IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28 / 04 / 2022

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.87 OF 2013

G.Kannappan ... Appellant/Appellant/Plaintiff

VS.

D.Sankar Chettiar ... Respondent /Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 25.06.2012 made in A.S.No.95 of 2011 (on the file of I Additional District & Sessions Judge, Cuddalore) confirming the judgment and decree dated 16.08.2011 made in O.S.No.228 of 2003 on the file of the Additional Subordinate Judge No.1, Cuddalore.

For Appellant : Mr.V.Radhakrishnan
Senior Counsel
for Mr.K.Sasindran

For Respondent : Ms.Hema Sampath
Senior Counsel
for Ms.R.Meenal

J U D G M E N T

Aggrieved over the concurrent findings of the Courts below the plaintiff has preferred the above Second Appeal.

2.For the sake of convenience, the parties are called as per their litigative status before the Trial Court.

3.According to the plaintiff, he filed a Suit for recovery of money on Promissory Note. The defendant executed a Promissory Note on 16.08.2001 for a valuable consideration of Rs.5,00,000/-. The defendant has also agreed to pay interest @ 12% per annum and also agreed to repay the amount to the plaintiff, on demand or to his order. The plaintiff issued a legal notice on 26.02.2003. In spite of receiving the notice sent by Certificate of Posting, the defendant managed to return the notice sent by Registered Post unserved. Hence, the plaintiff filed the Suit.

4.The defendant denied the execution of the Promissory Note for borrowal of any money. According to him, the plaintiff agreed to sell 2 acres 65 cents of land claiming that he and his brothers are the owners. However, the brothers and wife of deceased brother have refused to sell the land. So that, he had to pay money to other legal heirs also apart from what was paid to the plaintiff. In a way he suffered a huge loss and he is not liable to pay any money on the Promissory Notice. The Promissory Note was not supported by consideration.

5.The Trial Court has framed appropriate issues and held that the Promissory Note marked as Ex.A1 does not fulfill the essential requirements of a pronote as per Section 4 of the Negotiable Instruments Act, 1881, and that the passing off consideration was not proved by the plaintiff and hence, dismissed the Suit. The First Appellate Court has confirmed the finding agreeing with the findings of the Trial Court, against which the Second Appeal has been preferred.

6.The learned Senior Counsel appearing for both sides have consented to argue the Second Appeal on the questions of law framed in the Memorandum of Grounds of Second Appeal, as under:

> "(a) Whether the document Ex.A1 dated 16.8.2001 is not a pronote and whether the suit filed on the basis of the pronote Ex.A1 is not maintainable?
>
> (b) Whether the document Ex.A1 dated 16.08.2001 is a pronote within the meaning of Section 4 of the Negotiable Instruments Act, 1881?
>
> (c) Whether the recitals contained in Ex.A1 pronote does not satisfy the requirements of a pronote as held by Courts below?
>
> (d) Whether the pronote executed for the admitted liability is not legally valid in law?"

7.It is to be seen that whether the pronote marked as Ex.A1 fulfills the essential conditions as specified under Section 4 of the Negotiable Instruments Act, 1881 and that it was executed for the admitted liability is legally valid or not ?

8.The pronote marked as Ex.A1 reads that out of the total sale consideration of Rs.7,00,000/-, after deducting Rs2,00,000/- paid, for a valid consideration of Rs.5,00,000/- agreed to repay on demand or the order to any person along with interest @ 12% per annum by cash signed by the plaintiff.

9.As per Section 4 of the Negotiable Instruments Act, 1881, a "Promissory Note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

10.In the instant case, the amount is Rs.5,00,000/- which is certain. It was signed by the defendant. The payment should be to the order of a person or to the bearer of the instrument is mentioned.

11.The Trial Court only on the issue of "on demand" construed that it is not a pronote, for, the meaning of a word “ வேண்டும்போது” does not stipulate on demand. In Tamil language, a single word may give rise to several meanings. It is the employment of the particular word, at a particular circumstance in a particular context should be understood in its appropriate context. For the word “on demand” the Tamil words "வேண்டும்போது‟ or "வேண்டும்போது‟ should be read cogently and conjointly, with the other sentences employed in the document.

12.In the instant case, the pronote reads that "வேண்டும்போது‟ the defendant will pay Rs.5,00,000/- along with interest to the plaintiff or to a person as ordered by the plaintiff. While reading these sentences, the word "வேண்டும்போது‟ in Tamil will mean "on demand". Therefore, all the essential features of Promissory Note is found in Ex.A1. The factum that it is a Promissory Note is admitted by the defendant himself in his written statement that the Promissory Note was executed by him, was not supported by consideration. He would further aver in the written statement that he has executed a blank stamp document for some valuable consideration. The signature on a stamp paper is admitted by the defendant. Even in the chief examination, the defendant would state that at the time of executing the Power of Attorney, the plaintiff obtained signature in a blank Promissory Note. During cross examination, the defendant would admit his signature in Ex.A1 and that he has signed it, since the plaintiff threatened that he will cancel the power of attorney. The suggestion that it was signed by him after filling up of the entire amount, he would deny the same and also his address to which the legal notice was sent is admitted as correct. Even in the additional chief examination, he would affirm that he had executed the pronote for the reason that the plaintiff threatened him and not supported by consideration. Further, in the cross examination, he would admit that after one year of the execution of the receipt Ex.B3, to the other vendors only he signed Ex.A1. This admission made by the plaintiff would categorically prove that Ex.A1 is a Promissory Note and that the defendant is also very much aware that it is a Promissory Note. The only contention is that he is not liable to pay the said amount due to the payments made by him to the other vendors. Therefore, it is categorically proved that Ex.A1 is a Promissory Note as admitted by the defendant and that it contains all the essential features as required under Section 4 of the Negotiable Instruments Act. Thus, the first question of law is answered in favour of the appellant.

