



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2021

CORAM

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.200 of 2016

Rajendran (died)

1.Thilagavathy

2.Minor Mugunthan ... Appellants/Respondents/Plaintiffs

(Minor A-2 is represented by his mother A-1)

Vs.

Jagadhambal

... Respondent/Appellant/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 29.01.2013 passed in A.S.No.67 of 2011, on the file of the Principal District Court, Thanjavur, reversing the judgment and decree, dated 30.03.2009 passed in O.S.No.51 of 2007 on the file of the Principal Sub Court, Thanjavur.

For Appellants

: Mr.P.Sesubalan Raja

For Respondent

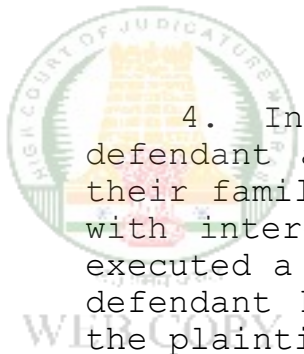
: Mr.G.Karnan

JUDGMENT

This second appeal has been directed against the Judgment and decree, dated 27.10.2014 passed in A.S.No.67 of 2011, by the Principal District Court, Thanjavur, reversing the judgment and decree, dated 30.03.2009 passed in O.S.No.51 of 2007 by the Principal Sub Court, Thanjavur, are reversed.

2. The husband of the first appellant, viz., Rajendran, as plaintiff has instituted a suit in O.S.No.51 of 2007 on the file of the trial Court for recovery of money of a sum of Rs.1,35,100/- along with interest, wherein, the respondent has been shown as the defendant.

3. For the sake of convenience, the parties are referred to as, as described before the trial Court.

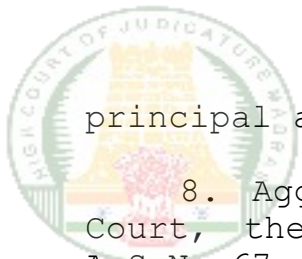


4. In the plaint it is averred that on 23.02.2004, the defendant and her husband had borrowed a sum of Rs.1,00,000/- for their family expenses and promised to repay the said amount borrowed with interest at the rate of 12% per annum to the plaintiff and executed a promissory note. Till the date of filing of the suit, the defendant has not paid either the principal or the interest. When the plaintiff has requested to pay the amount, the defendant delayed in paying the same. In the mean time, the defendant's husband passed away and the defendant had sought for some time to repay the same. Since the defendant had not paid the amount, on 07.03.2007 the plaintiff sent a legal notice and the same was also received by the defendant and sent a reply with untenable averments. Hence, the plaintiff filed the suit.

5. In the written statement filed on the side of the defendant, the defendant refuted the averments made in the plaint. The defendant had never borrowed any amount from the plaintiff on 23.03.2004 and executed any promissory note as alleged by the plaintiff. The plaintiff is the husband of one Thilagavathy, a professional money-lender. The defendant borrowed a sum of Rs.25,000/- from the wife of the plaintiff in the year 2000 and the defendant and her husband executed a blank promissory note in favour of the said Thilagavathy in the year 2000 and also repaid the amount in monthly installments at the rate of Rs.1,500/- per month from the year 2001 in two years. Thereafter, the defendant had also paid a sum of Rs.1,000/- per month to the said Thilagavathy, who had acknowledged the same. But, she demanded more money from the defendant which resulted in a criminal complaint filed by the said Thilagavathy against the defendant. The District Crime Branch Police enquired the matter and directed the said Thilagavathy to seek her remedy before the civil Court. Thereafter, the defendant issued a notice dated 24.09.2003 to the said Thilagavathy calling upon her to return the promissory note executed by the defendant in her favour. She never returned the blank promissory note. The plaintiff's wife had set up her husband by filling the blank pronote in the name of the plaintiff and he had filed the suit without any basis and prayed for dismissal of the suit.

6. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and one Senthil Kumar was examined as P.W.2 and Exs.A1 to A4 were marked. On the side of the defendant, D.W.1 to D.W.4 were examined and Exs.B.1 to B.10 were marked.

7. On the basis of the rival pleadings on either side, the trial Court has framed necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in favour of the plaintiff. The trial Court directed the defendant to pay a sum of Rs.1,35,767/- and to pay interest at the rate of 12% per annum from the date of plaint till the date of decree and 6% per annum from the date of decree till the date of realization for the



principal amount of Rs.1,00,000/-.

