IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022
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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

A.S.No.935 of 2018
and
C.M.P.No.23802 of 2018

1.Punithavathi Maniam
2.Bharathi
3.Sudha
4.Raghul ..Appellants/Defendants

Vs.

M.V.Aruljothi .. Respondent/Plaintiff

Appeal filed under Section 96 of the Civil Procedure Code read with Order 41 & 41-A of C.PC., against judgment and decree dated 19.03.2018 made in O.S.No.62 of 2012 on the file of the learned Principal District Judge at Vellore.

For Appellants : Mr.Prakash Goklaney
For Mr.S.Giridharan

For Respondent : Mr.Ravikumar Paul
Senior counsel
For Mr.Arun Anbumani

JUDGMENT

The defendants in O.S.No.62 of 2012 are in appeal, aggrieved by the judgment dated 19.03.2018 passed by the learned Principal District Judge at Vellore.

2. The suit in O.S.No.62 of 2012 had been filed by the plaintiff, M.V.Aruljothi, seeking a judgment and decree, directing the defendants, Punithavathi Maniam and her two daughters and son, Sudha, Bharathi and Raghul to pay an aggregate sum of Rs.13,79,133/- (Rupees Thirteen Lakhs Seventy Nine Thousand One Hundred and Thirty Three only) on the basis of two promissory notes said to have been executed by the late husband of the first defendant / father of the defendants 2 to 4, N.Balasubramaniam, who died before the institution of the suit, but who is said to have been executed the promissory notes and also for the accrued interest on the amount due and payable and for costs of the suit. In the suit, it had been stated that

the late husband of the first defendant / father of the defendants 2 to 4, N.Balasubramaniam had borrowed a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) from the plaintiff on 03.11.2009 and had agreed to repay the same with interest at the rate of 12% per annum and had also borrowed a further sum of Rs.10,00,000/- (Rupees Ten Lakhs only) on 05.11.2009, again agreeing to repay the same with interest at the rate of 12% per annum and with respect to both the borrowals, had executed two separate promissory notes in favour of the plaintiff on the very same dates, namely on 03.11.2009 and on 05.11.2009.

3. There had also been further endorsements in the promissory notes and those endorsements continued till 07.05.2012. It had been stated further in the plaint that for the amount due on the second promissory note dated 05.11.2009, N.Balasubramaniam had made a part payment of Rs.7,00,000/- (Rupees Seven Lakhs only) on 15.02.2010. He had also paid interest at the rate of 12% per annum on both the promissory notes till November 2011. Towards the interest, which had accrued upto April 2012 namely from November 2011 till April 2012, for a period of 5 months, which amounted to Rs.65,000/-, the said N.Balasubramaniam had issued a cheque bearing No.653442, drawn on ICICI Bank Limited at Vellore for Rs.50,000/- on 07.05.2012. A copy of the cheque was also filed along with the plaint. There was an endorsement made in the promissory note till the last payment of the interest and in that endorsement, the number of the cheque was mentioned. It is claimed that the cheque related to the second promissory note dated 05.11.2009. It had been stated that subsequent to November 2011, the interest had not been paid. Further, with respect to the first promissory note dated 03.11.2009, it had been stated that N.Balasubramaniam evaded payment of any further amount. He unfortunately died on 28.07.2012. It had been claimed that as legal representatives, the defendants are liable for the suit claim.

4. A Written statement had been filed, which had been verified by the first defendant and had been adopted by the 2nd, 3rd and 4th defendants. In the written statement, it was denied that N.Balasubrmaniam had borrowed a sum of Rs.10,00,000/- on two separate dates, on 03.11.2009 and on 05.11.2009 and that he had agreed to pay interest at the rate of 12% per annum and had executed two promissory notes in favour of the plaintiff. The endorsements on the promissory notes were also denied. The assertion that he had paid interest till November 2011 and that towards interest from November 2011 to April 2012, he had issued a cheque was also denied.

