

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2022
PRONOUNCED ON : 07.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.No.279 of 2013

R.Jayaprakash

...Appellant / Plaintiff

Vs.

C.Palanisamy

...Respondent / Defendant

Prayer : This Appeal Suit has been filed, under Order 41 Rule 1 r/w Section 96 of the Civil Procedure Code, against the Judgment and Decree, dated 18.03.2013 made in O.S.No.51 of 2009 on the file of the First Additional District Judge, Erode.

For Appellant : Mr.N.Damodaran

For Respondent : Mr.M.Govindaraju

JUDGEMENT

1. This Appeal Suit has been filed, against the Judgment and Decree, dated 18.03.2013 made in O.S.No.51 of 2009 on the file of the learned First Additional District Judge, Erode.

2. The appellant is the plaintiff and the respondent is the defendant in O.S.No.51 of 2009 on the file of the learned First Additional District Judge, Erode. The suit was filed for recovery of money with interest and for costs of the suit.

3. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the suit.

4. The case of the Plaintiff, as set out, in the plaint is that on 06.12.2007, the Defendant has borrowed a sum of Rs.17,00,000/- from Plaintiff for his urgent family and business expenses and he executed the suit promissory note in favour of the Plaintiff on the same day. The Defendant also agreed to repay the same to the Plaintiff on his demand, with interest at the rate of 12% per annum per hundred. In spite of repeated demands made by the Plaintiff, the Defendant has not paid any amount either towards interest or towards principal. Thereafter,

on 27.01.2009, the Plaintiff issued a registered notice to the Defendant. Though, the same was acknowledged by the Defendant, he has not taken any steps to repay the said amount. However, on 06.02.2009, the Defendant has issued a reply to the Plaintiff, and the contents of the reply were not admitted by the Plaintiff. Therefore, the suit has been filed by the plaintiff, seeking reliefs, as stated above.

5. The averments found in the written statement filed by the Defendant, are as follows:

(i) The defendant denied the execution of the suit promissory note and also denied the consideration. It is stated that the defendant is aged about 73 years and an agriculturist, thereby, he has no necessity to borrow such a huge amount for interest. Further, the Plaintiff is an utter stranger to the defendant and he has never seen the Plaintiff on any occasion.

(ii) The properties mentioned in I.A.No.107 of 2009, filed by the Plaintiff for attachment in this suit, are very valuable properties situated at Trichy - Kovai N.H.67. In the above said properties, Item Nos.1 to 10 are ancestral properties of the defendant and Item Nos.11 to 14 were purchased by the Defendant through court sale deed in the specific performance suit in O.S.No.55 of 1996 on the file of the Sub Court, Karur filed by the Defendant against one Devanna Gounder, Son of Palanimalai Gounder. Due to this, Devanna Gounder developed enmity over the Defendant. Hence, the said Devanna Gounder created illegal documents of power of attorney deeds, sale deeds with regard to the above said items of properties against the Defendant. He continuously gave troubles to the Defendant. The Defendant was not able to handle the Devanna Gounder individually.

(iii) At that time, some political persons namely Lakshmi Duraisamy and T.P.Karuppusamy voluntarily approached the Defendant to help and solve the problem against the Devanna Gounder. But they demanded 6 acres of land from the Defendant, signed blank promissory note and signed blank papers of the Defendant. Agreeing to the same, the Defendant executed sale deed in favour of D.Vijayanandh, who is son of Lakshmi Duraisamy and T.P.Karuppusamy. Thereafter, Lakshmi Duraisamy and T.P.Karuppusamy had lodged a criminal complaint against Devanna Gounder and others. Thereafter, Devanna Gounder and others cancelled the forged fabricated documents. But again, Devanna Gounder tried to create another fabricated document in favour of P.Balasubramanian, P.T.Rajamani and M.Natarajan in respect of the said properties. Hence, D.Vijayanandh had lodged a criminal complaint against Devanna Gounder and others before the District Crime Branch, Karur and the same is pending.

