



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1236 of 2010

K.P. Subramaniam

...Appellant /Respondent/Plaintiffs

Vs.

M. Palanisamy

... Respondent/Appellant/Defendant

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 09.01.2009 passed in A.S. No.51 of 2008, on the file of the Additional District and Sessions Judge, Fast Track Court No.3, Dharapuram, reversing the decree and judgment dated 03.03.2008 passed in O.S. No.11 of 1999, on the file of the Subordinate Judge, Dharapuram.

For Appellant : Mr. R. Asokan

For Respondent : Mr.A. Tamilvanan

JUDGMENT

The appellant K.P. Subramaniam is the plaintiff in O.S. No.11 of 1999 on the file of the Subordinate Court, Dharapuram. He filed the suit for recovery of a sum of Rs.3,36,800/- together with interest @ 12% per annum from M. Palanisamy (respondent/defendant) due on a promissory note.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranking in the present appeal would also be indicated.

3. The case of the plaintiff is that the defendant borrowed a sum of Rs.3,00,000/- from him on 05.01.1998 and executed a promissory note Ex.A1 promising to repay the principal together with interest @ 12% per annum on demand by the plaintiff or to his order. The further case of the plaintiff is that in spite of repeated demands made by him, the defendant did not come forward to make good the payment and therefore, he filed the suit for recovery of the amount due under the promissory note before the Subordinate Judge, Dharapuram.



4. The defendant filed a written statement contending that he borrowed a sum of Rs.80,000/- only from the plaintiff and that he paid interest upto October 1998. According to him, the plaintiff demanded him to pay the entire amount due under the promissory note and that as he could not pay the entire amount as demanded by the plaintiff, the plaintiff filled one of the blank promissory notes signed by the defendant and filed the suit. He also filed an additional written statement contending that the defendant executed a promissory note only in favour of Jai Karthik Finance during the year 1995-96 where the plaintiff was employed as a manager. His further contention is that the cause of action as alleged in the plaint is false and the plaintiff did not have any house at Kozumangulli village where the suit promissory note was executed.

5. The trial court, based on these pleadings framed necessary issues and decreed the suit in favour of the plaintiff vide its decree and judgment dated 03.03.2008 and directed the defendant to pay a sum of Rs.3,36,800/- together with interest @ 9% per annum from the date of plaint till the date of decree and thereafter @ 6% per annum till the date of realisation.

6. Aggrieved over the same, the defendant filed an appeal in A.S. No.51/2008 before the Additional District and Sessions Court, Erode. The learned Additional District Judge, Erode, held that since the plaintiff did not prove that he owns any house at Kozumangulli village, the Subordinate Court, Dharapuram, does not have territorial jurisdiction to try the suit. However, the learned Additional District Judge, Dharapuram, did not render any finding with regard to the execution of the promissory note and passing of consideration and dismissed the suit filed by the plaintiff vide his decree and judgment dated 09.01.2009 in A.S. No.51 of 2008.

7. Now the present second appeal is filed by the plaintiff on the following substantial questions of law.

- 1) When the defendant admitted borrowal of Rs.80,000/- and paid interest upto December, 1998 in his original written statement whether the court below was right in holding that the defendant did not borrow any amount from the plaintiff?
- 2) When the loan transaction and the execution of the suit promissory note at Kozumangulli were established by the plaintiff by examining witnesses whether the court below was right in holding that the loan transaction did not take place at Kozumangulli village and the Sub-Court, Dharapuram had not territorial jurisdiction to try the suit?



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3) Whether the lower appellate court was right in holding that the appellant failed to prove his residence at the time of the loan transaction when the defendant did not dispute the same in his original written statement?

4) Whether the lower appellate court was right in relying upon the additional written statement which was filed to fill up the lacuna after examination of the witnesses and especially taking a contra stand to the original written statement?