5. It is therefore evident that the entire transaction alleged by the plaintiff had been denied and disputed by the

defendants. Thereafter, the defendants, in the written statement, went further and stated facts relating to the nature of relationship between the plaintiff and N.Balasubramaniam. It had been stated that there was a transaction for purchase of a particular property and N.Balasubramaniam as purchaser, had to pay the sale consideration towards the purchase. It had been stated that the sale took place between the plaintiff and N.Balasubramaniam on 02.11.2009 for a total consideration of Rs.10,60,000/-. It was however stated that at that particular point of time, N.Balasubramaniam had suffered lung cancer and had also undergone a surgery and therefore, he had not paid the entire consideration to the plaintiff.

6. It was claimed that when the documents were registered in the Sub-Registrar office, the 1st defendant had paid a sum of Rs.2,60,000/- from her own account and thereafter, the sale deed was executed. According to the first defendant, it was mutually agreed that the balance sale consideration of Rs.8,00,000/- shall be paid within a period of three months together with interest.

7. It had been stated that, as security for the payment of the balance sale consideration of Rs.8,00,000/-, the plaintiff had obtained several blank signed promissory notes from the husband of the first defendant, who had apparently signed those promissory notes on 22.01.2010. It had been stated that the defendants had thereafter paid the entire sale consideration and had sought return of the promissory notes. Some of the promissory notes were returned, but the suit promissory notes were not returned. The plaintiff stated that they were lost and would be returned whenever recovered.

8. It had been stated that the husband of the first defendant N.Balasubramaniam died on 28.07.2012 and that the first defendant was in a state of shock and could not properly negotiate with the plaintiff with respect to the sale consideration for the purchase of the property. It had been therefore stated that the entire suit is not based on true facts and therefore, it was urged that the suit should be dismissed.

9. On the basis of the above pleadings, the Principal District Judge at Vellore, had framed the following issues for trial:

> "1. Whether the suit promissory note is true and valid?
>
> 2. Whether the suit pronote was executed by 1st defendant's husband is collateral security?
>
> 3. Whether the claim of the defendants that they had paid entire balance sale consideration amount along with interest on 22.01.2010 is true?

4. Whether the suit has no cause of action?

5. To what other relief the plaintiffs are entitled?

10. The parties were invited to graze the witness box and adduce evidence. Both the plaintiff and the defendants had taken up that opportunity. The plaintiff examined himself as P.W.1 and examined the Manager of ICICI Bank as P.W.2. It must be kept in mind that late N.Balasubramaniam had issued a cheque, which, even according to the plaintiff had been retained by the Bank official and to that effect, the Manager of ICICI Bank was examined as P.W.2. The defendants examined two witnesses. The first defendant examined herself as D.W.1 and examined the second defendant as D.W.2.

11. The plaintiff marked Exs.A1 to A49. Though the string of documents seem to be quite lengthy, the actual documents marked were two promissory notes, Exs.A1 and A21. The endorsements in the said promissory notes were marked as Exs.A2 to A20 in the first promissory note and as Exs.A22 to A41 in the second promissory note. The cheque, which had been issued, had been marked as Ex.A42. The copy of the agreement of sale and the certified copy of the agreement of sale and the certified copy of Power of Attorney were all marked as Exs.A43 to A45 respectively. The ICICI Bank Statement was marked as Ex.A48 and a copy of an unregistered sale agreement was marked as Ex.A49.

12. The defendants had marked Exs.B1 to B5. Ex.B1 related to the medical treatment taken by N.Balasubramaniam and a Discharge Summary. Ex.B2 was a certified copy of the Sale Deed dated 02.11.2009. Ex.B3 was original promissory note executed by the first defendant in favour of the plaintiff. Ex.B4 was an endorsement in Ex.B3 Promissory note and Ex.B5 was the copy of the Death Certificate of N.Balasubramaniam.

13. On the basis of the pleadings and evidence, the learned Principal District Judge, Vellore, had taken up for consideration the first and second issues.

14. The learned Principal District Judge at Vellore, found that as a fact, the signatures in the two promissory notes of N.Balasubramaniam had been admitted by the defendants during their examination. This had simplified the issues to a larger extent.

