



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 23.11.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A.(MD) No.317 of 2018

and

C.M.P(MD) No.8823 of 2018

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Murugesan ... Appellant/Respondent/Plaintiff
Vs.

Chinnakandiyanagoundar (Died)

Kaliyammal ... Respondent/Appellant/2nd Defendant

PRAYER : Second Appeal filed under Section 100 of CPC against the Judgment and Decree, dated 19.07.2018 passed in A.S.No.07 of 2016, on the file of the Additional District Court (Fast Track Court), Palani, reversing the Judgment and Decree, dated 28.02.2011 passed in O.S.No.188 of 2006, on the file of the Sub Court, Palani.

For Appellant : Mr.M.P.Senthil

For Respondent : Mr.B.Rajesh Saravanan

JUDGMENT

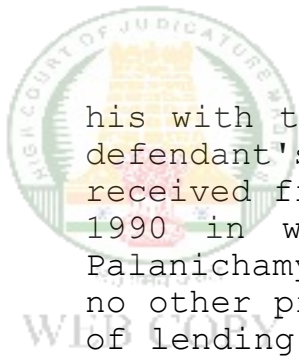
The present second appeal has been preferred against the Judgment and Decree, dated 19.07.2018 passed in A.S.No.07 of 2016, on the file of Additional District Court (Fast Track Court), Palani, reversing the Judgment and Decree, dated 28.02.2011 passed in O.S.No.188 of 2006, on the file of the Sub Court, Palani.

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

3.The case of the plaintiff, as per the averments made in the plaint, in short, reads as follows:-

The 1st defendant received a sum of Rs.1,00,000/- from the plaintiff on 10.12.2004 and agreed for payment of interest at the rate of 0.75 paise, for Rs.100/- and had executed a promissory note. Instead of repeated demands by the plaintiff, there was no payment by the 1st defendant. On 23.03.2008, the 1st defendant died. Since the 2nd defendant, who is the wife of the 1st defendant, succeeded the estate of the 1st defendant, she is liable to repay the amount borrowed by her husband. Hence, the suit.

4.The second defendant filed a written statement, contending *inter alia* that the suit promissory note is a created and forged one. Plaintiff is not entitled for any relief. The first defendant had not executed any promissory note and not received amount, as claimed by the plaintiff. The plaintiff has suppressed the relationship of



his with the 1st defendant. The plaintiff is the brother of the 1st defendant's daughter. Since the plaintiff had not repaid the amount received from one Unnamalaiyammal, she filed a Suit in O.S.No.845 of 1990 in which, the plaintiff's property was taken over by one Palanichamy through Court auction purchase. When the plaintiff has no other property, except the court auctioned property, the question of lending money to the 1st defendant does not arise all. Since this defendant has no issue, the plaintiff forced the defendant to execute the property in his favour. Since the defendant refused to execute the property in favour of the plaintiff, the plaintiff filed the suit by creating the suit promissory note. Hence, prayed for dismissal of the suit.

5.During trial, before the trial Court, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and marked 4 documents as Exs.A1 to A4. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and 2 documents were marked as Exs.B.1 and B.2.

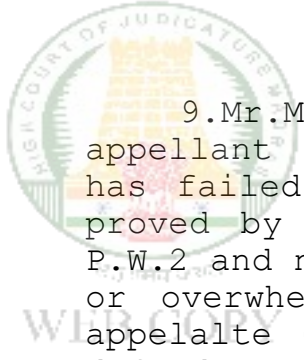
6.On analysis of materials adduced and on the basis of the rival pleadings on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, had decreed the suit in favour of the plaintiff .

7.Aggrieved by the Judgment and Decree passed by the trial Court, the 2nd defendant, as appellant, had filed an Appeal Suit in A.S.No.07 of 2016, on the file of the Additional District Court, (Fast Track Court), Palani. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, had allowed the appeal by setting aside the Judgment and Decree of the trial Court and dismissing the Original Suit.

8.Being disconcerted and aggrieved by the said Judgement and Decree of the first appellate Court, the plaintiff filed this Second Appeal on various grounds and also suggesting some substantial questions of law, as below:-

"1.Whether the lower appellate Court is right in law in mechanically accepting the version of the respondent as if the appellant has no means to advance the amount involved in the pro-note under Ex.A1 merely on the basis of Ex.B1 without advertting to the presumption provided under Section 118 of the Negotiable Instruments Act?

2. Has not the lower appellate Court erred in law in dismissing the Suit by reversing the findings of the trial Court absolutely without any cogent reasons, merely on surmises and conjectures, even overlooking the evidence of P.W.1 and P.W.2 as well as the very admission of D.W.1 in a right perspective?."

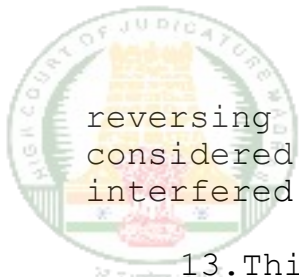


9.Mr.M.P.Senthil, the learned Counsel appearing for the appellant / plaintiff would submit that the first appellate court has failed to advert that the due execution of pronote has been proved by the plaintiff by examining the attesting witness viz., P.W.2 and no contra evidence was adduced by the 2nd defendant to tilt or overwhelm the evidence adduced by the plaintiff. The first appellate Court has mechanically accepting the version of the 2nd defendant, as if the plaintiff has no means to advance the amount involved in the pronote under Ex.A1 merely on the basis of Ex.B1 without adverting to the presumption relating to passing of consideration provided under Section 118 of the Negotiable Instruments Act. The first appellate Court completely overlooked even assuming without admitting the plea of the 2nd defendant relating to inheritance of property by her through Ex.B2 still she is liable to repay the amount borrowed by her husband / 1st defendant, as she has succeeded in the estate of the 1st defendant on the very own plea of the defendant herself.