8. Heard Mr. R. Asokan, learned counsel for the appellant and Mr. A. Tamilvanan, learned counsel for the respondent.

9. At the outset it may be observed that in the promissory note, the defendant had clearly mentioned that he obtained a sum of Rs.3,00,000/- from the plaintiff K.P. Subramaniam, residing at Kozumangulli village, Dharapuram Taluk, Erode District. Nowhere in the promissory note it is stated that the defendant executed the promissory note in favour of Jai Karthik Finance, which is located at Tirupur. It is also pertinent to mention that in the original written statement, the defendant did not contend that the suit promissory note was not executed at Kozumangulli village and executed only at Thirupur, where Jai Karthik Finance is located. Only in the additional written statement which was filed after 8 years of filing of the original suit, such a plea has been taken by the defendant. In any event the additional written statement has been received by the trial court. The learned First Additional District Judge had observed that the plaintiff did not adduce any acceptable oral and documentary evidence to show that he owns a house at Kozhumanguli village and also did not produce any property tax receipt, electricity bills, etc. He therefore, concluded that the Sub-court, Dharapuram, does not have jurisdiction to entertain the suit filed by the plaintiff and dismissed the suit by allowing the first appeal.

10. Mr.A. Tamilvanan, learned counsel for the respondent contended that as per Order 7 Rule 10 of Code of Civil Procedure, the plaint should be returned to the plaintiff to be presented before the proper court. In the instant case, as already observed, even in the promissory note Ex.A1, it is clearly indicated that it was executed at Kozhumanguli village. On the side of the plaintiff, Arumugam (P.W.2), the scribe of the promissory note, Damodharan (P.W.3), one of the attestors were examined and both of them had deposed that the suit promissory note Ex.A1 was executed at Kozumangulli village.



Nothing useful was suggested to P.W.2 and P.W.3 during the course of cross examination to discredit or disbelieve their evidence.

Section 20 of Code of Civil Procedure reads as follows:

20. Other suits to be instituted where defendants reside or cause of action arises._

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

Therefore, as per Ex.A1, the cause of action arose within the jurisdiction of the Subordinate Court, Dharapuram and in such circumstances, the observation of the first appellate court that the Subordinate Court, Dharapuram, does not have jurisdiction to entertain the plaint filed by the plaintiff is totally wrong. Even assuming that Dharapuram court does not have jurisdiction, the first appellate court should have returned the plaint to the plaintiff for presenting the same before the proper court. The first appellate court did not also give its finding with regard to the merits of the case. The promissory note Ex.A1 coupled with the evidence of P.W.1 to P.W.3 shows that the promissory note was executed only at Kozumangulli village and in such circumstances, the suit filed by the plaintiff before the Subordinate Court, Dharapuram, is perfectly right and the substantial questions of law are answered accordingly.

11. Since the first appellate court did not give its finding with regard to the merits of the case, this case has got to be remitted back to the first appellate court with instructions to go into the merits of the case and decide it in accordance with law. The suit was filed in the year 1999 and



therefore, the first appellate Court is directed to dispose of the appeal suit in A.S. No.51 of 2008 within a period of three months from the date of receipt of a copy of this order.

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12. In the result,
- i. the second appeal is allowed partly and the case is remitted back to the first appellate court with instructions to go into merits of the case in A.S. No.51/2008 according to law. No costs.
 - ii. the decree and judgment dated 09.01.2009 passed in A.S. No.51 of 2008, on the file of the Additional District and Sessions Judge, Dharapuram, is set aside.
 - iii. The Additional District and Sessions Judge, Dharapuram, is directed to dispose of the appeal suit in A.S. No.51 of 2008 on merits within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court No.3,
Dharapuram.
2. The Subordinate Judge,
Dharapuram.
3. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.A.Tamilvanan, Advocate SR.No.8210
+1cc to Mr.R.Ashokan, Advocate SR.No.7873

S.A.No .1236 of 2010

NRL (CO)
GN(16/03/2022)