8. Aggrieved by the Judgment and decree passed by the trial Court, the defendant as appellant, had filed an Appeal Suit in A.S.No.67 of 2011. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has allowed the appeal and set aside the Judgment and decree passed by the trial Court.

9. Challenging the judgment and decree passed by the first Appellate Court, the present second appeal has been preferred at the instance of the plaintiff, as appellant.

10. At the time of admitting the present second appeal, the following substantial questions of law have been framed for consideration:

"i) Whether the first Appellate Court has erred in reversing the Judgment and a decree of the trial Court on the ground that the suit promissory note has been executed in a stamp paper three years prior to the date of execution?

ii) Whether the lower Appellate Court is right in reversing the judgment of the lower Court placing reliance on the evidence of D.W.4 alone without considering the reason for not accepting the evidence of D.W.4 was given before the trial Court and without considering the document Ex.B.1 and the reply to the suit notice wherein the defendant has not accounted the signature of the defendant's husband in the suit promissory note?

11. The learned counsel appearing for the appellants/plaintiffs contended that the first Appellate Court had erred in overlooking the admissions made by D.W.1 and allowed the appeal on mere assumptions and presumptions and the first Appellate Court had failed to consider the fact that the respondent had accepted the execution of suit promissory note by admitting her signature. The first Appellate Court has erred in doubting the veracity of the promissory note, since it has been executed in a stamp paper three years prior to the date of execution and the first Appellate Court ought not to have given any importance to the evidence given by D.W.2 to D.W.4 and prayed for allowing the Second Appeal.

12. The learned counsel appearing for the appellant relied on the Judgment of this Court in **T.Thiyagaraj Vs. K.R.Venugopalan and others** reported in **CDJ 2010 MHC 4537**.

13. The learned counsel appearing for the respondent / defendant would submit that the first Appellate Court, after analysing the documents available on record, has rightly allowed the

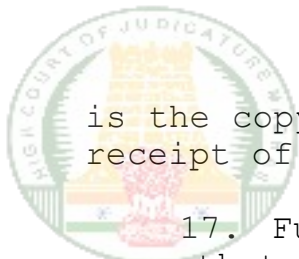


Appeal in favour of the respondent / defendant and prayed for dismissal of the Second Appeal.

14. Heard the learned counsel for the appellants and the learned counsel for the respondent and perused the materials available on record.

15. It is the case of the plaintiff that the signature in Ex.A.1 suit promissory note, dated 23.03.2004 was admitted by the respondent and she denied the contents of Ex.A.1 document and therefore, the plaintiff had proved the contents of the document and the presumption in favour of the plaintiff has not been rebutted through the evidence produced on the side of the defendant and the trial Court appreciated the evidence on record and decreed the suit. It is the case of the defendant that the blank promissory note executed by the defendant in favour of the wife of the plaintiff was in the year 2000 and the same had been misused by the plaintiff to file the suit for recovery of money on the basis of the promissory note and even though the signature in the promissory note was admitted by the defendant, through consistent evidence, the defendant has proved that the promissory note was not executed for any valid consideration and disproved the case of the plaintiff by rebuttal evidence and the lower Court miserably failed to appreciate the evidence on record and wrongly decreed the suit in favour of the plaintiff.

16. On a perusal of the materials available on record, it is seen that Ex.A.1-promissory note was dated 23.03.2004. However, the stamp paper was purchased in the name of Subramanian on 20.09.2000 and the seal of the Treasury Office was dated 01.08.2000. The contents of Ex.A.1 and signature and address of the scribe, who was examined as P.W.2, are found written in black ink and while so, the other contents of Ex.A.1 including the thumb impression are in blue ink. As per the evidence of P.W.1-plaintiff, the stamp paper was purchased and brought by the defendant herself and the plaintiff did not know about the person in whose name the stamp paper was purchased and he did not raise any objection for the execution of the promissory note by the defendant in the stamp paper purchased in the name of different person more than three years ago. The evidence of P.W.2-scribe was that he did not even enquire about the use of the old stamp paper for the execution of the suit promissory note. Therefore, it is clear that there was no explanation on the side of the plaintiff with regard to use of the very old stamp paper in the name of different person. Ex.A.2-legal notice was issued by the plaintiff, for which the defendant had sent Ex.A.3 reply legal notice. In Ex.A.3, the defendant made the defence that she borrowed money from the wife of the plaintiff, who is a habitual money lender and repaid the amount, but the wife of the plaintiff has not returned the promissory note and preferred a police complaint and the defendant had issued a notice on 24.09.2003 to the wife of the plaintiff. The same was acknowledged by her on 06.10.2003. Ex.B.1