(iv). The said Lakshmi Duraisamy and T.P.Karuppusamy colluded together with an intention to grab the entire property from the Defendant. The Defendant came to know about the same, later. Thereafter, they demanded the Defendant to sell the entire property to them at a cheaper rate. But the Defendant denied the same. However, the value of the property induced them to grab the same by hook or crook. The Plaintiff is the close associates with the above persons. The witness and scribe of the suit promissory note were residing in the same village of T.P.Karuppusamy. All the above persons colluded together with an intention to make trouble to the Defendant to grab the said property. They might have used the blank promissory note executed by the Defendant. The suit promissory note is materially altered as per their wish. It is stated that no consideration was passed as alleged in the plaint. Hence, the present Suit is liable to be dismissed.

6. As against the same, the Plaintiff filed a reply statement, denying the allegation made by the Defendant in the written statement. He has categorically denied that he is the close associate of Lakshmi Duraisamy and also denied that the witness and the scribe of the suit promissory note were residing in the same village of T.P.Karuppusamy and also denied that they might have used the blank promissory note executed by the Defendant and the suit promissory note is materially altered as their wish. They created the suit promissory note signatures as the Defendant's signature found in the blank promissory note are also denied. Further, it was denied that no consideration was passed as alleged in the plaint. There is no relationship between the plaintiff and the said Lakshmi Duraisamy, T.P.Karuppusamy and Vijayanandh. They are all close associates with the Defendant alone. The plaint averments that the Defendant received a sum of Rs.17,00,000/- from the Plaintiff and he executed the suit promissory note, are true and genuine one. Further, the Defendant did not deny the thumb impression found in the suit promissory note. Therefore, he prays to decree the suit.

7. On the pleadings of the parties, the following issues were framed by the Trial Court:-

- (i) Whether the suit promissory note is true and valid?
- (ii) Whether the plaintiff is entitled to the suit amount?
- (iii) Whether the plaintiff is entitled to decree as prayed for?
- (iv) To what relief the plaintiff is entitled?

8. Before the Trial Court, on the side of the Plaintiff, PW.1 and PW.2 were examined and Ex.A1 to Ex.A4 were marked. On the side of the Defendant, DW.1 to DW.3 were examined and Ex.B1 to Ex.B15 were marked. After considering the facts and

circumstances of the case, by an order dated 18.03.2013, the learned First Additional District Judge, Erode, has dismissed the suit. Aggrieved by the same, this Appeal Suit has been filed by the Plaintiff.

9. This Court heard the submissions of the learned counsel on either side and perused the materials available on record.

10. The learned counsel appearing for the Appellant/Plaintiff has submitted that the Respondent/Defendant received a sum of Rs.17,00,000/- from the Appellant/Plaintiff and though, he executed a suit promissory note/Ex.A1, he has not paid any amount towards interest and principal. Therefore, the plaintiff has issued a legal notice/Ex.A2 to the Respondent/Defendant. He also acknowledged the same, which was marked as Ex.A3. However, he has not taken any steps to repay the same. On the side of the Appellant/Plaintiff, Ex.A1 to Ex.A4 were marked to prove his contention. He further submitted that on the side of the Respondent/Defendant, Ex.B1 to Ex.B14 were marked but the same do not relate to the present case on hand. He further submitted that consideration was passed on. The Respondent/Defendant stated different story and he has not denied thump impression. It is the duty of the Respondent/Defendant to prove his contention that the suit promissory note is not executed by him, but he has not taken any steps to prove his contention. He further submitted that both oral and documentary evidence considered by the Lower Court are vitiated and conclusion arrived at is not supported by any material evidence. Hence, the entire findings of the Lower Court are liable to be set aside and accordingly, he prays to allow this appeal.

11. The learned counsel appearing for the Respondent/Defendant has submitted that the appellant/plaintiff has not pleaded anything regarding thump impression in the plaint and hence he was not given any opportunity to deny the same. Without pleadings, they cannot make submissions before this Court. Vijayanandh and T.P.Karuppusamy are friends. This was proved by the respondent/defendant and only at their instigation, the plaintiff filed the present suit. DW2 and DW3 are not their own evidence. The contention of the respondent is that the suit promissory note was a created one and it was clearly established before the Lower Court. The respondent/defendant rebutted the contention raised by the plaintiff by way of proper witness and documents. The plaintiff failed to establish his case. The lower Court after considering all the records, arrived at a proper conclusion and therefore, he prays to dismiss the present appeal suit. The learned counsel appearing for the Respondent/Defendant, in support of his contentions, has relied upon the following citations:-

- 1.2006 (4) MLJ 1734 - K.V.Krishnan vs. B.A.Damodaran.
- 2.2010 (11) SCC 441 - Rangappa vs. Sri Mohan.
- 3.2017 (1) MWN (Civil) 67 - P.Jayarama Pillai vs. K.Balakrishnan.
- 4.2017 (3) MWN (Civil) 225 - M.R.Rathindran vs. Saraswathi Narayanan and others.

