had not sent any communication seeking return of his pro-note.

17.The defendant admits the signature found in Ex.A1. Therefore, the Courts below rightly invoked the presumption set out in Section 118 of the Negotiable Instruments Act. The Courts below have concurrently found that Ex.B2 has not been established by the defendant. This being a question of fact, the question of interference with the impugned judgment does not arise. The 2nd substantial question of law is also answered against the appellant.

18.Section 20 of the Negotiable Instruments Act, 1981, deals with unfilled instruments. It gives prima facie authority to the holder to complete the inchoate negotiable instruments. In the case on hand, even according to the defendant, he borrowed a sum of Rs.1,00,000/-, Ex.A1 is only for a sum of Rs.1,00,000/-. Thus, the authority conferred under Section 20 of the Negotiable Instruments Act, 1981 has not been exceeded. The Courts below invoked Section 92 only against D.W2 for deposing contrary to what has been expressly written down by him in his own hand. The Courts below have correctly applied Section 92 of the Indian Evidence Act and therefore, the 3rd



substantial question of law is also answered against the appellant.

19.I find no merit in this Second Appeal. It stands dismissed. No costs.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge,
Devakottai.

2.The District Munsif,
Devakottai.

3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.NIRANJAN S.KUMAR, Advocate (SR-16631[F] dated
20/04/2021)

S.A. (MD) .No.962 of 2007
17.04.2021

SVN(CO)

TR(08.06.2021) 6P 6C