



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A(MD).No.784 of 2014

1.Vasanth
W/o.Mathias
2.Prasanth
S/o.Mathias
3.Pradeese
S/o.Mathias
4.Anu
D/o.Mathias

...Appellants/Respondents/Defendants

Vs

Iyyappan
S/o.Arumugam Pillai

...Respondent/Appellant/Plaintif

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.87 of 2012 dated 22.08.2013, on the file of the First Additional Subordinate Court, Nagarcoil, Camp at Padmanabhapuram and which was reversed the judgment and degree passed in O.S.No.69 of 2011 dated 22.12.2011, on the file of the learned Principal District Munsif-Cum-Judicial Magistrate Court, Eraniel.

For Appellants : Mr.K.Vamanan
For Respondent : Mr.T.Arul

JUDGEMENT

The defendants in O.S.No.69 of 2011 on the file of the learned Principal District Munsif-Cum-Judicial Magistrate Court, Eraniel are the appellants in the second appeal.

2.The said suit was instituted by one Iyyappan. The case of the plaintiff was that on 08.09.2008, the husband of the first appellant namely Mathias borrowed a sum of Rs.1,40,000/- and executed Ex.A1/Pro-Note. He returned a sum of Rs.1,00,000/- on 25.01.2009 and the endorsement was also made on Ex.A1. Mathias passed away on 08.12.2009 and there upon, the plaintiff issued legal notice dated 08.02.2010 to the defendants and the defendants sent reply notice dated 16.02.2010, denying the notice averments. Thereafter, the aforesaid suit for recovery of money came to be filed.



3.The defendants filed their written statement denying the suit claim. It was also contented that the said Mathias never borrowed any money from the plaintiff and that Ex.A1 has been fabricated. The plaintiff examined himself as P.W.1 and the attesor, namely, Suresh was examined as P.W.2 and Exs.A1 to A7 were marked. Pradeese/D3 examined himself as D.W.1 and no document was marked on the side of defendants. After considering the evidence on record, the trial Court, by judgement and decree dated 24.12.2011 dismissed the suit. Questioning the same, the plaintiff filed A.S.No.7 of 12 before the First Additional Sub Court, Nagarcoil, Camp at Padmanabhapuram. By judgement and decree dated 22.08.2013, the appeal was allowed, the decision of the trial Court was set aside and the suit was decreed. Challenging the same, this second appeal came to be filed. It was admitted on the following substantial questions of Law:-

'1.whether first Appellate Court was right in construing Ex.A.1 as promissory note in the light of the evidence of P.W.2 and decreeing the suit?

2.Whether Ex.A.1 suffers from vice of material alteration?''

4.The learned counsel for the appellant submitted that the Appellate Court ought not to have decreed the suit by reversing the well considered decision of the trial Court. He would further point out that in the written statement, the genuineness of Ex.A1 has been specifically impeached. Therefore, the burden fell entirely on the plaintiff to prove Ex.A1. Ex.A1 indicates that the borrowal was for urgent family purposes, but a reading of the evidence of P.W.2/Suresh would show that there were some other transactions between the plaintiff and Mathias. According to the learned counsel for the appellants, Ex.A1 cannot be considered as promissory note at all. The learned counsel for the appellants called upon the Court to answer the substantial questions of law in favour of the appellants and to restore the decision of the trial Court.

5.Per contra, the learned counsel for the respondent submitted that the first Appellate Court correctly appreciated the evidence on record and decreed the suit and the said judgement and decree do not call for any interference.

6.I carefully considered the rival contentions and went through the evidence on record. Section 4 of Negotiable Instrument Act 1881, defines promissory note in the following terms:-

"Promissory note"- A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by a maker, to pay a certain sum of money only to, or to the order of, a



certain person, or to the bearer of the instrument."

A mere look at Ex.A1 would show that it contains an unconditional undertaking to pay a sum of Rs.1,40,000/- to the plaintiff on demand. I therefore come to the conclusion that Ex.A1 was rightly treated as promissory note by the first Appellate Court. I answer the first substantial question of law against the appellants.

7.The said document on a careful perusal does not indicate any material alteration. ExA1 was originally executed for a sum of Rs.1,40,000/-. The endorsement made on Ex.A1 shows that on 25.01.2009 a sum of Rs.1,00,000/- was received from Mathias by the plaintiff Iyyappan. P.W.2/Suresh had signed as attesor on both the occasions, that is, when the original borrowing took place and again when, a portion of the amount was returned. Therefore, the second substantial question of law is also answered against the appellants.

8. The appellants in their written statement had taken the plea, that Ex.A1 is a fabricated document. In view of such denial by the defendants, the initial burden squarely lay on the plaintiff. The plaintiff discharged the same by examining the attesor. Thereafter, the defendants ought to have discharged the onus, after it was shifted to them. The defendants could have produced the admitted signature of Mathias that was contemporaneous. If the defendants had done so, the plaintiff would have sought forensic opinion. The defendants did not produce any such material.

9.I come to the conclusion that the evidence produced by the plaintiff stood un rebutted. In a case of this nature, when the executor had passed away, the plaintiff can only be expected to examine himself and the attesor of the document. The document was written on a stamp paper. The stamp paper was purchased only in the name of T.Mathias. The name of the stamp vendor is also mentioned. The defendants could have examined the stamp vendor. In these circumstances, the first Appellate Court was justified in reversing the decision of the trial Court and decreeing the suit as prayed for. Of course, the first Appellate Court rightly held that the appellants will not be personally liable or responsible for satisfying the decree. Their liability is limited to the extent of the inheritance from the deceased Mathias. If the appellants have not inherited any property from the Mathias, then obviously, the decree cannot be executed against the appellants personally. The impugned judgment and decree passed by the first appellate Court do not call for any interference.

10.Though I have answered the second question of law against the appellants, I am of the view that the plaintiff is entitled to interest only @ 6% per annum from the date of plaint till the date of realization. The Impugned judgment and decree are modified to



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this limited extent. Accordingly, the second appeal is partly allowed. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The First Additional Subordinate Judge, Nagarcoil, Camp at Padmanabhapuram.

2.The Principal District Munsif-Cum-Judicial Magistrate, Eraniel.

Copy to

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

+1 CC to M/s.T.ARUL, Advocate (SR-19293[F] dated 15/06/2021)

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SRR(CO)
KB(20.10.2021) 4P 6C