12. In this case, PW.1 has deposed that on 06.12.2007, the defendant borrowed a sum of Rs.17,00,000/- from the Plaintiff and executed a suit promissory note, which was marked as Ex.A1. Thereafter, he failed to repay the principal and interest amount. Therefore, he has issued a legal notice to the Respondent/Defendant, which was marked as Ex.A2. He also acknowledged the same, which was marked as Ex.A3. The defendant sent a reply to the plaintiff, which was marked as Ex.A4. However, he has not taken any steps to repay the same. PW.1 further deposed that he do not know Devanna Gounder, Lakshmi Duraisamy, T.P.Karuppusamy and D.Vijayanandh. Hence, he filed this suit.

13. In this case, DW.1 has deposed that one Devanna Gounder gave more trouble to him. At that time, some political persons namely Lakshmi Duraisamy and T.P.Karuppusamy voluntarily approached the Defendant to solve the problem against the Devanna Gounder. But they demanded 6 acres of land from the Defendant and signed blank promissory note. Under the above circumstances, the Defendant agreed for that. The Defendant executed a sale deed in favour of D.Vijayanandh, who is son of Lakshmi Duraisamy and T.P.Karuppusamy. Lakshmi Duraisamy and T.P.Karuppusamy colluded together with an intention to grab the entire property from him. They also demanded to sell the entire property for cheaper rate. The value of the property induced them to grab the same by hook or by crook. The plaintiff is close associates with Lakshmi Duraisamy's family. The witness and scribe of the suit promissory note were residing in the same village of T.P.Karuppusamy. They are all politically influenced and capable of doing anything. All these persons joined together with an intention to make trouble to the defendant. They might have used the blank promissory note executed by the defendant. The suit promissory note is materially altered. It is further deposed that no consideration was passed on.

14. In this case, in the written statement, it was stated that the plaintiff is utter stranger to the defendant. In this regard, nothing was whispered by the plaintiff in his evidence.

15. On perusal of Ex.B4 clearly shows that R.Jayaprakash/Plaintiff's name was found in the paper publication. He has

studied in Kongu Arts and Science College, Erode. The defendant proved that the plaintiff and D.Vijayanandh/DW.2 are college friends.

16. On perusal of students particulars given by the Principal of Dr.G.R.Damodaran College of Science, Coimbatore/ Ex.B11 and Ex.B12 clearly shows that R.Jayaprakash and D.Vijayanandh are classmates. This documents disproved the contention of the plaintiff. In that documents, the year of admission also mentioned as 1997.

17. In this case, the defendant pleads that they created the suit promissory note signatures as the defendant's signature found in the blank promissory note. On perusal of the records, it was found that as per Ex.B3, DW.2 and DW.3 discharged the loan of one Nallsamy and Selvan. Hence, these two documents are vital for sale in respect of passing consideration. According to the defendant, the plaintiff failed to prove the execution of suit promissory note and the same is materially altered as per their wish.

18. In this case, the defendant caused notice to DW.2 and DW.3 to adduce evidence and produce those suit promissory notes. But DW.2 and DW.3 have not produced the same. They produced only one promissory note which was marked as Ex.B14. Therefore, non filing of the other promissory note creates suspicion.

19. In this case, the defendant rebutted the contention of the plaintiff by way of proper witness and documents. Therefore, it is the duty of the plaintiff to disprove the defence taken by the defendant. The plaintiff failed to disprove the same. Therefore, the plaintiff is not entitled to the relief. It is found that the suit promissory note is not true and valid. The plaintiff voluntarily suppressed certain facts. The lower Court after perusal of the documents and evidence, has arrived at a proper conclusion, which requires no interference and this Appeal Suit is liable to be dismissed.

20. Accordingly, the Appeal Suit is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

dm

To

The Additional District Judge,
Erode.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.N.Damodaran, Advocate Sr.No.32425

+1cc to Mr.M.Govindaraju, Advocate Sr.No.32460

A.S.No.279 of 2013

KK(CO)
RVM(25/07/2022)