



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.725 of 2011

D.Periyannan

...Appellant /Defendant

Vs.

N.Anandan

... Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 23.04.2009 passed in A.S. No.42 of 2008, on the file of the Sub Court, Arani, Tiruvannamalai District, upholding the decree and judgment dated 27.03.2008 passed in O.S. No.64 of 2008, on the file of the District Munsif, Polur, Tiruvannamalai District.

For Appellant : Mr.T.Dhanasekaran

For Respondent : Ms.Abirami
for M/s.V.Raghavachari

JUDGMENT

The unsuccessful defendant before both the courts below has filed the present second appeal.

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

3. The respondent/plaintiff filed the suit in O.S.No.64 of 2008 before the District Munsif, Polur, for recovery of a sum of Rs.97,530/- from the defendant together with interest @ 9% per annum due under four promissory notes dated 07.01.1997 (Ex.A1), 25.10.1998 (Ex.A3), 28.09.2001 (Ex.A6) and 28.09.2001 (Ex.A8).



WEB COPY

4. The case of the plaintiff in nutshell is as follows:

The defendant borrowed a sum of Rs.10,000/- from the plaintiff on 07.01.1997 and executed a promissory note (Ex.A1) promising to repay the principal together with interest @ 24% per annum on demand by the plaintiff or to his order. On 05.01.2000, the defendant paid a sum of Rs.100/- towards part payment and thereafter, did not pay any amount. The defendant further borrowed a sum of Rs.30,000/- on 25.10.1998 and a sum of Rs.10,000/- on 28.09.2001 from the wife of the plaintiff and executed three promissory notes Ex.A3, Ex.A6 & Ex.A8 promising to repay the principal together with interest @ 24% per annum on demand by the wife of the plaintiff. Subsequently the wife of the plaintiff made over the pro-notes (Ex.A3, Ex.A6 & Ex.A8) in favour of the plaintiff as evidenced by the endorsements Ex.A5, Ex.A7 & Ex.A9. The contention of the plaintiff is that despite repeated demands made by him, the defendant did not come forward to make good the payment and hence the suit.

5. The suit was resisted by the defendant on the following grounds :

i. The defendant repaid a sum of Rs.13,000/- on 22.07.1998, Rs.2,003/- on 05.01.1999, Rs.4,000/- on 20.02.1999, Rs.5,000/- on 02.03.1999, Rs.4,800/- on 16.03.1999 and Rs.20,000/- on 20.03.1999 towards Ex.A1 and Ex.A3 promissory notes and that these amounts have not been accounted for by the plaintiff.

ii. There was no passing of consideration for the promissory notes Ex.A6 & Ex.A8.

He therefore prayed for dismissal of the suit. It is also his further contention that all the promissory notes were executed only in respect of a chit transaction.

6. The trial court after framing necessary issues, decreed the suit in favour of the plaintiff vide its decree and judgment dated 27.03.2008, directing the defendant to pay the suit amount together with interest @ 9% per annum from the date of plaint till the date of decree and thereafter @ 6% per annum from the date of decree till the date of realisation.

7. Aggrieved over the same, the defendant filed an appeal in A.S. No.42 of 2008 before the Subordinate Judge, Arani. The learned Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides upheld the findings recorded by the trial Court.



8. Notice of motion was issued to the respondent and after several adjournments, the case was posted today for final hearing. Substantial questions of law raised by the learned counsel for the appellant in the grounds of appeal are as follows:

- i. Whether the suit based on a chit transaction can be filed on the basis of promissory notes?
- ii. Whether the trial Court has territorial jurisdiction to try the suit?

9. At the outset it may be observed that the appellant/defendant did not deny the execution of the promissory notes Ex.A1, Ex.A3, Ex.A6 & Ex.A8. He did not also deny that he paid a sum of Rs.100/- on 05.01.2000 (Ex.A2) in respect of Ex.A1 promissory note and another sum of Rs.100/- on 28.09.2001 (Ex.A4) in respect of Ex.A3 promissory note. However, he contended that there was no consideration for Ex.A6 & Ex.A8 promissory notes. Once the execution of the promissory note is admitted, there is a presumption under Section 118 of the Negotiable Instruments Act that the promissory note is supported by consideration unless and until the contrary is proved. In the instant case, the defendant did not adduce any acceptable evidence to show that there was no consideration for the pro-notes Ex.A6 and Ex.A8. It is seen from the records that though the defendant had contended that he had made several payments on different dates towards the discharge of pro-notes, did not adduce any documentary evidence to substantiate the same. Both the Courts below had analysed the evidence on record properly. Both the courts below, based on the oral and documentary evidence adduced on both sides, had concurrently held that all the suit promissory notes were supported by consideration. I do not find any perversity in the judgments passed by both the courts below. Moreover, this is 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 courts below in a second appeal.

10. As regards the territorial jurisdiction is concerned, the plaintiff initially filed the suit before the District Munsif, Arani, and the suit was decreed ex parte. Subsequently, after the constitution of District Munsif Court, Polur, the entire bundle was transferred to District Munsif Court, Polur and the petitions in I.A.No.176/2007 and 865/2006 to set aside the ex parte decree along with a petition under Section 5 of the Limitation Act, was filed before District Munsif Court, Polur.



Hence, in such circumstances it cannot be said that the District Munsif Court, Polur did not have territorial jurisdiction to try the suit.

11. Though there is a vague pleading about a chit transaction in the written statement, it is not stated by the defendant what was the chit transaction and with whom he had such transaction. He had not also explained the connection between the pro-notes and the chit transaction. Hence, the substantial questions of law are answered against the appellant. In fine, the second appeal fails and is dismissed.

12. In the result,

- i. the second appeal is dismissed. No costs.
- ii. the decree and judgment dated 23.04.2009 passed in A.S. No.42 of 2008, on the file of the Sub Court, Arani, Tiruvannamalai District and the decree and judgment dated 27.03.2008 passed in O.S. No.64 of 2008, on the file of the District Munsif, Polur, Tiruvannamalai District, are upheld.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

mtl

To

1. The Sub Court, Arani, Tiruvannamalai District.
2. The District Munsif, Polur, Tiruvannamalai District.

Copy to:

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

+1cc to Mr.V.Raghavachari, Advocate SR.No.8881

S.A.No .725 of 2011

BS (CO)
CB(01/03/2022)