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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.NO.268/2018 & CMP.NO.6790/2018

R.Sekar

.. Appellant / Defendant

Vs.

Soundarrajan

.. Respondent / Plaintiff

Prayer:- Second Appeal preferred under Section 100 of CPC against the judgment and decree in AS.No.4/2017 dated 05.12.2017 passed by the learned Sub Judge, Ranipet, Vellore District, confirming the judgment and decree in OS.No.9/2014 dated 29.02.2016 passed by the learned District Munsif, Ranipet, Vellore District.

For Appellant : Mr.C.Prakasam
for M/s.S.Sujatha

For Respondent : Mr.P.Mani

JUDGMENT

- (1) The defendant in the suit in OS.No.9/2014 on the file of the learned District Munsif, Ranipet, Vellore District, is the appellant in the above Second Appeal.
- (2) The respondent herein, as plaintiff filed the suit in OS.No.9/2014 for recovery of a sum of Rs.92,280/- being the principal sum and interest @ 24% per annum on Rs.44,000/- from the date of execution of Pronote till the date of suit.
- (3) The case of the plaintiff in the plaint is that the defendant borrowed a sum of Rs.44,000/- on 13.08.2008 and executed the suit Pronote agreeing to repay the amount with the interest @ 24% per annum. It is also stated in the plaint that a sum of Rs.5000/- was paid on 10.08.2011 towards the amount due on the Pronote and an endorsement



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was also made in the suit Pronote on 10.08.2011. A similar endorsement was also pleaded on 28.05.2012 upon payment of a further sum of Rs.4500/-. It is the case of the plaintiff that the defendant did not repay the amount due on the Pronote despite several demands.

- (4) The suit was contested by the defendant by filing a written statement specifically denying the averments made in the plaint. The defendant disputed the execution of the Pronote and the amount stated to have been borrowed by the defendant from the plaintiff as alleged in the plaint. It is the specific case of the defendant that the suit Pronote is a fabricated document as the defendant never borrowed any money from the plaintiff. The further payment and the subsequent endorsements dated 10.08.2011 and 28.05.2012 was also specifically denied in the written statement. Stating that the suit Pronote is not supported by any consideration, the defendant prayed for dismissal of the suit.
- (5) The Trial Court, after framing necessary issues and after considering the pleadings and evidence, found that the defendant himself has admitted his signature in Ex.A1-suit Pronote. Since the signature of the defendant in the suit Pronote is admitted, the Trial Court held that the passing of consideration can be presumed in view of Section 118 of the Negotiable Instruments Act. The plaintiff though issued a suit notice, there was no reply by the defendant before filing of suit. Considering all these circumstances, the Trial Court held that the plaintiff has proved his case and hence, decreed the suit as prayed for.
- (6) Aggrieved by the judgment and decree of the Trial Court, the defendant preferred an appeal in As.No.4/2017 on the file of the learned Subordinate Judge, Ranipet at Vellore.
- (7) The Lower Appellate Court considered the pleadings and evidence independently and held that the burden lies on the appellant to prove that the suit Pronote was not for consideration and that it was forged. The Lower Appellate Court also relied upon the evidence of defendant himself to the effect that the signature found in Ex.A1 is his signature. Though the learned counsel for the appellant before the Lower Appellate Court raised a plea that suit Pronote is a forged one, the Lower Appellate Court observed that the appellant did not take any steps to send the Pronote for expert opinion. Having considered the overall circumstances and the evidence of defendant himself admitting his signature in the suit Pronote, the



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Lower Appellate Court also held that the plaintiff has proved the due execution of Pronote as well as the acknowledgments by paying some money by the appellant/defendant as endorsed in the document-Ex.A1. After confirming the findings of the Trial Court, the appeal was also dismissed. Aggrieved by the concurrent findings and the judgments and decrees of the Courts below, the present Second Appeal is preferred by the appellant / defendant.

- (8) The appellant has raised the following substantial questions of law in the Memorandum of Grounds of Appeal:-
- (9) The learned counsel for the appellant submitted that the Courts below have believed the execution of the suit Pronote dated 13.08.2008 without considering the overall evidence and the pleadings of respective parties. It is submitted by the learned counsel that the execution of the Pronote and passing of consideration was specifically denied by the appellant in the written statement and hence, the Courts below ought to have held that the burden lies on the respondent/plaintiff to prove at least passing of consideration. The learned counsel then submitted that the endorsements made in the suit Pronote were not admitted by the appellant and that the Courts below ought to have held that the suit is barred by limitation as the endorsements were forged only to save limitation.
- (10) Per contra, the learned counsel for the respondent submitted that the findings of the Courts below regarding proof of execution of Pronote cannot be assailed as the Courts below have considered the pleadings as well as the documents in extenso. The learned counsel then pointed out that the appellant/defendant himself has admitted his signature in the suit Pronote under Ex.A1 and therefore, there cannot be a challenge to the findings that the suit Pronote was executed by the appellant/defendant.
- (11) This Court has considered the arguments made on both sides and perused the materials placed before it including the findings of the Courts below which are after appreciation of the entire evidence in the light of pleadings.
- (12) As submitted by the learned counsel for the respondent, the appellant/defendant has admitted his signature in the document-Ex.A1. Once the execution of Pronote is admitted, it is possible for the Courts below to presume passing of consideration in view of the statutory presumption under Section 118 of the Negotiable



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Instruments Act. The Courts below have rightly held that the suit Pronote executed by the appellant is supported by consideration as recited in the Pronote. No doubt, it is true that the suit is filed three years after the Pronote. However, the respondent specifically relied upon the endorsements made by the appellant acknowledging the debt. In the course of evidence, the document-Ex.A1 was shown and the appellant/defendant has not specifically disputed his signatures below the endorsements. The endorsements acknowledging the debt gives an indication that the period of limitation is saved by such acknowledgment of debt as permissible in law. Therefore, the contention of the learned counsel for the appellant that the suit is barred by limitation cannot be sustained.

- (13) Having regard to the admission of the appellant / defendant that the appellant is the author of the signature found in Ex.A1, this Court is unable to find any force in any of the submissions made by the learned counsel for the appellant.
- (14) As observed earlier, the Courts below have considered the pleadings, documents and evidence in a proper manner and rendered findings which are supported by reasons. Since this Court is unable to find any irregularity either in the decision or in the decision making process, is not inclined to interfere with the findings of the Courts below.
- (15) In the result, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Subordinate Judge,
Ranipet, Vellore District.
2. The District Munsif,



Ranipet, Vellore District.
Copy To

The Section Officer
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.P.Mani, Advocate, S.R.No.28732

S.A.No.268 OF 2018

SPD (CO)
RLP (28/06/2022)