



S.A.No.547 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 26.09.2022

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

S.A.No.547 of 2007

and

M.P.No.1 of 2007

1.A.N.Jeevarathinam

2.Vanaja

.. Appellants

Versus

S.Muniyan

.. Respondent

This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 27.01.2006 made in A.S.No.86 of 2005 on the file of the Subordinate Court, Ranipet, Vellore District dismissing the appeal, reversing the judgment and decree on the file of District Munsiff Court, Ranipet, Vellore District in O.S.No.275 of 2004 dated 28.02.2005.

For Appellants : Mr.P.Jagadeesan

For Respondent : No Appearance



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JUDGMENT

The defendants in O.S.No.275 of 2004 are the appellants in this appeal. The said suit in O.S.No.275 of 2004 was filed by the respondent herein for recovery of the sum of Rs.34,360/- representing Rs.20,000 as principal and Rs.14,360/- towards interest with future interest at the contractual rate from the date of plaint till the date of realisation.

2. According to the plaintiff/respondent herein, on 10.06.2001, the defendants/appellants have borrowed from him a sum of Rs.20,000/- and executed the suit promissory note dated 10.06.2001. Thereafter, the defendants did not repay neither the principal amount nor the interest. Therefore, he has filed the suit for recovery of the amount.

3. A written statement was filed by the defendants contending that on 07.09.2001 they borrowed a sum of Rs.10,000/- from the plaintiff and not Rs.20,000/- as alleged. Even out of the sum of Rs.10,000/-, the plaintiff deducted Rs.1,000/- towards interest and paid only a sum of Rs.9,000/- to them. It is further stated that the defendants did not execute the suit promissory note agreeing to repay Rs.20,000/- with interest at the rate of 24%



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per annum. Further, the defendants have paid a total sum of Rs.26,000/- towards interest alone for twenty six months. If at all, the defendants are liable only to pay the principal sum of Rs.10,000/- alone. However, the plaintiff is not prepared to receive the said amount and refused to return the property deeds to the defendants. The defendants therefore prayed for dismissal of the suit.

4. During trial, the plaintiff/respondent herein examined himself as P.W.1 alone with one Paramasivam, attesor of suit promissory note, as P.W.2 and Exs. P1, suit promissory note was marked. On behalf of the defendants, the defendants examined themselves as D.W.s 1 and 2 along with one Parthiban and Balaraman as D.W.3 and 4, however, they have not marked any document on their side.

5. The trial court, on appreciation of the oral and documentary evidence dismissed the suit by placing reliance on the deposition of DWs 1 to 4. The trial court concluded that DWs 1 to 4 have clearly deposed that their signatures have been obtained in blank. The trial court also observed that the ink with which the defendants 1 and 2 have signed, the signature of first attesting witness and the second attesting witnesses in the promissory note differs. The



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trial court also observed that there is substantial gap between the place where the defendants signed and the recitals contained in the promisory note. The trial court further observed that the plaintiff in his deposition has admitted that he is in possession of the parent deed of the defendant's land and refused to return it as the defendants have not repaid the entire amount borrowed. On the basis of such admission, the trial court concluded that after having received the suit promisory note, there is no necessity for the plaintiff to retain the parent documents of the defendants. The trial court also referred to the deposition of DWs 3 and 4, and came to the conclusion that the defendants have borrowed amount and repaid the entire amount to the plaintiff. On the basis of the deposition of DWs 3 and 4, the trial court held that on 26.01.2004, the plaintiff received a sum of Rs.6,000/- from the defendants and another sum of Rs.4,000/- was received on 10.03.2004 thus, the defendants have repaid the entire loan amount. Accordingly, the trial court dismissed the suit filed by the plaintiff/respondent herein.

6. Aggrieved by the judgment and decree of the trial court, the plaintiff filed A.S. No. 86 of 2005. The appellate Court reversed the judgment and decree of the trial court on the ground that the defendants have not produced any evidence to show that they have received only Rs.10,000/- as loan from



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the plaintiff especially in the suit promisory note a sum of Rs.20,000/- is mentioned. The Appellate Court observed that the defendants did not dispute the execution of the suit promisory note but their defence is that they have executed the promisory note in blank and the contents thereof have been filled by the plaintiff. Further, the defendants have also failed to establish that they have repaid Rs.26,000/- over a period of 26 months at the rate of Rs.1,000/- per month. When the defendants did not establish their defence, the trial court ought not to have dismissed the suit filed by the plaintiff. Accordingly, the first appellate Court allowed the appeal preferred by the plaintiff.