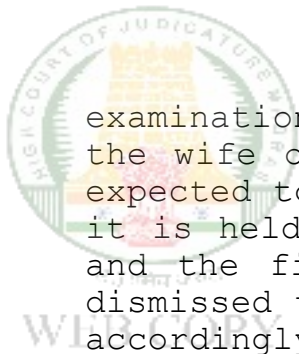


is the copy of the legal notice and Ex.B.2 is the acknowledgment for receipt of Ex.B.1 by the wife of the appellant.

17. Further, in the cross-examination of the plaintiff it is seen that the plaintiff has deposed that he was not aware of the said legal notice issued on 24.09.2003 and only after that he has filed a suit which was not replied by the plaintiff's wife was not known to the plaintiff is not accepted. Further, it is seen that the plaintiff and his wife are living in the same house and his wife being a habitual money lender and the plaintiff denied that he was not aware of contents of Ex.A.3 in the plaint and the said promissory note has been accepted by the plaintiff that he prepared the promissory note, but he was not in a position to state how he was in such a position to pay the amount. It is further seen that the plaintiff was working as an employee of BSNL, who was a Central Government employee, and the service rules would show that the said persons cannot lend any amount for interest. That being the case, this shows that the said claim made by the plaintiff prohibits the plaintiff from lending any amount for getting interest for the amount and his own admission in the evidence that he will be saving only Rs.3,000/- or Rs.4,000/- and it is surprising to say that without even withdrawing any money from the Bank he has owned only Rs.1,00,000/- at home as cash, is also not supported by any materials. That being the case, the trial Court has erroneously come to a conclusion that the plaintiff had lend money to the defendant and the same is not convincing and the same is liable to be rejected.

18. It is not in dispute that the plaintiff and his wife, who was examined as D.W.2, were living together in the same premises. The evidence of the plaintiff is not at all believable. The plaintiff has not whispered anything about the contents of Ex.A.3 notice in his plaint. There was no specific denial of the contents of Ex.A.3-notice in the plaint, even though Ex.A.2-notice and Ex.A.3-reply legal notice were filed along with the plaint at the time of institution of the suit.

19. It is not in dispute that D.W.4 was the only attesting witness in Ex.A.1 document and she gave evidence supporting the case of the defendant. The trial Court rejected the evidence of D.W.4 on the ground that D.W.4 also obtained loan from the wife of the plaintiff and was also working along with the defendant. The trial Court failed to appreciate the evidence of D.W.4 and that her evidence corroborates with the above circumstances in the evidence on record. The evidence of D.W.4 is not only corroborating the evidence of D.W.1, but also the evidence of D.W.3-the Sub-Inspector of the District Crime Branch, Thanjavur, that the wife of the plaintiff lodged a complaint against one Karpagam, wife of Saminathan, who is D.W.4 and also against one Jagathambal, wife of Subramanian. The evidence of D.W.3 was that one Thilgavathy lodged a complaint against the said Karpagam was not elicited in his cross-



examination. On the other hand, the trial Court failed to see that the wife of the plaintiff, who was examined as D.W.2 could not be expected to support the case of the defendant. In the circumstances, it is held that the defendant proved her case by rebuttal evidence and the first Appellate Court has rightly allowed the appeal and dismissed the suit and the substantial questions of law are answered accordingly as against the appellant/plaintiff and in favour of the respondent/defendant. The Judgment relied on by the learned counsel appearing for the appellants in T.Thiyagarajan's case (cited supra) regarding the filling up of suit promissory note does not support the case of the appellant and the same is hereby dismissed.

20. In fine, this Second Appeal is dismissed without any order as to costs and the judgment and decree, dated 29.01.2013 passed in A.S.No.67 of 2011, on the file of the Principal District Court, Thanjavur, is confirmed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Court,
Thanjavur.

2.The Principal Sub Court,
Thanjavur.

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

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22.11.2021

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