



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.1172 of 2011

Ravichandran ... Appellant/Respondent/Plaintiff

Vs.

1. S.Chandra (Died) ... 1st Respondent/Appellant/Defendant

2. Subbiah

3. Renugadevi

4. Navarathinam

5. Udayakumar

(R-2 to R-5 are *suo motu* brought on record
as LR's of the deceased sole respondent
vide Order dated 15.04.2021)

... Respondents

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 27.01.2009 made in A.S.No.2 of 2008 on the file of the Principal District Judge, Pudukottai, reversing the Judgment and decree dated 14.07.2006 made in O.S.No.19 of 2003 on the file of the Subordinate Judge, at Pudukottai and allow this appeal.

For Appellant : Mr.P.Santhosh Kumar

For Respondents : Mr.V.S.Badrinath

J U D G M E N T

The plaintiff in O.S.No.19 of 2003 on the file of the Sub Court, Pudukottai, is the appellant in this second appeal.

2. The said suit was filed for recovering a sum of Rs.1,23,000/- from the defendant. The suit was filed on the strength of Ex.A.1 promissory note dated 22.07.1999. The case of the plaintiff is that on 22.07.1999, the defendant availed a loan of Rs.70,000/- from the plaintiff and executed Ex.A.1 promissory note. The defendant agreed to repay the loan amount with interest at the rate of 24% p.a. but committed default. However, on



05.01.2001 the defendant paid a sum of Rs.5,000/- as interest. The endorsement in this regard was made on the reverse side of Ex.A.1 promissory note. The plaintiff issued Ex.A.2 notice dated 14.03.2001 calling upon the defendant to clear the loan liability. Though the defendant received the said legal notice, the demand set out therein was not complied with. Therefore, the plaintiff was left with no other option but to institute O.S.No.19 of 2003 on 31.01.2003 before the Sub Court, Pudukottai. The plaintiff examined himself as P.W.1 and one G.Kumar was examined as P.W.2 and Ex.A.1 to Ex.A.4 were marked. The defendant examined herself as D.W.1 and marked Ex.B.1 dated 13.03.2001. The trial Court decreed the suit on 14.07.2006 as prayed for and directed the defendant to pay the plaintiff a sum of Rs.1,23,000/- with interest at the rate of 6% on the principal amount of Rs.70,000/-.

3. Aggrieved by the same, the defendant filed A.S. No.2 of 2008 before the Principal District Court, Pudukottai. By Judgment and Decree dated 27.01.2009, the decision of the trial Court was reversed and the appeal was allowed. The suit came to be dismissed. Challenging the same, the plaintiff filed this second appeal.

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

"(a) Whether the respondent has executed the promissory note as per the documentary evidence on record before the trial Court?

(b) Whether the suit was barred by limitation?"

5. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer both the substantial questions of law in favour of the appellant and restore the judgment and decree passed by the trial Court.

6. The learned counsel appearing for the appellant would contend that the appellate Court erred in holding that the suit was barred by limitation. He pointed out that Ex.A.2 endorsement was made on 05.01.2001 and therefore, the period of limitation would start running only from 05.01.2001 and not from 22.07.1999. He laid particular stress on the fact that even though suit notice Ex.A.3 was issued by the plaintiff and the same was received by the defendant, the defendant did not choose to respond to the same. Marking of Ex.B.1 would not come to the rescue of the defendant as it was not issued in response to Ex.A.3.

7. The learned counsel appearing for the appellant submitted that the first appellate Court had completely misdirected itself in law. He pointed out that the defendant had



not disputed her signature found in Ex.A.1 promissory note. Therefore, the presumption under Section 118 of the Negotiable Instruments Act, 1881 would apply. Since the defendant did not rebut the same, the decision of the first appellate Court will have to be reversed.

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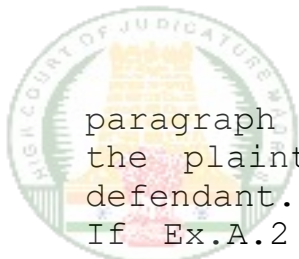
8. Per contra, the learned counsel appearing for the respondent submitted that the impugned Judgment of the first appellate Court does not call for any interference.

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

10. The case of the defendant is that the parents-in-law of the plaintiff are engaged in money lending and that the defendant was their neighbour. The defendant had persuaded the father-in-law of the plaintiff to lend a sum of Rs.50,000/- in the year 1997 to one Gomathy. The said Gomathy had committed default. Therefore, by way of assurance, the defendant had executed Ex.A.1 promissory note. Ex.B.1 notice was issued to the father-in-law of the plaintiff. The learned counsel appearing for the respondent would point out that while Ex.B.1 is dated 13.03.2001, the notice issued by the plaintiff is dated 14.03.2001.

11. The learned counsel appearing for the respondent drew my attention to paragraph No.6 of the written statement. In the said paragraph, the defendant had categorically denied that on 05.01.2001 the defendant gave a sum of Rs.5,000/- to the plaintiff or made any endorsement. In view of such denial, the burden squarely lay on the part of the plaintiff to show that Ex.A.2 was in fact endorsed by the defendant. A mere look at Ex.A.2 would indicate that it was attested by one M.Renganathan, S/o.Manickam Chettiyar. The plaintiff did not examine the said Renganathan who had allegedly attested Ex.A.2 endorsement which is said to have been made by the defendant. Since the defendant had denied the signature in Ex.A.2, the plaintiff could have taken steps for referring the same for the opinion of the handwriting expert. No such reference was made. Interestingly, the trial Court also did not invoke its jurisdiction under Section 73 of the Indian Evidence Act, 1872 to compare the disputed signature with the admitted signature of the defendant. Thus the plaintiff had miserably failed to establish that Ex.A.2 endorsement was in fact made by the defendant Chandra.

12. The learned counsel appearing for the appellant would claim that the burden lay on the defendant on account of her failure to respond Ex.A.3 notice. I am not persuaded by the said submission. In view of the categorical denial and the pleading in



paragraph No.6 of the written statement, the burden clearly lay on the plaintiff to establish Ex.A.2 endorsement was made by the defendant. The plaintiff had failed to discharge the said burden. If Ex.A.2 is eschewed out of consideration, the suit will be obviously hit by limitation. The transaction had taken place in the year 1999. The suit was filed after three years from the said date. Only if Ex.A.2 is taken as having been established, the suit can be held to be filed in time. Since Ex.A.2 has not been proved, I have to necessarily concur with the finding of the first appellate Court that the suit itself is barred by limitation. Since the second substantial question of law is answered against the plaintiff, there is no need to answer the other substantial question of law. The judgment and decree passed by the first appellate Court does not call for any interference.

13. This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// 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,
Pudukottai.
2. The Subordinate Judge,
Pudukottai.

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Madurai Bench of Madras High Court, Madurai.

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14.06.2021

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