13.It only remains to consider whether the Promissory Note was supported by consideration or was it executed for the admitted liability. The Trial Court has found that even though the defendant has admitted his address and that any letter sent to that address will reach him, held that the service of legal notice by the plaintiff was not proved. The address found in the legal notice and the address given by the defendant are one and the same and there is no dispute that any letter sent to that address will be served.

14.According to the plaintiff, he sent one legal notice by Certificate of Posting and another notice by Registered Post with Acknowledgment Due. There is no denial by the defendant that he has not received any letter sent by Certificate of Posting or returning of legal notice sent through Registered Post with acknowledgment. In that event, it appears that, the defendant has deliberately omitted to issue any reply notice to the plaintiff. It is also found that the defendant has given an advance to the plaintiff and after the dispute raised by other co-owners, he paid huge amount for others also. In view of the payment made to them, the finding has been given that the pronote was not supported by consideration. Such a finding, in the considered opinion of this Court, will not satisfy the issue. When the defendant himself states that he has to make payments to several other persons and therefore, he is not liable to discharge the debt, as promised in the pronote is not supported by any evidence. Hence, it is clear that the pro-note is supported by consideration.

15.When the execution of the Promissory Note is admitted, it is well settled as per Section 118 of the Negotiable

Instruments Act, 1881, it shall be presumed that consideration has also been passed. The sale agreement and power of attorney executed by the plaintiff were all admitted and it shall be presumed that the defendant has unconditionally undertaken to pay a sum of Rs.5,00,000/-. Therefore, it shall be presumed that the defendant is liable to discharge the debt on pronote.

16.The learned Senior Counsel appearing for the respondent would contend that the Promissory Note as well as General Power of Attorney were executed simultaneously and therefore, the Promissory Note was one for future consideration and not supported by consideration passed at the time of execution of the Promissory Note. But, on the other hand, there was an elaborate evidence of the transaction between the defendant, his son-in-law's brother and the other co-owners and payments made to them. It is not categorically stated that the defendant is liable to pay only the liquidated amount and that he has paid the same and therefore, he is not liable to make any further payments. In the absence of any such specific details of payment and proof that the defendant is not liable to pay any further amount, it cannot be considered that he discharged the burden cast upon him.

17.The judgment of the Hon'ble Supreme Court in KUNDAL LAL RALLARAM VS. THE CUSTODIAN, EVACUEE PROPERTY, BOMBAY [AIR 1961 SC 1316] relied on by the learned Senior Counsel for the defendant will not apply to the present case on hand. The facts and circumstances of that case is entirely different wherein the liability to pay the sale consideration was presumed to be negatived by setting aside of the sale itself. In the instant case, the liability to pay the sale consideration to all the co-owners is admitted by the defendant.

18.The judgment of the High Court of Rajasthan in MANGILAL VS. L.Rs' OF LAL CHAND [AIR 1995 RAJ 189] relied on by the learned Senior Counsel for the defendant is also not supporting the case of the defendant. In the given facts and circumstances of the case, Ex.A1 is primarily an acknowledgment of debt or receipt, wherein it was promised to pay certain amount. When there was an intention that he executed the Promissory Note with a intention to adjust the same from the advance amount given, the burden is cast on the defendant to prove that he had given the entire sale consideration including the balance sale consideration as mentioned in the Promissory Note. In the absence of the same, the finding that the defendant is not liable to pay and the Promissory Note is not supported by consideration, cannot be accepted. The Courts below have not given a finding on this aspect, particularly, the Fist Appellate

Court has simply accepted the findings of the Trial Court without giving any independent finding on this aspect.

19.The Hon'ble Supreme Court in NEELAKANTAN AND OTHERS VS. MALLIKA BEGUM [2002 (2) SCC 440] has held that the findings of fact recorded must be set aside where the finding has no basis in any legal evidence on record or is based on a misreading of evidence or suffers from any legal infirmity, which materially prejudices of the case of one of the parties.

20.The judgment and decree passed by the First Appellate Court, without its own independent finding, after discussing the entire materials is bad and liable to be set aside. Accordingly, the judgment and decree dated 25.06.2012 passed in A.S.No.95 of 2011 by the learned First Additional District & Sessions Judge, Cuddalore, stands set aside and the matter is remitted back to the First Appellate Court, for fresh disposal.

21.In fine, the Second Appeal is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK
To

1.The First Additional District & Sessions Judge
Cuddalore.

2.The Additional Subordinate Judge No.1
Cuddalore.

3.The Record Keeper,
VR Section, High Court,
Madras.

+1cc to Mr.R.Meenal, Advocate SR.No.29978

SA NO.87 OF 2013

SSD(CO)
GN(06/06/2022)