15. Thereafter, the cross examination of D.W.1 had been extracted by the learned trial judge, wherein, it had been stated by the witness/D.W.1/first defendant that she did not know whether any complaint was given owing to the retention of the blank signed promissory notes and refusal to return the same

by the plaintiff and that, she was not aware whether any notice was issued by her, seeking return of those promissory note. She further stated that there were talks to settle the entire issue. She stated that during the course of mediation, a total sum of Rs.5,00,000/- had been agreed to be paid towards settlement of the dispute. She also stated that she was not aware of the various endorsements, but she admitted that the endorsements in Exs.A22 to A41 were in the hand writing of her late husband N.Balasubramaniam. She also admitted that N.Balasubramaniam had an account in ICICI Bank, but denied knowledge about the issuance of cheque, which had been marked as Ex.42 and for which, P.W.2 had been examined. She also stated that she knew about the alleged transaction relating to the agreement of sale and the sale deed between the plaintiff and her husband.

16. The cross examination of D.W.2 had also been extracted by the learned Principal District Judge. D.W.2 also affirmed Mr.N.Balasubramaniam's signature in Exs.A2 to A20 and also in Ex.A21 and also in Exs.A22 to A41.

17. Infact, both the witnesses admitted that the two promissory notes were signed by N.Balasubramaniam and that the endorsements in the promissory notes were signed and executed by N.Balasubramaniam in his hand writing and that, these promissory notes were in the possession of the plaintiff and that no amount had been paid towards the discharge of the amounts mentioned in the said promissory notes.

18. The learned trial Judge also examined the written evidence of P.W.2 / Manager of ICICI Bank.

19. After extracting the evidence as aforementioned, a presumption was drawn under Section 118 of the Negotiable Instruments Act. It had been admitted that N.Balasubramaniam, had appended his signatures in the promissory note and a presumption was drawn that he had so appended, knowing fully well the contents of the documents. It was held that the promissory notes stood proved. The learned trial judge therefore answered the first and second issues in favour of the plaintiff.

20. Thereafter, the third issue was taken up, which was with respect to the transaction relating to the house and which had been mentioned only in the written statement and not in the plaint. The learned trial judge found that the statements in the written statement had not been established by the defendants and therefore, that particular issue was answered against the defendants.

21. The suit was decreed as prayed for with costs. It was directed that the defendants were jointly and severally liable

to pay the plaintiff the suit claim with interest and costs.

22. Questioning such judgment and decree, the defendants have filed the present appeal suit.

23. Heard Mr.Prakash Goklaney, learned counsel for the appellants. Though the respondent / plaintiff was represented, Mr.Ravikumar Paul, learned Senior Counsel, who appeared for Mr.Arun Anbumani, the learned Senior Counsel was not called.

24. The points, which arise for consideration in view of the arguments advanced by Mr.Prakash Goklaney, under Order 41, Rule 31 of the C.P.C., are as follows:

1. Whether the appellants herein can be made liable to repay the amount due from and out of the estate of N.Balasubramaniam?
2. Whether a discussion on that particular aspect should extend to whether the appellants herein stood benefited with any amount from and out of the estate of N.Balasubramaniam?
3. Whether the issue No.3, which had been framed by the learned trial judge relating to the transactions surrounding the house is an issue, which had actually arisen for consideration under Order 14 of the C.P.C.,?
4. Whether the plaintiff's claim on the basis of the promissory notes should be upheld and the reasonings of the trial Judge should be affirmed by this Court?

25. Mr.Prakash Goklaney, learned counsel, took me through the entire judgment, stated that the only point, which arises for consideration is with respect to whether the appellants herein can be made liable, for a debt incurred by the late husband of the first appellant / father of the 2nd to 4th appellants and whether the appellants can be made liable for such a commitment made from and out of the estate of said N.Balasubramaniam. The entire focus of the arguments, in my opinion, is misplaced and if at all it arises, it was only owing to the statements made in the written statement.

26. Under Order 8 Rule 1 of the C.P.C., an obligation is placed on the defendants to deny every statement in the plaint. Under Order 8 Rule 5 of the C.P.C., if there is no specific denial, then, a reasonable presumption can be drawn that those aspects, which are not denied are admitted. Under Section 58 of the Indian Evidence Act, facts admitted need not be proved. I must concede that there is also a proviso to Section 58, where, the Court can call upon certain facts to be proved, even if admitted.

