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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1197 of 2011

and

M.P. No.1 of 2011

Karunanithi

...Appellant/Defendant

Vs.

Arjunan

... Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 30.03.2010 passed in A.S. No.43 of 2008, on the file of the Subordinate Judge, Ariyalur, Ariyalur District, upholding the decree and judgment dated 20.02.2008 passed in O.S. No.94 of 2005, on the file of the Additional District Munsif, Ariyalur.

For Appellant : Mr. S. Sathish Raja

For Respondent : Mr.C. Parthiban

for Mr.M.V. Krishnan

JUDGMENT

The appellant is the defendant in O.S. No.94 of 2005 on the file of the Additional District Munsif, Ariyalur. The plaintiff filed the suit for recovery of a sum of Rs.60,000/- from the defendant together with interest @ 12% per annum 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 rank in the present appeal would also be indicated.

3. The case of the plaintiff is that the defendant borrowed a sum of Rs.60,000/- from one Kamaraj on 01.01.2003 and executed a promissory note (Ex.A1) on the same date promising to repay the principal together with interest @ 12% per annum on demand by him or to his order. The said Kamaraj, subsequently, made over (Ex.A4) the suit promissory note Ex.A1 in favour of the plaintiff on 05.03.2005. Despite repeated demands made by the plaintiff to the defendant to pay the



amount due under the promissory note (Ex.A1), the defendant did not pay either the principal or interest. The plaintiff, therefore, issued a legal notice (Ex.A2) dated 27.02.2005 to the defendant. Though the defendant received the said notice as is evidenced by the postal acknowledgment card (Ex.A3), there was no response from the defendant and he did not also come forward to make good the payment. Hence, he filed the suit for recovery of the amount due under the promissory note before the Additional District Munsif, Ariyalur.

4. The suit was resisted by the defendant on the following grounds.

- 1) The defendant did not execute any promissory note in favour of Kamaraj as alleged by the plaintiff.
- 2) He does not know who the said Kamaraj is.
- 3) The defendant borrowed a sum of Rs.30,000/- from the plaintiff on 25.08.2000 and executed a promissory note promising to repay the principal with interest @ 36% per annum and also repaid a sum of Rs.25,000/- on 25.09.2002.
- 4) He has to repay only a sum of Rs.10,000/- towards principal and interest.

He, therefore, prayed for the dismissal of the suit.

5. The trial court, after framing necessary issues and after full contest, decreed the suit in favour of the plaintiff vide its decree and judgment dated 20.02.2008 on the following grounds.

- 1) Though the defendant in his written statement had contended that he did not execute Ex.A1, he admitted the execution of the promissory note during the course of cross examination.
- 2) The suit promissory note was properly made over to the plaintiff by Kamaraj to whom Ex.A1 promissory note was executed by the defendant.
- 3) The defendant also admitted in his deposition that Ex.A1 promissory note was written and signed by him.
- 4) The plaintiff has proved the execution of the promissory note.
- 5) The defendant did not discharge his burden of proof that the suit pro-note was not supported by consideration.

6. Aggrieved over the same, the defendant filed an appeal in A.S. No.43 of 2008 before the Subordinate Court, Ariyalur. The learned Subordinate Judge, after analysing the evidence on record, upheld the findings recorded by the trial court.

7. Notice of motion was ordered to the respondent and after several adjournments, the case was posted for hearing today. In the Memorandum of grounds, the appellant has raised the following substantial questions of law.

- 1) Whether the courts below are right in decreeing the suit when the plaintiff failed to examine the person who made over the suit promissory note?



2) Is it not the duty cast upon the plaintiff to examine the person who had made over the promissory note when particularly the execution was denied and disputed by the defendant?

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8. Heard Mr. S. Sathish Rajan, learned counsel for the appellant and Mr.C. Parthiban for Mr.M.V. Krishnan, learned counsel for the respondent.

9. Mr. S. Sathish Rajan, learned counsel for the appellant contended that the plaintiff did not examine Kamaraj, who made over the suit promissory note in favour of the plaintiff and that the trial court has also framed a wrong issue as if the plaintiff has made over the promissory note in favour of Kamaraj when the fact is that only Kamaraj had made over the promissory note in favour of the plaintiff. He would further contend that the first appellate court did not frame any independent points for consideration as mandated under Order 41 Rule 31 of Code of Civil Procedure and hence, the appeal should be allowed.

