



S.A(MD).No.433 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.07.2022

CORAM: JUSTICE N.SESHASAYEE

S.A(MD).No.433 of 2011
and M.P(MD).No.2 of 2011

Muthulakshmi Appellant/Respondent/Defendant

Vs.

Ramakrishnan ... Respondent/Appellant/Plaintiff

Prayer: Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree in A.S.No.4 of 2009 dated 15.03.2010 on the file of the Subordinate Court, Srivilliputhur confirming the judgment and decree in O.S.No.64 of 2006 dated 27.03.2008 on the file of the Principal District Munsif, Srivilliputhur.

For Appellant : Mr.H.Thayumanaswamy

For Respondent : MrD.Srinivasaraghavan

JUDGMENT

The defendant in O.S.No.64 of 2006, which was instituted for recovery of money on a promissory note, is the appellant herein. While the trial Court



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dismissed the suit, the fortune shifted to the plaintiff before the first appellate Court in A.S.No.4 of 2009. For narrative convenience, the parties are referred to as per their rank before the trial Court.

2. The case of the plaintiff is straight forward: On 31.03.2003, under Ext.A1-promissory note, the defendant/ appellant had borrowed a sum of Rs.50,000/- from the plaintiff promising to repay the same with interest at the rate of 12% per annum. The promissory note was attested *inter alia* by P.W.2. And the suit is laid for recovery of this amount with both past and future interest.

3. The defendant contended that the plaintiff was running a Chit, in which she was a subscriber, that she bid a certain chit-auction successfully, and when she obtained the prize money, she left a signed blank paper to the plaintiff as security, and this was misused by the plaintiff to fabricate Ext.A1, and denied liability under the same.

4. The dispute went to trial and before the trial Court, the plaintiff examined himself as P.W.1 and also examined an attesting witness referred to above as P.W.2. Besides the promissory note, he has also produced two other



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documents, which are not very germane to the nature of the dispute. For the defendant, she examined herself as D.W.1 and also examined two other witnesses as D.W.2 and D.W.3. She had produced as many as 8 documents, which came to be marked as Ext.B1 to Ex.B8. Of them, Ext.B1, Ext.B2, Ext.B6 and Ext.B7 related to the chit transactions that she had pleaded. D.W.2 is an erstwhile partner of the plaintiff, who spoke in favour of the defendant, and D.W.3 is the head-constable, who was examined to speak about Ext.B8-statement said to have been given by the plaintiff before the police after the suit was laid.

5.1 On appreciating the evidence before it, the trial court dismissed the suit. The trial court has heavily relied on the testimony of D.W.2, who was once a partner of the plaintiff to discredit the version of the plaintiff. When the matter reached the first appellate Court in an appeal preferred by the plaintiff in A.S.No.4 of 2009, the first appellate Court relied on the testimony of P.W.2 to believe the case of the plaintiff.

5.2 While the trial Court was silent about Ext.B.8 and the role of D.W.3, the first appellate Court disbelieved the version of D.W.3 as he had conceded in his cross-examination that he was not even in the police station



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at the time when Ext.B.8 was prepared. Turning to P.W.2, he did not attach much significance since by the time D.W.2 testified before the Court, differences had already arisen between the plaintiff and D.W.2. This decree of the first appellate court is now under challenge in this appeal.

6. The Second Appeal was admitted for considering the following substantial questions of law:

“(i)Whether the lower Appellate Court is correct when the defendant/appellant rebutted the presumption under Section 118 of Negotiable Instrument Act by producing convincing documentary evidence as well as oral evidence and the plaintiff miserably failed to establish this case that passing of consideration for suit pro-note, is the learned Sub Judge right in reversing the well considered judgment? and

(ii)Whether the learned Appellate Court is right in reversing the judgment of trial Court without considering the evidence of the defendant that the plaintiff failed to establish his case with regard to question of consideration for a suit pro-note. The burden of proof should be shifted on the part of plaintiff to establish his case?”

7. The learned counsel appearing for the defendant/appellant submitted that



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the first appellate court has merely gone by the fact that the defendant had admitted the signature in Ext.A1-promissory note, but had overlooked the fact that even P.W.2, the attesting witness to Ext.A1, has deposed that the said document that he had signed was only a blank paper. The case of the defendant is that the plaintiff, D.W.2 and two others had executed a consent deed to run a chit business, and that a signed blank paper given by the defendant was used to fabricate the promissory note to enforce the liability. He further argued that P.W.1 even denied that he had ever run a chit business and pretended that he did not know D.W.2. Indeed, he would even deny Ext.B4 and Ext.B5, two of the documents, which relate to the *inter se* dispute between the partners. But, if the signatures of the plaintiff in Ext.B4 and Ext.B5 are compared with the signature in the plaint, they reconcile. He proceeded to argue that the defendant had preferred Ext.B3, complaint before the police complaining about the plaintiff not returning the blank paper given by her, and during enquiry into that complaint by the police, the plaintiff had given a signed statement (Ext.B8), but in his testimony he even denied the signature in this.

8. The learned counsel for the plaintiff/respondent arguments is an adaptation of the line of reasoning of the first appellate court, which



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essentially relied on Section 20 of the Negotiable Instruments Act, 1881 read with Section 118(a) thereof. The learned counsel added that even if the line of defence of defendant is analysed, it is her case that she has prized a chit auction run by the plaintiff, and at that time she delivered a blank signed paper as a security to the plaintiff and pleads that she has discharged it. To prove her transaction regarding the paper on which Ext.A.1 is written, she has examined D.W.2, an erstwhile partner of the plaintiff. This witness however, did not specifically state anything about the defendant handing over the blank paper, but has made a general statement. That will be of zero relevance in evaluating the liability of the defendant, argued the counsel. However, he submitted that the plaintiff would be happy even if the defendant pays the balance principal amount.

9. Without wasting a wink's time, the learned counsel for the defendant/appellant submitted, on instructions, that the defendant would be willing to pay the principal sum as alleged, even though she is not liable to pay, and that she agrees to this proposal only with a view to give a quietus to the litigation. The law and facts are immediately sidelined by the offer and acceptance made at the Bar to resolve the dispute, and this Court appreciates it.



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10. In view of this development, the Second Appeal is partly allowed and the defendant is directed to pay such amount as may be necessary for paying the principal sum less Rs.35,000/- already deposited by the defendant in Court. And, if this amount is invested by the Registry, and if the principal sum plus the accrued interest thereon exceeds Rs.50,000/- (Rupees Fifty Thousand only) then, the respondent/plaintiff would be entitled to receive Rs.50,000/- (Rupees Fifty Thousand only), and the balance would be received by the appellant/defendant. If however, the sum in court deposit falls short of Rs.50,000/-, then the defendant is directed to pay the difference within a period of eight weeks from the date of receipt of the copy of the judgment or when the judgment is hosted in the official website, whichever is earlier. No costs. Consequently, connected Miscellaneous Petition is closed.

11. The Registry is required to notify the learned counsel on both sides about the amount i.e., now available to the credit of this case.

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Index : Yes/No

Internet: Yes/No

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To

1.The Subordinate Judge, Srivilliputhur.

2.The Principal District Munsif, Srivilliputhur.

3.The Section Officer,

VR Section, Madurai Bench of Madras High Court, Madurai.



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N.SESHASAYEE, J.,

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