27. When the facts are viewed on the basis of the provisions aforementioned, the issue in the suit can be reduced to simple aspects.

28. There were two promissory notes, one was dated 03.11.2009 and the other was dated 05.11.2009. They were both for Rs.10,00,000/- each. The signatures in the promissory notes have been admitted. They had been signed by N.Balasubramaniam. The signatures are admitted by the defendants and I must state that the first defendant had actually affirmed the signature during the course of cross examination and the second appellant had also affirmed the signatures during his evidence. To that extent, their stand must be appreciated, but it also simplifies the issues before the Court and a presumption can be drawn under Section 118 of the Negotiable Instruments Act that N.Balasubramaniam had appended those signature, knowing fully well the purpose for which the signatures had been appended by him.

29. It is also pointed out by the first appellant that N.Balasubramaniam had paid a sum of Rs.2,60,000/- towards part consideration for the purchase of the house of the respondent herein and that there was a balance of Rs.8,00,000/- to be paid and that therefore, the blank signed promissory notes have been taken as security by the respondent herein and they had been utilized for the purpose of filing the suit.

30. Those issues go beyond the pleadings. If those aspects are to be accepted by Court of law, then the normal conduct of an individual, whose husband is dead, and who is aware that her late husband had a liability to pay consideration and towards such consideration, the vendor had segregated away blank promissory notes would have been to issue a notice seeking return of such blank signed promissory notes. It has very fairly admitted by the first defendant that such notice was never issued. It was also admitted that no complaint was ever lodged. The reason can only be that there was a commitment to repay the amount towards the said promissory notes, which were in the possession of the plaintiff. The plaintiff also during the course of trial, marked the original promissory notes, which passed the test of admissibility, relevancy and had been proved in the manner known to law.

31. As a matter of fact, the signatures having been admitted, the onus shifts to the defendants to explain execution. The issue, which has to be then proved was that there had not been any consideration received under the promissory notes. Each one of the two promissory notes have been produced. In the said promissory notes, the endorsements have also been admitted by the two witnesses / D.W.1, D.W.2. They both stated

that the endorsements are in the handwriting of N.Balasubramaniam and also that they contain his signatures. These facts stare at the face of the appellants. Any other reason given surrounding consideration to be paid for the sale of the house, would pale into insignificance and cannot be countenanced.

32. If at all the respondent herein had a grievance that there has been a sale of a house and the consideration had not been paid, then it is for the respondent to initiate appropriate proceedings for recovery of the balance sale consideration. It does not lie in the mouth of the appellants to claim that sale consideration was due and payable and that promissory notes have been given as security and that those promissory notes have been used for the purpose of the suit. Even if that statement of the appellants is taken into consideration, it would only mean that the suit claim is towards the sale of the house, for which, consideration is due and therefore, the appellants are bound to make the payments as stated in the promissory notes.

33. The points framed for consideration under Order 41 Rule 31 C.P.C., therefore are answered that the entire statements made in the written statement regarding the sale of the house and balance sale consideration have been stated by the appellants only to draw the Court through a different path and to divert attention for the liability under the promissory notes.

34. The burden is heavy on the appellants to prove lack of benefit from the estate of N.Balasubramanian. There is no evidence adduced on that aspect and that is yet another defence taken more out of frustration than with any real intent.

35. I would therefore hold that the suit had been properly adjudicated, and that evidence had been properly appreciated. There is no infirmity or irregularity or misinterpretation of the facts by the learned Trial Judge, I have no hesitation in upholding the same.

36. Thus, the appeal stands dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The learned Principal District Judge,
Vellore.

+1cc to Mr.S.Giritharan, Advocate, S.R.No.25873
+1cc to Mr.Arun Anbumani, Advocate, S.R.No.25828

A.S.No.935 of 2018
and
C.M.P.No.23802 of 2018

SS(CO)
SB(27/06/2022)