



THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A.(MD)No.896 of 2011

R.Kumaresan

... Appellant/Respondent/Defendant
-Vs-

M.Prabhakaran

...Respondent/Appellant/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 30.04.2010 passed in A.S.No.74 of 2008 on the file of the first Additional Sub Court, Nagercoil reversing the Judgment and Decree dated 06.03.2007 passed in O.S.No.521 of 2006 on the file of the Principal District Munsif Court, Nagercoil.

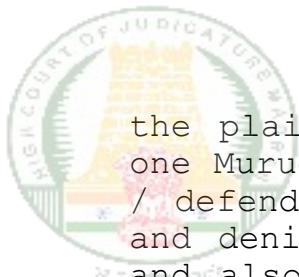
For Appellant : Mr.V.Meenakshisundaram
for Mr.D.Nallathambi
For Respondent : Mr.M.Gnanagurunathan

JUDGMENT

The defendant in O.S.No.521 of 2006 on the file of the Principal District Munsif Court, Nagercoil is the appellant in this second appeal. The suit was filed by the respondent herein for recovering a sum of Rs.1,00,000/- with interest. The suit was laid on the strength of Ex.A2-pro-note dated 11.11.1998. The plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A10. The defendant examined himself as D.W.1 and Ex.B1- a communication from the finance company run by the plaintiff addressed to the defendant was marked during the cross examination of D.W.1. After considering the entire evidence on record, the learned trial Court, by Judgment dated 06.03.2007 dismissed the suit. Aggrieved by the same, the plaintiff filed A.S.No.74 of 2008 before the First Additional Sub Court, Nagercoil. By Judgment and decree dated 30.04.2010, the first appeal was allowed and the decision of the trial Court was reversed. Challenging the same, the defendant has filed this second appeal. The second appeal was admitted on the following substantial questions of law:-

(a) When the appellant / defendant has taken a very specific plea that he put the signature on the "blank papers" and when there is no material on the side of the respondent / plaintiff, that the appellant/defendant signed so with an intention of acknowledging the terms of the document whether the finding of the first appellate Court that the appellant / defendant had executed the suit promissory note is unsustainable and against the law of evidence regarding burden of proof?

(b) when the appellant / defendant elicited evidence from



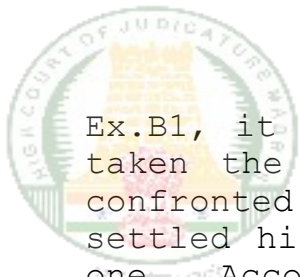
the plaintiff P.W.1 to the effect that the loan in favour of one Murugesan was given by obtaining signature of the appellant / defendant also by producing Ex.B1, which fact was suppressed and denied at the initial stage by the respondent / plaintiff and also the admission of P.W.1 in the enquiry conducted by the police and when the respondent / petitioner has failed to produce the account books to establish that passing of consideration amount under the suit promissory note, whether the first appellate Court is correct in straight away drawing the presumption under Section 118 of Negotiable Instrument Act to uphold that the respondent / plaintiff proved passing of consideration?

(c) When the trial Court has dealt in detail about the issue relating to the passing of consideration in para 15 to 18, by taking into consideration of the admission of P.W.1 and non-production of account books and thereby drawing adverse inference under Section 114 of Evidence Act and also the circumstances, hold that the respondent / plaintiff has not proved the passing of consideration under the suit promissory note and dismissed the suit, whether the first appellate Court is correct in reversing the well considered findings of the trial Court, without discussing how the above said findings of the trial Court is wrong, which warrant interference under Section 100 of Civil Procedure Code?

2.Heard the learned counsel on either side.

3.The case of the plaintiff is that the defendant / appellant herein approached the plaintiff for a loan of Rs.75,000/- on 11.11.1998. He also obtained the loan amount of Rs.75,000/- after executing the suit pro-note. The defendant contrary to his promise did not repay the loan amount. Therefore, the plaintiff had to issue Ex.A3-suit notice. But the same was returned 'un-served'. Hence, the plaintiff filed O.S.No.229 of 2001 before the Sub Court, Nagercoil. The same was later transferred to the file of the Principal District Munsif Court, Nagercoil and re-numbered as O.S.No.521 of 2006. The defendant filed a written statement contesting the suit claim. According to the defendant, one Regin was running a Auto Consulting Business and that, in order to oblige him, the defendant stood as guarantor for the vehicle loan obtained by one Murugesan. The plaintiff had taken the signatures of the defendant in some blank documents. The blank documents were later fraudulently filled up by the plaintiff and on that basis, the instant suit had been laid. According to the defendant, he never borrowed any money from the plaintiff and that the suit itself has been instituted on a false cause of action.

