BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **23.12.2021**
CORAM
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
S.A(MD)No.213 of 2017
and
C.M.P(MD)No.4263 of 2017

J.Sundari Ammal ... Appellant/Appellant/Defendant

Vs.

R.Vellaichamy ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 25.11.2016 passed in A.S.No.4 of 2014, on the file of the Principal District Court, Tuticorin, confirming the judgment and decree, dated 31.10.2013 passed in O.S.No.215 of 2008, on the file of the Subordinate Court, Tuticorin.

For Appellant : Ms.P.Jessi Jeeva Priya
for Mr.G.Aravinthan
For Respondent : No Appearance

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.215 of 2008 by the Subordinate Court, Tuticorin and in A.S.No.4 of 2014, by the Principal District Court, Tuticorin, are being challenged in the present Second Appeal.

2. The respondent/plaintiff has instituted a suit in O.S.No.215 of 2008, on the file of the trial Court for recovery of money directing the defendant to pay a sum of Rs.1,35,833/- along with future interest on Rs.1,00,000/- from the date of plaint till the date of realisation from the asset (L) Jeyachandran, wherein, the present appellant has been shown as defendant.

3. The case of the plaintiff is that the defendant's husband B.Jeyachandran, son of Balaiya Nadar, had borrowed a sum of Rs.1,00,000/- on 21.12.2005 from the plaintiff for his family expenses and executed a promissory note on the same day in favour of the plaintiff promising to repay the said sum with interest at the rate of 12% per annum. Inspite of many demands made by the plaintiff, the defendant's husband did not pay either the principle amount nor the interest. In the meantime, the defendant's husband-B.Jeyachandran died in the year 2006, leaving behind him the defendant as his only legal heir to succeed the movable and immovable properties of B.Jeyachandran. The defendant, as a legal

heir, was enjoying the properties of her husband and as such, the defendant is liable to discharge the debts of her husband. Hence, the plaintiff demanded the payment of the loan from the defendant, immediately, after the death of her husband. Since the defendant was not intended to pay any amount, the plaintiff filed the suit.

4. The defendant filed a written statement denying all the averments made in the plaint and submitted that the plaintiff is running a finance company under the name of style of "NPK Kuruthammal Finance" at Tuticorin and he is the proprietor of the same. On 01.01.1996, the defendant's husband had borrowed a sum of Rs.32,500/- to purchase a Hero Honda Motor cycle and by availing the loan, the defendant's husband had purchased the Hero Honda Motor cycle bearing Registration No.TN-69-B-1067 and the defendant's husband had repaid the loan amount as agreed and the same has been endorsed in the passbook issued by the plaintiff. Further, the defendant's husband had requested the plaintiff to sign in the necessary forms to submit before the transport office, Tuticorin, so as to cancel the hypothecation endorsement in the RC Book of the motor cycle. Inspite of repeated demands, the plaintiff refused to sign in the necessary form. At the time of getting loan, the plaintiff obtained signatures from the defendant's husband in many blank papers with revenue stamp and printed forms. Since the plaintiff was claiming more interest, the hypothecation endorsement could not be cancelled and still it is subsisting in the original RC of the above referred Motor cycle. After the death of the defendant's husband, the plaintiff refused to cancel the hypothecation endorsement in the RC book and filed the suit. The plaintiff had filled up the blank paper, which were signed by the defendant's husband and had fabricated it into a promissory note and prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A4 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and Exs.B.1 & B.2 were marked.

6. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit.

7. Aggrieved by the Judgment and decree passed by the trial Court, the defendant, as appellant, had filed an Appeal Suit in A.S.No.4 of 2014. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

8. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendant, as appellant.

9. At the time of admitting the present second appeal, this Court had framed the following substantial questions of law, for consideration:

"a. Whether the presumption under Section 118 of the Negotiable Instrument Act, in favour of the holder is available, against the deceased executant.

b. Whether the Courts below are correct in relying on Ex.A.3 without verifying that it is not complied with the requirements stipulated under Section 65-B of the Evidence Act?

c. Whether the document received without complying with under Section 65-B of the Indian Evidence Act can be relied on as relevant document within the provisions of Section 34 of the Indian Evidence Act for proving each particular entry therein?

d. Whether the lower Appellate Court has committed an act of illegality in passing a personal decree, as against the legal representative of the debtor, without restricting the enforceability of the decree, in so far is related to or to the extent of the estate of the deceased debtor, available in the hands of the legal representative, namely, the appellant?

e. When the respondent is a licensed money lender under the Tamil Nadu Money Lenders Act, whether the failure to draw presumption for not producing the account books directed to be maintained under Section 9(1)((a) and (b)) of Tamil Nadu Money Lenders Act thereto is an act of illegality committed by the Court?"