7. At the time when the second appeal was taken up for admission, this Court framed the following substantial questions of law and they are:-

a) Is not the findings of the Lower Appellate Court that Ex.A1 is valid and supported by consideration, is perverse and illegal?

b) Whether the plaintiff has proved the due execution of Ex.A1 by the defendants after receiving the consideration under the said document?

8. Even though notice was served and his name is printed in the cause

list, there is no representation for the respondent/plaintiff.



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WEB COPY 9. This Court heard the learned counsel for the appellant and perused the materials placed on record.

10. The trial Court dismissed the suit primarily on consideration of the evidence tendered by the D.Ws.3 and 4 who are the independent witnesses, who supported the version of the defendants that they have not borrowed a sum of Rs.20,000/- from the plaintiff on 10.06.2001 and also they have not executed any promissory note, but their signatures were obtained in blank papers. D.W.3 has deposed that on 07.09.2001 the plaintiff paid a sum of Rs.9,000/- only after deducting Rs.1,000/- towards interest to the defendants and even the said amount was repaid in two instalments, viz., on 26.01.2004 a sum of Rs.6,000/- and on 10.03.2004 a sum of Rs.4,000/- and thereby there was no due payable by the defendants to the plaintiff.

11. However, on appreciation of the findings of the trial Court as well as oral and documentary evidence adduced by both the parties, the lower appellate Court has reversed the findings of the trial Court. According to the lower appellate Court, the defendants themselves in their written statement, have clearly admitted that they have borrowed only a sum of Rs.10,000/- on



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10.06.2001 and not Rs.20,000/- as pleaded by the plaintiff, but to prove the same, the defendants have not adduced any reliable evidence. The lower appellate Court has relied upon the evidence of P.W.2 who is an attesting witness to the promissory note, who deposed that on 10.06.2001 the defendants have borrowed Rs.20,000/- from the plaintiff and executed Ex.A1-promissory note and thereby came to the conclusion that the plaintiff has proved the execution of the promissory note Ex.A1 by the defendants on receipt of Rs.20,000/-.

12. On going through the findings rendered by both the Courts below and on perusal of both oral and documentary evidence placed on record by the parties this Court finds that the defendants have admitted the execution of the promissory note, but only denied the receipt of Rs.20,000/- however, admitted that they have received Rs.10,000/- only from the plaintiff. Though it is pleaded by the defendants that they repaid a sum of Rs.6,000/- on 26.01.2004 and Rs.4,000/- on 10.03.2004 and in this regard they examined D.W.3 also. But the fact remains that to prove the alleged payments, the defendants have not adduced any reliable documentary evidence. Therefore, there is no dispute with respect to execution of promissory note by the defendants. The observations made by the trial Court that the defendants have executed the



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promissory note in blank and the ink, with which the parties to the promissory note signed differs are insignificant for being considered in this case.

13. It is pertinent to mention that D.W.3 is an independent witness, who, according to the defendants, have extended financial assistance to them which in turn was paid to the plaintiff. D.W.3 has categorically stated that a total sum of Rs.10,000/- was borrowed from him and it was repaid to the plaintiff towards the loan amount borrowed by the plaintiffs. D.W.3 may not have any knowledge about the borrowal of amount and signing of the suit promissory note by the defendants. On the other hand, D.W.3 is the one who paid amount to the defendants for settling the debt to the plaintiff. Even though the defendants in their written statement have stated that they paid Rs.26,000/- at the rate of Rs.1,000/- per month for 26 months, they themselves admitted that such amount was paid only towards interest and not towards the principal. Therefore, it is clear that out of the sum of Rs.20,000/- paid by the plaintiff, atleast a sum of Rs.10,000/- has been received by the plaintiff, which the defendants have substantiated by examining D.W.3 and D.W.4. Therefore, this Court is of the view that the plaintiff had borrowed only a sum of Rs.10,000/- and not Rs.20,000/- and he is entitled to receive the sum of Rs.10,000/- from the defendants.



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WEB COPY 14. In the light of what is stated above, the substantial questions of law framed in this appeal are answered in favour of the plaintiff and against the defendants. Accordingly, the Second Appeal is partly allowed. The Judgment and Decree dated 27.01.2006 made in A.S. No.86 of 2005 on the file of the Subordinate Court, Ranipet, Vellore District, reversing the judgment and decree dated 28.02.2005 made in O.S. No.275 of 2004 on the file of the District Munsiff Court, Ranipet, Vellore District stands modified by granting a decree in favour of the plaintiff for a sum of Rs.10,000/- which is payable by the defendants with interest at the rate of 6% per annum from the date of plaint till the date of realisation. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

gbi

26.09.2022

To

- 1.The Subordinate Judge,
Ranipet, Vellore District.
- 2.The District Munsiff Judge,
Ranipet, Vellore District.



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KRISHNAN RAMASAMY, J.,

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