10. Per contra Mr. C. Parthiban, learned counsel for the respondent contended that both the courts below had properly analysed the evidence on record and had come to a conclusion that the suit promissory note was executed by the defendant for a consideration. He, therefore, prayed for the dismissal of the second appeal as no substantial question of law is involved in the present second appeal.

11. At the outset it may be observed that though the execution of the promissory note (Ex.A1) was denied in the written statement, the defendant, in his deposition as D.W.1, admitted that Ex.A1 was written and signed by him. Once the execution of the promissory note is admitted by the defendant, there is a presumption under Section 118 of the Negotiable Instruments Act that the promissory note is supported by consideration unless the contrary is proved. Therefore, the burden lies on the defendant to prove that the promissory note was not supported by consideration. The defendant did not adduce any acceptable evidence to show that the suit promissory note was not supported by consideration. The defendant also did not send any reply to the legal notice (Ex.A2) to the plaintiff. The first appellate court in Paragraph Nos.11 and 12 had made the following observations:

"11.On close perusal Ex.A1 and B1 I find that both were handwritten by the defendant himself. During cross examination, the defendant has clearly and categorically admitted that he only written Ex.A1. For better appreciation, the relevant person of cross examination of DW1 is extracted hereunder .



பாலகிருஷ்ணன் மகன் காமராஜ் பேருக்கு எழுதி
கொடுத்திருக்கிறேன். காமராஜ் என்பவர்
அரசுமனை மைத்துனரா என்று எனக்கு தெரியாது.
அதில் முன் பாண்டு இருக்கா என்று எழுதி
கொடுத்திருக்கிறேன். பதில் அறிவிப்பு
கொடுத்திருக்கிறேன். அதில் பூர்த்தி செய்யப்படாத
வெற்று புரோநோட்டில் கையெழுத்து செய்து
கொடுத்ததாக சொல்லியுள்ளேன் என்றால்
சரிதான்."

12. Therefore from the above lines deposed by the defendant/appellant himself, I find that appellant/defendant himself admitted that he had executed the Ex.A1 in his own handwriting in favour of Kamaraj. Since the execution has admitted, it is for the appellant/defendant to prove that no consideration passed. Whereas on close perusal of material records, I find that appellant/defendant did not discharge his burden. Further more by way of documentary and oral evidence, plaintiff has clearly established the execution of Ex.A1, made over Ex.A4 and the passing of consideration."

The above observations of the first appellate court cannot be found fault with.

12. The first appellate court has framed points for determination. Though the points for determination are general in nature, the first appellate court had analysed the entire evidence on record threadbare. The non examination of Kamaraj in favour of whom the defendant executed the promissory note is not also fatal to the case of the plaintiff since the defendant during the course of cross examination admitted the execution of the promissory note Ex.A1 in favour of Kamaraj. Framing of an issue that the plaintiff made over the pro-note in favour of Kamaraj was apparently a bonafide mistake while drafting the issue since it was only Kamaraj who made over Ex.A1 in favour of the plaintiff and there is no dispute in this regard.

13. It is also pertinent to mention that this a second appeal under Section 100 of the Code of Civil Procedure where the jurisdiction of the High Court is confined to a substantial question of law. A full Bench of the Supreme Court in Bholaram Vs. Ameerchand reported in AIR 1981 SC 1209 has held that the High Court cannot interfere with the concurrent factual findings of court below in a second appeal. In fine, the second appeal fails and is dismissed.

14. In the result,

- i. the second appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

<https://hcservices.ecourts.gov.in/hcservices/> This decree and judgment dated 30.03.2010 passed



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in A.S. No.43 of 2008, on the file of the Subordinate Judge, Ariyalur, Ariyalur District, and the decree and judgment dated 20.02.2008 passed in O.S. No.94 of 2005, on the file of the Additional District Munsif, Ariyalur, are upheld.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Subordinate Judge, Ariyalur, Ariyalur District.
2. The Additional District Munsif, Ariyalur.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+1 cc to Mr.S.Sathish Rajan, Advocate Sr.NO. 18515

+1 cc to Mr.M.V.Krishnan, Advocate Sr.NO. 18400

S.A.No .1197 of 2011

SRA (CO)

A.SK(29/04/2022)