10. The learned counsel appearing for the appellant/defendant would submit that the first Appellate Court has committed an act of illegality in law, in taking the entries under Ex.A.3 to rely upon the plea made by the respondent, as a proof for the payment of a sum of Rs.1,00,000/- as loan, to the deceased husband of the appellant, whereas, Ex.A.3 entries are not admissible in evidence, unless the ledgers were produced by the respondent. The first Appellate Court cannot accept all the said documents, unless, the electronic devices were to be produced by the respondent and accompanied with the certificate, as contained under Section 65-B (4) of the said Act, identifying the electronic record containing the statement and describing the manner by which, it was produced and giving such particulars of any device involved in the production of that electronic records, as may be appropriate, for the purpose of showing that the electronic record was produced by the computer and dealing with the matters, to which the condition mentioned in sub-Section (2) relates. The first Appellate Court ought to have seen that as per the evidence of P.W.2, purporting to be an attestor

to Ex.A.1-promissory note, she raised loan, by pledging her jewels, on 21.12.2005, whereas, there was no entry, for giving loan to P.W.2 on 21.12.2005 and the same would clearly go to show that the entire A3 document had been created only for the purpose of this case and that the entries made therein are inadmissible in evidence, without the production of the ledger books as well as the rough day book and prayed for allowing the Second Appeal.

11. Heard the learned counsel for the appellant and also perused the records carefully.

12. The case of the plaintiff is that the defendant's husband had obtained a loan of Rs.1,00,000/- for his family expenses. Since he did not repay the said sum with interest at the rate of 12% per annum, the plaintiff filed a suit for recovery of money. The case of the defendant is that her husband obtained a loan to the tune of Rs.32,500/- for purchasing a Hero Honda Motor cycle on 01.01.1996 and he repaid the said amount. But the plaintiff has not cleared the endorsement made in the RC book and had utilised the said papers, which has been executed in the year 2005, misusing the same has filed the suit, which is barred by limitation and the documents which were given as security for payment of loan has been misused. The plaintiff submitted that the said money has been paid to the defendant's husband and in order to prove his case, the plaintiff has produced the promissory note, dated 21.12.2005 has been marked as Ex.A.1, the money lending licence, has been marked as Ex.A.2, 2005-2006 day book original, has been marked as Ex.A.3, and the income tax receipts, has been marked as Ex.A.4 and these documents would prove that the plaintiff has paid a sum of Rs.1,00,000/- to the defendant's husband.

13. The defendant was not in a position to prove her case that the defendant's husband had accompanied with the plaintiff, when he obtained the loan to purchase the two-wheeler either in the written statement or in the chief-examination and only for purchasing the Hero Honda Vehicle, the plaintiff had obtained signature in various blank papers and promissory note was not proved beyond doubt. D.W.2 in his evidence, has stated that he went along with the defendant's husband while paying the money in instalments, but he has not stated in his evidence that the plaintiff has not questioned the loan obtained by the defendant's husband. From the evidence of D.W.2, it is seen that Ex.A1-promissory note is a genuine one. Accordingly, the defendant was not in a position to prove that the signature in the promissory note was not of her husband and without any receipt of money, the defendant's husband has signed in the said document, was also not proved by the defendant. The plaintiff was able to prove the same through P.W.2, who in his cross-examination, has deposed that only after receiving the money, the defendant's husband alleged to have signed the same and also the defendant has not put any question to the witnesses that the said document was executed only at the time of obtaining the loan for the purchase of a Hero

Honda Motor cycle and when such a question has been taken as a main point, she has not denied the same in the written statement and has not even put a suggestion to the witness regarding the same while examining the witnesses and they were not able to establish the true facts as denied in the written statement. The genuinety of the day book ledger was also questioned by the defendant, but they were not in a position to establish the said accounts which were maintained are forged one or it is a created document for this case.

14. In Ex.A.3-day book ledger, it has been found that the loan amount has been disbursed, wherein, it is clearly found that including the defendant's husband many other persons also obtained loan and the same would prove that the said document is a genuine one and the said day book ledger was not proved to be a false or forged document. D.W.2 in his cross-examination, had admitted that how much money obtained as loan was not known to him and the defendant's wife is a relative through his wife and the payment of money for the loan obtained for the motor cycle was also not known to him and the payment of full loan amount was also not known to him. When D.W.1 and D.W.2-witnesses have stated in their evidences that the plaintiff was asking more interest, the defendant has not proved the same by producing appropriate oral or documentary evidence. It is not established by the defendant that she has taken steps to give police complaint, if the said interest demanded was more for settling the amount. As the defendant has not taken any prudent steps to prove the case with substantiating evidence, the trial Court as well as the first Appellate Court has rightly arrived at a conclusion that the defendant is liable to pay a sum of Rs.1,35,833/- along with future interest on Rs.1,00,000/- from the date of plaint till the date of realization from the assest (L) Jeyachandran.

15. Section 65-B of the Indian Evidence Act reads as follows:-

> "*65B. Admissibility of electronic records. -- (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.*"

16. In this case, the plaintiff has produced Ex.A.3, which is only a day book ledger and not an electronic record. That being the

case, the questions of law raised are not acceptable and the defendant has not proved her case. The substantial questions of law are ordered accordingly in favour of the plaintiff and against the defendant.

17. In fine, this Second Appeal is dismissed. No costs. The Judgments and decrees passed in O.S.No.215 of 2008 by the Subordinate Court, Tuticorin and in A.S.No.4 of 2014, by the Principal District Court, Tuticorin, are confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

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Sub Assistant Registrar(CS)

ps

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,
Tuticorin.

2.The Subordinate Judge, Tuticorin.

Copy to

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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PK(CO)
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