10.The learned Counsel would further submit that the lower appellate Court has completely overlooked the due execution of the pronote under Ex.A1, which has been proved without any doubt by examining the plaintiff himself as P.W.1 as well as attesting witness of Ex.A1 viz., P.W.2. The lower appellate Court having accepted the plea of the plaintiff, the due execution of Ex.A1 ought to have decreed the suit on the basis of evidence of P.W.2, attestor of Ex.A1. It is his further submission that whenever the Judgment of the first appellate Court was a Judgment of reversal, it is the primary duty of the first appellate Court while reversing the findings of the trial Court to consider the reasons given by the trial Court and those reasons must also be reversed, but the same was not done in this case. Therefore, the findings of the first appellate Court is not binding on the Second Appellate Court.

11.Adding further, the learned Counsel appearing for the appellant/plaintiff would contend that to upturn a well considered judgment of the trial court, the first appellate court, dealing with an Appeal under Section 96 C.P.C., should assign reasons indicating as to where the trial court has gone wrong and what should have been the right approach. This exercise must be done by the first appellate court, when it intends to upturn a well considered judgment. Suffice to state that the first appellate has not done this important duty, keeping in mind the rigor of Section 96 C.P.C., which is a statutory right available to the aggrieved person. Hence, the learned counsel prayed for setting aside the Judgment made by the first appellate Court and allowing the Second Appeal.

12.Mr.B.Rajesh Saravaan, the learned Counsel appearing for the Respondent/Defendant would submit that the first appellate court upon considering the materials adduced on either side and



reversing the Decree and Judgment of the trial Court. The well considered Judgment of the first appellate court need not be interfered with and prayed for dismissal of the second appeal.

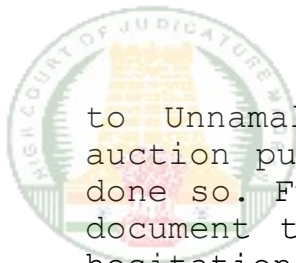
13.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

14.It is the case of the plaintiff that the 1st defendant received a sum of Rs.1,00,000/- from the plaintiff on 10.12.2004 and agreed for payment of interest at the rate of 0.75 paise, for Rs.100/- and had executed a promissory note to that effect. Instead of repeated demands by the plaintiff, there was no payment by the 1st defendant. On 23.03.2008, the 1st defendant died. Since the 2nd defendant, who is the wife of the 1st defendant, succeeded the estate of the 1st defendant, she is liable to repay the amount borrowed by her husband.

15.It is the case of the defendant that the first defendant had not executed any promissory note and not received amount, as claimed by the plaintiff. The plaintiff has suppressed the relationship of his with the 1st defendant. The plaintiff is the brother of the 1st defendant's daughter. Since the plaintiff had not repaid the amount received from one Unnamalaiyammal, she had filed a Suit in O.S.No.845 of 1990 in which, the plaintiff's property was taken over by one Palanichamy through Court auction purchase. When the plaintiff has no other property, except the court auctioned property, the question of lending money to the 1st defendant does not arise at all. Since this defendant has no issue, the plaintiff forced the defendant to execute the property in his favour. Since the defendant refused to execute the property in favour of the plaintiff, the plaintiff filed the suit by creating the suit promissory note. The suit promissory note is a created and forged one. Plaintiff is not entitled for any relief.

16.Ex.B1 is the Sale Deed, dated 15.12.2004. On perusal of Ex.B1 would reveal that one Unnamalai Ammal filed a suit in O.S.No.845 of 1993, before the District Munsif Court, Palani, against P.W.1, for not repaying the amount, which he borrowed. The Suit is ended in favour of Unamalai Ammal. Pursuant to the Execution Petition filed by the said Unnamalai Ammal in E.P.No.483 of 1993 in O.S.No.845 of 1990, on 18.02.1993, one Chidambaram Chettiar purchased the property of P.W.1 through Court Auction Purchase and he sold the same to one Palanichamy Gounder, for Rs.80,000/- and the sale certificate was issued on 08.12.2004.

17.Ex.A1 is the pro-note, dated 10.12.2004 said to have been executed by 1st defendant in favour of the plaintiff. According to the plaintiff, he had given a sum of Rs.1,00,000/- to the 1st defendant for interest at the rate of Rs.0.75/- for Rs.100/- per



to Unnamalai Ammal, which he received and prevented the Court auction purchase and kept his property with him, but P.W.1 had not done so. Further, in this regard, the plaintiff has not produced any document to substantiate his stand. Therefore, this Court has no hesitation to come to a categorical conclusion that P.W.1 has no means to advance the amount involved in the pro-note under Ex.A1. When that being the case, the trial Court merely on surmises and conjunctures, without properly appreciating the evidence P.W.1 and P.W.2, held Ex.A-1 is true and genuine, which this Court unable to accept.

18.In fine, the Second Appeal is dismissed, confirming the Judgment and Decree, dated 19.07.2018 passed in A.S.No.07 of 2016, by the learned Additional District Judge (Fast Track Court), Palani, in reversing the Judgment and Decree, dated 28.02.2011 passed in O.S.No.188 of 2006, by the learned Sub Judge, Palani. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised 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 Additional District Judge(Fast Track Court),
Palani.
- 2.The Sub Judge,
Palani.

Copy to:

The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

- +1 CC to M/s.B.RAJESH SARAIVANAN,Advocate (SR-35603 dated 24/11/2021)
+1 CC to M/s.M.P. SENTHIL, Advocate (SR-35815 dated 25/11/2021)

S.A. (MD) No.317 of 2018
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