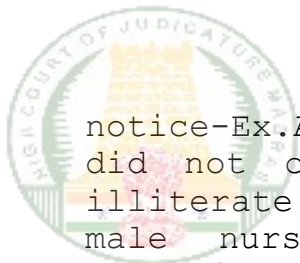
4.The learned counsel appearing for the appellant took me through the testimony of P.W.1. P.W.1 in his testimony had admitted having sent Ex.B1-letter addressed to the defendant. In the said



Ex.B1, it has been stated that the defendant and one Murugesan had taken the vehicle loan and that the same was not repaid. When confronted with Ex.B1, P.W.1 admitted that Murugesan has since settled his amount and that the suit transaction is an independent one. According to the plaintiff, Murugesan had no connection with the suit transaction. However, the learned counsel for the appellant also drew my attention to the admission made by the plaintiff that there is overwriting in respect of the amount mentioned in Ex.A1-loan application as well as Ex.A2-pro-note. He also would point out that P.W.1 had admitted that it was he who filled up the body of the loan application as well as the suit pro-note. According to him, in these circumstances, the First Appellate Court ought not to have raised the presumption under Section 118 of the Negotiable Instruments Act. According to him, the trial Court had given convincing reasons for the conclusion that no consideration had passed under Ex.A2-pro-note and it has been established that it was executed only by way of guarantee and that since the plaintiff has not come to the Court with correct facts, the trial Court rightly dismissed the suit. No case was made out for interfering with the same.

5.Per contra, the learned counsel appearing for the respondent would contend that the appellant had admitted the signatures attributed to him both in Ex.A1 and A2 and that therefore, the presumption under Section 118 of the Negotiable Instruments Act was rightly invoked. The learned counsel for the respondent would further submit that no case has been made out for interfering with the decision of the First Appellate Court. He pressed for dismissal of the second appeal.

6.I carefully considered the rival contentions and went through the evidence on record. The specific case of the respondent is that he is running a finance business in the name and style of 'manoj bankers'. According to the respondent, the appellant approached him for financial assistance. The respondent had taken the appellant's signature in the loan application form. He also obtained the loan amount of Rs.75,000/- after executing the suit pro-note Ex.A2. Thus, the case of the respondent is anchored on these two documents namely Ex.A1 and A2. The defendant/appellant admits his signatures in both these documents. His primary defence is that he was not the primary borrower and that he was only a guarantor. According to the appellant, the transaction was essentially one between the plaintiff and one Murugesan. The appellant would claim that he affixed his signatures in order to oblige one Regin who was running an Auto Consulting Business. But the appellant did not examine either Regin or Murugesan. It is further seen that Ex.B1 was issued some time in July 1998. Ex.A1 and A2 are dated 11.11.1998. The suit itself was filed on 01.09.2001. The suit was not straight away filed. The evidence on record indicates that on 16.06.2001, the plaintiff issued suit



notice-Ex.A3. Even though intimation was sent to the appellant, he did not chose to receive the same. The appellant is not an illiterate villager. He is a government servant. He was working as male nursing assistant. He has not chosen to send any communication. If his signatures had been unlawfully obtained by the plaintiff, certainly, the defendant would have issued legal notice to the plaintiff demanding the return of the documents signed by him. It is true that there was a police enquiry. But then, the police complaint was given after filing of the suit filed by the plaintiff. Even if no presumption is drawn in terms of Section 118 of Negotiable Instrument Act, still as rightly held by the Appellate Court, the plaintiff had established the liability on the part of the defendant. Of-course, the defendant had succeeded in obtaining certain answers from the plaintiff during the course of cross-examination which apparently cast a cloud on the case of the plaintiff. In my view, they do not really go to the root of the matter.

7.When the plaintiff had not chosen to dispute the signatures in Ex.A1 and A2 and when the filing of the suit is preceded by Ex.A3-suit notice, I have to necessarily hold that the plaintiff had established his case against the defendant on a balance of probabilities. Therefore, even if I answer substantial question of law in favour of the appellant as regards drawal of presumption under Section 118 of Negotiable Instruments Act, since I have found that the plaintiff had established his case, I decline to interfere with the Judgment and decree passed by the Appellate Court.

8.Since it has been brought out on record that the respondent had initiated criminal prosecution against the said Murugesan, I wanted to know as to what happened to the said prosecution. The learned counsel for the appellant in my presence contacted the respondent and he makes a statement that the said Murugesan had passed away and therefore, the criminal prosecution initiated against him could not be pursued and that the respondent was not able to collect any amount from the said Murugesan. This statement made by the respondent through his counsel is placed on record. I find no ground to interfere. The second appeal is dismissed. It is seen that the suit was dismissed for default on 20.09.2003 and it was restored on 28.12.2005. For the period when the suit had suffered dismissal for default, the plaintiff will not be entitled to get any interest. No costs.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



rmi

To

- 1.The Principal District Munsif Court, Nagercoil.
- 2.The first Additional Sub Court, Nagercoil.

WEB COPY

Copy to

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-16599[F] dated
20/04/2021)

+1 CC to M/s.M.GNANAGURUNATHAN, Advocate (SR-16635[F] dated
20/04/2021)

Judgment made in
S.A.(MD)No.896 of 2011
19.04.2021

srk(CO)

TR(21.05.2021) 5P 7C