IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2022

PRONOUNCED ON : 12.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.Nos.544 & 545 of 2017

(Through Video Conferencing)

K.Karthikeyan ... Appellant/Defendant in both appeals

Vs

P.Selvaraj ... Respondent/Plaintiff in both appeals

Prayer:- These Appeal Suits have been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree, dated, 15.06.2017, made in OS.Nos.32 and 33 of 2013, by the Principal District Judge, Namakkal.

For Appellant : Mr.G.Arulmurugan

For Respondent : Mr.Ramesh Ganapathy

JUDGEMENT

1.These Appeal Suits have been filed, by the Defendant, against the judgement and decree, dated, 15.06.2017, made in OS.Nos.32 and 33 of 2013, by the Principal District Judge, Namakkal.

2.The case of the Plaintiff, as set out in both the plaints, is that the Defendant had borrowed a sum of Rs.11,00,000/- and another sum of Rs.12,00,000/- for his business and family expenses from the Plaintiff on 25.03.2012 and 10.03.2011, respectively and executed two promissory notes on that dates, agreeing to repay the said amounts with interest, at the rate of Rs.1 per Rs.100/- per month. The total sum payable towards principal and interest from 25.03.2012 to 22.01.2013 is Rs.12,10,000/- and from 10.03.2011 to 22.01.2013 is Rs.14,64,000/-. The Defendant had also issued post dated cheque nos.129594 and 129593, drawn on ICICI Bank, Salem Shevapet Branch, for the said sums in favour of the Plaintiff on

25.01.2013 and 22.01.2013, respectively. When the said cheques were presented for encashment on 11.02.2013 and 08.02.2013, they were dishonoured on the ground of 'funds insufficient'. Hence, legal notices dated, 25.02.2013 were issued and replies were sent on 05.03.2013 by the Defendant with false allegations. Since, in spite of several demands, the Defendant did not come forward to repay any amount either towards principal or interest, the above suits were filed, seeking a judgement and decree, directing the Defendant to pay Rs.12,34,532/- and Rs.14,96,400/-, with interest at 12% p.a.

3. The case of the Defendant in both the suits is that the Plaintiff and the Defendant are close relatives and the alleged signatures and thumb impressions found in the promissory notes were forged. The empty promissory notes with the signatures of the Defendant given for security purpose in respect of some other chit transactions run by the Plaintiff had been misused. The cheques in question were utilized only for the purpose of security for car loan and the same were stolen and forged by the Plaintiff. Making use of the forged promissory notes and cheques, the suits had been filed. Hence, the suits are liable to be dismissed.

4. In both the suits, on the pleadings of the parties, issues were framed by the Trial Court. In OS.No.32 of 2013, on the side of the Plaintiff, Ex.A1 to Ex.A7 were marked and PW.1 to PW.3 were examined and on the side of the Defendant, Ex.B1 to Ex.B3 were marked and DW.1 and DW.2 were examined and Ex.X1 was marked. In OS.No.33 of 2013, on the side of the Plaintiff, Ex.A1 to Ex.A4 were marked and PW.1 to PW.3 were examined and on the side of the Defendant, neither any witness was examined nor any document was marked. By the impugned common judgement and decree, the Trial Court had decreed both the suits. Aggrieved against the same, these Appeal Suits have been filed by the Defendant.

5. This Court heard the submissions of the learned counsel on either side.

6. The learned counsel for the Appellant has submitted that the suit promissory notes were given only for security purpose for some other chit transaction and the same were not supported by any consideration. The Respondent was not having any means to pay the amount. The Appellant along with the Respondent have started a Sago Factory and during the course of the said business, dispute arose between them and they dissolved the partnership. The Respondent alone agreed to pay Rs.9 lakhs and retained the two promissory notes. There is no cause of auction for the suit. The witnesses are his close relatives. The Appellant has rebutted the presumption by proving that the

promissory notes are not supported by consideration and hence, he prays to allow these appeals. The learned counsel would rely on the decisions reported in AIR 1961 SC 1316 (Kundan Lal Rallaram Vs. The Custodian, Evacuee Property), 1999 I CTC 497 (Bharat Barrel Vs. Amin Chand Pyarelal), 2007 1 LW 797 (Swaminathan Vs. M.Kumar), 2013 3 SCC 86 (Vijay Vs. Laxman) and 2018 2 CTC 225 (Ashok Kumar Vs. Latha).

7. The learned counsel for the Respondent would submit that the Respondent has proved the execution of the promissory notes by oral and documentary evidence. The Trial Court perused the entire records and came to the proper conclusion. Therefore, there is no necessity to interfere with the impugned judgement of the Trial Court and hence, these appeals are liable to be dismissed.

8. This Court considered the submissions of the learned counsel on either side and also perused the materials available on record.

9. The contention of the Appellant is that the suit promissory notes were given for security purpose and not supported by consideration. The Plaintiff had issued legal notices dated 25.02.2013 and the Defendant had issued reply notices on 05.03.2013. In the said replies, the Defendant did not speak anything about the chit transaction. Further, in order to substantiate the same, the Defendant has not adduced any oral or documentary evidence.

10. The ratio decidendi in AIR 1961 SC 1316 has no relevance to the case on hand since the defence of the Defendants in both the suits is that the signatures found in Ex.A1 are forged and the cheques were stolen. While so the question of invoking Section 118 does not arise at all. Further, the contradictory statements made in the written statement and the oral evidence also would confirm the stand of rebuttable presumption canvassed by the Appellants, by relying upon the other rulings reported in 1999 I CTC 497, 2007 1 LW 797 and 2013 3 SCC 86 and has no relevance and stated by the Honourable Supreme Court in 1999 I CTC 497 Section 118 applies once the execution of the promissory note is accepted. Apart from the above, the Respondents herein proved their initial onus by examining himself as PW.1 and the attestors as PW.2 and PW.3.

11. In so far as the payment of Rs.9 lakhs by the Plaintiff to the Defendant is concerned, it is entirely a different transaction. For that, he has to work out his remedy in a manner known to law.

12. Further, nothing is whispered in the reply notices in Ex.B2,

about the sale of the property for discharging the loan amount. For the theft of cheques, he ought to have lodged a complaint and immediately taken steps, but, he failed to do so.

13.The contentions raised in the written statements by the Defendant are not proved by oral and documentary evidence. At the same time, PW.1 has proved the execution of the promissory notes by oral and documentary evidence.

14.In Ex.A4, the expert report, it is clearly mentioned that both the admitted thumb impressions and disputed thumb impressions are identical in nature. The Trial Court, after perusal of the oral and documentary evidence, came to the proper conclusion. Therefore, there is no necessity to interfere with the impugned judgement of the Trial Court and accordingly, these appeals are liable to be dismissed.

15.In fine, these Appeal Suits are dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Srcm

To

1. The Principal District Judge,
   Namakkal.

AS.Nos.544 & 545 of 2017

PMK(CO)
UMA(25/07/2022)