



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.508 of 2015

K.Periyasamy ... Appellant/Appellant/Defendant

Vs.

Palanisamy (Died)

1.P.Saroja

2.P.Nagalakshmi

3.P.Kanagaraj

... Respondents/Respondents/Plaintiffs 2 to 4

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 04.12.2014 passed in A.S.No.23 of 2012, on the file of the Additional District & Sessions Court, Dindigul, confirming the judgment and decree, dated 16.04.2012 passed in O.S.No.171 of 2004 on the file of the Principal Subordinate Court, Dindigul.

For Appellant : Mr.B.Saravanan

For Respondents : Mr.M.R.Sreenivasan
for Mr.R.Nandakumar

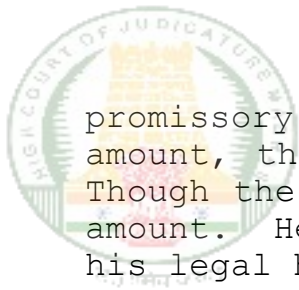
JUDGMENT

The second appeal is directed against the concurrent Judgments and decrees, passed in O.S.No.171 of 2004 by the Principal Subordinate Court, Dindigul and in A.S.No.23 of 2012, passed by the Additional District Court, Dindigul.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking as before the Trial Court.

3.The respondents herein as plaintiffs 2 to 4 have instituted a suit in O.S.No.171 of 2004 on the file of the trial Court for recovery of money of a sum of Rs.3,40,750/- along with interest based on a pro-note, dated 28.05.2001, wherein, the appellant has been shown as the defendant.

4.In the plaint, it is averred that the defendant approached the deceased first plaintiff on 28.05.2001 and obtained a sum of Rs.2,50,000/- with interest at the rate of 1% for a sum of Rs.100/- per month, for his agricultural expenses and executed a



promissory note on the same day. Due to non-payment of the said amount, the first plaintiff has sent a legal notice on 16.12.2002. Though the defendant had received the notice, he had not repaid the amount. Hence, the suit. Pending suit the first plaintiff died and his legal heirs were impleaded as plaintiffs 2 to 4.

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5. In the written statement filed on the side of the defendant, it is averred that the defendant never borrowed a sum of Rs.2,50,000/- from the plaintiff nor executed the suit promissory note dated 28.05.2001. The defendant's son Sakthivel had borrowed loan from Pavunan @ Palanisamy and others and as he could not repay the amount and he filed an insolvency petition in I.A.No.1 of 2002 on the file of the Subordinate Court, Dindigul. Due to the enmity, at 7.30 p.m., on 07.02.2002, Pavunan @ Palanisamy and two others kidnapped the defendant in a Car and threatened him with dire consequences and forcibly obtained his signature and left thumb impression (LTI) in many blank papers and stamp papers and snatched away Rs.10,000/- from him. Further, the defendant lodged a complaint before the Oddanchatram Police Station and a case has been registered against Pavunan @ Palanisamy and two others. So the defendant issued a warning notice in Daily Thanthi on 08.02.2002. The defendant has filed a suit in O.S.No.171 of 2004 against three persons for declaration that those persons are not entitled to trump up instrument on the blank papers and stamp papers bearing left thumb impression and the signatures of the defendant obtained by coercion and intimidation. The first plaintiff being the co-brother of Pavunan @ Palanisamy has been set up to institute a suit on the basis of the forged suit promissory note. The suit promissory note is not supported by any consideration. There is no cause of action for filing the suit. The suit is devoid of merits and prayed for dismissal of the same.

6. Before the trial Court, on the side of the plaintiffs, P.W.1 to P.W.3 were examined and Exs.A1 to A3 were marked. On the side of the defendant, one Palanisay was examined as D.W.1 and Exs.B.1 and B.2 were marked.

7. On the basis of the rival pleadings on either side, the trial Court has framed necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in favour of the respondents / plaintiffs and directed the defendant to pay a sum of Rs.3,40,750/- with 6% per annum from the date of plaint, till the date of realization for the principal amount of Rs.2,50,000/-.

8. Aggrieved by the Judgment and decree passed by the trial Court, the defendant as appellant, had filed an Appeal Suit in A.S.No.23 of 2012. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.



