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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.NO.965 OF 2011

Sivaraj

...Appellant / Defendant

Vs.

Somasundaram

...Respondent / Plaintiff

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 05.11.2008 passed in A.S. No.65 of 2008, on the file of the Principal Sub Court, Gobichettipalayam, upholding the decree and judgment dated 14.12.2007 passed in O.S. No.37 of 2007, on the file of the District Munsif Court, Gobichettipalayam.

For Appellant	:	Mr.P.R.Balasubramanian
For Respondent	:	Mr.T.Sezhian for M/s. R. Meenal

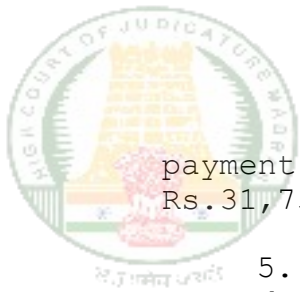
JUDGMENT

The appellant is the defendant in O.S. No.37 of 2007 on the file of the District Munsif Court, Gobichettipalayam.

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 respondent/plaintiff filed the suit for recovery of a sum of Rs.31,737.50, from the appellant/defendant, together with interest @ 12% per annum due under two promissory notes (Ex.A1 and Ex.A2).

4. The case of the plaintiff is that the defendant borrowed a sum of Rs.13,000/- under the promissory note (Ex.A1) dated 31.01.2004 and a sum of Rs.12,000/- under another promissory note (Ex.A2) dated 31.01.2004, promising to repay the principal together with interest @ 12% per annum on demand by the plaintiff or to his order. The further contention of the plaintiff is that despite repeated demands made by the plaintiff, the defendant did not come forward to make good the



payment and hence he filed the suit for recovery of a sum of Rs.31,737.50 together with interest.

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

- 1) The defendant did not execute any promissory note in favour of the plaintiff.
- 2) The plaintiff, at the instigation of some persons, had filed the suit against him and there is no cause of action for filing the suit.

6. The learned District Munsif, after framing necessary issues and after full trial, decreed the suit filed by the plaintiff vide his decree and judgment dated 14.12.2007, directing the defendant to pay a sum of Rs.31,737.50 together with interest @ 9% per annum from the date of the plaint till the date of decree and thereafter, 6% per annum from the date of decree till the date of realisation. The trial court also observed that the promissory notes Ex.A1 and Ex.A2 are true and valid and that the attestors of the promissory notes, namely Muthusamy (P.W.2) and Karuppusamy (P.W.3) had clearly deposed that the promissory notes were executed by the defendant on 31.01.2004 and that there was no good ground to disbelieve or discredit their evidence.

7. Aggrieved over the same, the defendant filed an appeal in A.S. No.65/2008 before the Principal Subordinate Court, Gobichettipalayam. The learned Principal Subordinate Judge, after analysing oral and documentary evidence on record, dismissed the appeal and upheld the findings recorded by the trial court.

8. Now the present second appeal is filed by the plaintiff on the following substantial question of law.

"Whether the lower appellate court had properly appreciated the oral and documentary evidence to hold that the suit promissory notes were true and valid".

9. Heard Mr. P.R. Balasubramanian, learned counsel for the appellant and Mr. T. Sezhan, learned counsel for the respondent.

10. At the outset it may be observed that the plaintiff in the instant case, in order to prove the execution of the promissory notes, examined himself as P.W.1 and also the attestors of the promissory notes as P.W.2 and P.W.3. The evidence of P.W.1 to P.W.3 coupled with the pro-notes Ex.A1 and Ex.A2 shows that the appellant/defendant executed the suit pro-notes. Both the courts had properly analysed the evidence adduced on both sides and concurrently held that the respondent/plaintiff is entitled to get the amount due under the



pro-notes. However, both the courts below granted interest at the rate of 9% per annum from the date of plaint till the date of decree and thereafter at the rate of 6% till the date of realisation.

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11. Mr. P.R. Balasubramanian, learned counsel for the appellant contended that the appellant is a poor farmer and that he cannot pay interest @ 9% per annum from the date of the plaint till the date of decree and that the same may be reduced.

12. Per contra, Mr. T. Sezhian, learned counsel for the respondent contended that though the defendant promised to pay interest @ 12% per annum, both the courts below had reduced the 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. He therefore, contended that reducing of interest from 9% would cause hardship to the plaintiff.

13. It is pertinent to point out that the plaintiff had borrowed Rs.25,000/- for agricultural purposes during the year 2004 as per Ex.A1 and Ex.A2 promissory notes. It is also admitted that the appellant/defendant is a farmer. In the circumstances, reducing interest rate from 9% to 6% from the date of plaint till the date of realisation, in the opinion of the court, would meet the ends of justice. Hence the defendant is directed to pay interest @ 6% per annum from the date of plaint till the date of realisation of the suit amount.

14. In the result,

- i. the second appeal is partly allowed. No costs.
- ii. the decree and judgment dated 05.11.2008 passed in A.S. No.65 of 2008, on the file of the Principal Sub Court, Gobichettipalayam, and the decree and judgment dated 14.12.2007 passed in O.S. No.37 of 2007, on the file of the District Munsif Court, Gobichettipalayam, are modified as under:

the defendant is directed to pay a sum of Rs.31,737.50 to the plaintiff together with interest @ 6% per annum from the date of plaint till the date of realisation of the suit amount.

Sd/-

Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge,
Gobichettipalayam.

2.The District Munsif,
Gobichettipalayam.

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

+1cc to M/s.R.Meenal, Advocate, S.R.No.8386

+1cc to Mr.P.R.Balasubramanian, Advocate, S.R.No.8576

S.A.No.965 of 2011

SR(CO)
RVM(25/03/2022)