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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2021
DELIVERED ON : 04.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R. PONGIAPPAN

S.A.No.1025 of 2010
and
M.P.No.1 of 2010

Abdul Rahim ...Appellant/Defendant/Defendant

Vs

Gnanasekaran @ Gnanasekar ...Respondent/Appellant/Plaintiff

Prayer : The Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree dated 19.03.2010 passed in A.S.No.1 of 2010 on the file of the Subordinate Judge, Panruti, reversing the judgment and decree dated 24.10.2009 passed in O.S.No.51 of 2008 on the file of the District Munsif, Panruti.

For Appellant : Mr.D.Murugan
for Mr.V.Manohar

For Respondent : Mr.T.Sezhian

JUDGMENT

This second appeal is focused as against the judgment and decree dated 19.03.2010 passed in A.S.No.1 of 2010 by the learned Subordinate Judge, Panruti, reversing the judgment and decree dated 24.10.2009 passed in O.S.No.51 of 2008 by the learned Principal District Munsif, Panruti.

2. For the sake of convenience, hereinafter the parties are called as per their respective litigative status before the trial Court.

3. The laconic averments made in the plaint are as follows:

3.1. On 13.07.2006, the defendant had received a sum of Rs.50,000/- from the plaintiff as a loan and agreed to repay the



4. The averments found in the written statement are as follows:

Since, the lenders demanded to repay the same, he made arrangement for selling his house through his cousin one Sait Sahib S/o. Abdul Quddhose. On 02.02.2007, the defendant sold the house and thereafter, he handed over the sale amount to Sait Sahib. After receipt of the said amount, the said Sait Sahib invited all persons, who were lent loan to the defendant and after explaining the position of the defendant, he repaid the loan availed by the defendant through various cheques drawn on Central Co-operative Bank Ltd., Cuddalore. In respect of the plaintiff, the loan amount was discharged by giving a cheque bearing BB No.072547 in favour of the plaintiff. When at the time the Sait Sahib asked about the pro-note executed by the defendant, the plaintiff told to him that the same was misplaced. Thereafter, by using the said pro-note, the present suit has been instituted against the defendant.

6. Having considered the materials placed before him, the learned Principal District Munsif, Panruti came to the conclusion that the plaintiff has not proved his case and resultantly dismissed the suit. In the appeal, the learned Subordinate Judge, Panruti reversed the finding arrived at by the trial Court and granted a decree in favour of the plaintiff.

(i) Whether the conclusion of the Lower Appellate Court to reverse the trial Court judgment merely on the basis of not getting back of document despite examining being discharge is correction it's part?



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(ii) Whether the Lower Appellate Court is justifiable in granting the decree against the evidence of discharge and without legal enforceability?

(iii) Whether the Lower Appellate Court is correct in holding the document is still valid without appreciating the fact that the consideration was received back in the presence of settlement through the cheque?

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. It is the case of the plaintiff that on 13.07.2006, the defendant after receiving a sum of Rs.50,000/- as a loan from the plaintiff, executed a pro-note under Ex.A1. Though the same was denied by the defendant as he has not availed any loan from the plaintiff, in respect to the execution of pro-note he has given evidence as the suit pro-note was executed by himself.

10. In the said occasion, the case of the defendant is that the loan availed from the plaintiff was discharged by issuing a cheque bearing BB No.072547. On the other hand, in respect to the discharge of loan by issuing a cheque, it is the case of the plaintiff that the amount paid through the cheque bearing BB No.072547 is for the loan availed by the plaintiff's brother Sait Sahib, and not in respect to the loan availed by the plaintiff. In the said circumstances, in order to substantiate his case, the plaintiff has produced the counterfoil pertaining to the cheque book bearing serial numbers in BB Nos.671541 to 671560 as Ex.B1. Further, he has also marked the signature found on the back side of the counterfoil as Ex.B3.

11. In this aspect, it is an admitted case of the defendant that the cheques given to the plaintiff towards the discharge of loan, pertains to the account stands in the name of the plaintiff's brother. In the said circumstances, being the reason that the plaintiff took a stand that the said cheque was issued to discharge the loan availed by the plaintiff's brother, this Court could not have come to the conclusion that the defendant has proved his case as the entire loan availed by him from the plaintiff was discharged.

12. Though it was contended on the side of the defendant that after receiving the loan amount, the plaintiff after saying



some lame excuses, did not return the pro-note executed by him. If it is so, it is for the defendant to send a notice immediately after came to his knowledge that the plaintiff is attempting to commit cheating. But here it is the case, before instituting the suit, the plaintiff alone vide Ex.A2, on 05.01.2008, had issued notice to the defendant. In other words, the defendant vide Ex.B2 sent reply notice alone. Though in the reply notice the defendant contended that the entire amount was discharged, being the reason that the amount repaid by the defendant is not from his account, this Court is not in a position to accept the case of the defendant as a true one. Therefore, due to the reason that the defendant has not obtained any acknowledgement from the plaintiff towards discharge of loan, this Court cannot hold that the story put forth by the defendant is true one. The Lower Appellate Court has also traversed on the same line and thereby reversed the finding of the trial Court. Accordingly, in view of the above discussion stated supra, the substantial Questions of Laws framed are answered affirmatively, in favour of the respondent/plaintiff.

13. In fine, the second appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

rsi
To
1.The Subordinate Judge,
Panruti.

2.The District Munsif,
Panruti.

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The Section Officer
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+1 CC to Mr.V.Manohar, Advocate sr 412
+1 CC to M/s.R. Meenal, Advocate sr 189

S.A.No.1025 of 2010

RGN(CO)
SP(05/04/2022)