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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2021

DELIVERED ON : 05.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R. PONGIAPPAN

S.A.No.1416 of 2011

and

M.P.No.1 of 2011

Govindasamy

.. Appellant/Defendant

Vs

S.Mala

.. Respondent/Plaintiff

Prayer: The Second Appeal is filed under Section 100 of C.P.C. against the Judgment and Decree dated 30.03.2011 made in A.S.No.130 of 2010 on the file of the Court of the Principal District Judge, Villupuram District, Villupuram confirming the judgment and decree dated 29.01.2010 made in O.S.No.540 of 2004 on the file of the Court of the Principal District Munsif, Ulundurpet.

For Appellant	:	Ms.Meenatchi for Mr.P.Anbarasan
For Respondent	:	Mrs.R.Meenal

JUDGMENT

Aggrieved over the concurrent findings made in A.S.No.130 of 2010 dated 30.03.2011 on the file of the Principal District Court, Villupuram and in O.S.No.540 of 2004 dated 29.01.2010 on the file of the Principal District Munsif Court, Ulundurpet. The appellant, who is the defendant in the above referred suit, is before this Court with the present second appeal.

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 03.01.2002, the defendant approached the plaintiff to lend a sum of Rs.50,000/- for the purpose of construction of his house and also agreed to repay the said amount with interest at the rate of 12% per annum and in lieu of the debt, he has also agreed to execute a promissory note in favour of the plaintiff. Accordingly, the plaintiff lent a sum of Rs.50,000/- in favour of the defendant and the defendant also executed a promissory note to repay the said amount with 12% interest per annum and received the same. Afterwards the defendant failed to repay the principal amount and interest as agreed. Therefore, the plaintiff has filed the suit.

4. The contentions raised by the defendant in the written statement are as follows:

4.1. The averment that the defendant borrowed a sum of Rs.50,000/- from the plaintiff on 03.01.2002 agreeing to repay the amount with interest at the rate of 12% per annum and in lieu of that he has executed a promissory note in favour of the plaintiff, is denied as false. The defendant had not come across any circumstances to borrow any amount from the plaintiff. Therefore, the averment that the defendant has borrowed a sum of Rs.50,000/- on 03.01.2002 is nothing but false. The plaintiff, in order to reap unlawful gain, fabricated a false promissory note with the support of his friends and made a false claim from the defendant. The promissory note filed in the suit is fabricated one. The plaintiff has no means to pay any debt to the defendant. As the suit promissory note is fabricated and forged one, the defendant is not liable to pay any amount to the plaintiff. Therefore, the suit has to be dismissed.

5. Based on the above averments, the trial Court framed necessary issues and tried the suit. Before the trial Court, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and two documents were marked as Exs.A1 and A2. On the side of the defendant, one witness has been examined and no document has been marked.

6. Having considered the materials placed before him, the learned Principal District Munsif, Ulundurpet, came to the conclusion that the plaintiff has proved her case and accordingly, the suit was decreed as prayed for. In the appeal, the learned Principal District Judge, Villupuram confirmed the findings arrived at by the trial Court and dismissed the appeal. Feeling aggrieved over the same, the appellant/defendant is before this Court.



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7. At the time of admission, this Court had formulated the following Substantial Questions of Law:

- (i) Whether the suit is barred by limitation?
- (ii) Whether the suit promissory note Ex.A1 is materially altered?
- (iii) Whether the finding of the Courts below that the appellant has failed to disprove the signature in the Ex.A1 is correct?
- (iv) Whether the judgments of the Courts below are hit by Section 67 of the Indian Evidence Act?
- (v) Whether the respondent/plaintiff has proved the fact of execution of promissory note Ex.A1 and the payment of consideration to the appellant?
- (vi) Whether the suspicious circumstances have surrounded the Ex.A1?

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

9. It is trite law that if a suit has been filed on the basis of a Negotiable Instrument, it is for the plaintiff to prove the execution. Afterwards, under Section 118 of the Negotiable Instruments Act, the burden has been shifted on the shoulder of the defendant, to prove that the said instrument is not supported with consideration. Here it is a case, when at the time the plaintiff was examined as P.W.1, in her evidence, she has narrated the time, manner and the circumstances on which, the defendant received the loan amount and about the execution of the pro-note. In respect of the execution, the evidence given by P.W.1 was fully corroborated through the evidence given by P.W.2, who is one of the attestors, signed in the pro-note as a witness.

10. In the said circumstances, it is the stand taken by the defendant that the suit pro-note is a fabricated one and the signature found in the suit pro-note is not belonged to him. Though it was argued on the side of the defendant that the suit pro-note is a forged one, the evidence let in by P.W.1 and P.W.2 is sufficient to accept the execution of the pro-note.



11. The lapses found in the evidence given by P.W.1 and P.W.2 are that they categorically admitted in their cross examination as the signature of the defendant found in Ex.B1 (suit pro-note), written statement and the vakalat are appears to be different. In other words, in respect of the signature of the defendant found in the proof affidavit filed by him and in respect of the signature found in the written statement, the defendant himself gave evidence as the signature found in those documents, are not belonged to him. Therefore, the said evidence given by the defendant is quite clear that he has not approached the trial Court with clear case. The said circumstances shows that the defendant himself having confusion with his case and therefore, it cannot be said that the plaintiff, after fabricating the false pro-note, filed a false case against the defendant.

12. Now on going through the copy of the 'B' diary maintained in the trial Court, it would appear that without seeing the original pro-note filed along with the plaint, the defendant filed his written statement, wherein he took a plea that the signature found in the pro-note was fabricated one. So it is clear, for the purpose of the present suit, the defendant has took such plea.

13. In the event that the evidence given by P.W.1 and P.W.2 in respect of the execution of pro-note is appears to be found sufficient, it is for the defendant to send those disputed documents for comparison. In fact, before the trial Court, the defendant has not produced the documents which are all signed by him in the relevant point of time for enabling the Court to come to the correct conclusion. Of course, for comparison under Section 73 of the Indian Evidence Act, being the reason that the signature found in the written statement and vakalat are not contemporary documents, it is not necessary for the plaintiff to send those documents for chemical examination.

14. In other words, the evidence given by P.W.1 and P.W.2 in respect of the execution of pro-note is sufficient to accept the case of the plaintiff that the suit pro-note was executed by the defendant. The inconsistent stand taken by the defendant itself is sufficient to accept the case of the plaintiff as during the relevant point of time after executing the suit pro-note, the defendant availed the loan for a sum of Rs.50,000/- from the plaintiff. Since the execution of the pro-note is proved by the plaintiff, in view of Section 118 of the Negotiable Instruments Act, it is for the defendant to show that



the said pro-note was not executed upon due consideration. In this aspect, especially to rebut the presumption as per the provision under Section 118 of the Negotiable Instruments Act, the defendant has not shown a probable case as the pro-note is not supported by consideration. In the absence of any evidence in respect to rebut the presumption, we cannot hold that the story put forth by the defendant is a genuine one.

15. The Courts below have traversed on the same line and came to the conclusion that the plaintiff has proved her case and rejected the claim made by the defendant. I am also of the same view that the suit pro-note was executed by the defendant. Accordingly, in view of the above discussion stated supra, the substantial Questions of Laws framed are answered in favour of the respondent/plaintiff.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rsi

To

1.The Principal District Judge,
Villupuram.

2.The Principal District Munsif,
Ulundurpet.

Copy To

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

+1cc to Mr.R.Meenal, Advocate SR.No.757

+1cc to Mr.P.Anbarasan, Advocate SR.No.1189

S.A.No.1416 of 2011

CA(CO)
GN(21/02/2022)