9. Challenging the said concurrent judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendant as appellant.

10. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

11. At the time of admitting the present second appeal, the following substantial question of law has been framed for consideration:

"a) Whether the Courts below are right in decreeing the suit especially when the witness to the promissory note has not supported the case of the plaintiffs ?

b) Whether the Courts below are right in decreeing the suit when P.W.1 did not speak anything as to the passing of consideration ?

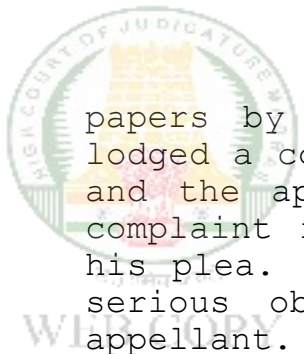
c) Whether the Courts below are right in not considering the pendency of criminal case with regard to the defence of the defendant ?

12. The learned counsel appearing for the appellant/defendant contended that both the Courts below have failed to consider that the appellant was kidnapped by Povunan @ Palanisamy and others and obtained signature and left thumb impression of the defendant under threat and intimidation and in respect of the said occurrence, a criminal case in C.C.No.873 of 2010 is pending before the Court below; the said Povunan @ Palanisamy, who is the co-brother of the deceased first plaintiff was present at the time of cross examination of P.W.1 and the same has also been admitted by P.W.1; the respondents / plaintiffs have not proved the passing of consideration and failed to discharge their burden and therefore, the defendant prayed for allowing the Second Appeal.

13. The learned counsel appearing for the respondents/plaintiffs 2 to 4 would submit that the first Appellate Court, after analysing the documents available on record, has rightly allowed the Appeal in favour of the respondents/plaintiffs 2 to 4 and prayed for dismissal of the Second Appeal.

14. This Court paid its anxious consideration to the rival submissions made and also carefully perused the materials placed on record.

15. On going through the documents, it is seen that during the pendency of the appeal, the defendant had filed I.A.No.10 of 2014 for receiving additional documents. The appellant had admitted his signatures in Ex.A.1 promissory note and has taken a defence plea that he was kidnapped by one Pavunan @ Palanisamy and two others and obtained his signature and left thumb impression in stamp



papers by coercion and threat and the appellant had immediately lodged a complaint in this regard and a charge sheet has been filed and the appellant has produced additional documents based on the complaint filed by him and other connected records to substantiate his plea. The respondents / plaintiffs 2 to 4 have not raised any serious objection to mark those documents on the side of the appellant. The defendant has explained why this documents could not be filed before the trial Court and therefore, the said petition seeking permission to mark additional documents was allowed and the said documents were marked as Ex.B.3 to B.16.

16. The case of the plaintiffs is that originally the deceased Palanisamy, as plaintiff has filed a suit in O.S.No.171 of 2004 against the defendant stating that the defendant has borrowed a sum of Rs.2,50,000/- as a loan and executed a suit promissory note-Ex.A.1 dated 28.05.2001. In spite of repeated demands made by the respondents, the defendant failed to repay the loan amount and hence, the deceased Palanisamy has issued a legal notice on 06.12.2002 to settle the entire loan amount and the defendant has also sent a reply notice denying the borrowal of loan amount and execution of promissory note. Therefore, the said Palanisamy was constrained to file a suit for recovery of money based on the promissory note. Pending the suit, Palanisamy died and his legal heirs were impleaded as Plaintiffs 2 to 4, who are the respondents in this Second Appeal.

17. The first plaintiff's son was examined as P.W.1 and he witnessed the borrowal of Rs.2,50,000/- by the defendant from his father and execution of Ex.A.1 promissory note dated 28.05.2001. At the time of execution of Ex.A.1, he was studying +2 in Higher Secondary School, Oddanchatram and Ex.A.1 was executed around 12.00 noon at his residence and in his presence a sum of Rs.2,50,000/- was handed over to the defendant by his father. The entire evidence of the chief and cross examination of P.W.1 would show that the first plaintiff's son was present along with his father at the time of lending money and he has proved his presence at the time. The attester - P.W.2, also deposed that he has also seen the execution and payment of money. Hence, both the Courts below have come to the conclusion as per the evidence of P.W.1 and P.W.2 and other evidence, the defendant has obtained a loan amount of Rs.2,50,000/- from the deceased Palanisamy by executing Ex.A.1-promissory note and the appellant has also acknowledged the same.

18.The only contention raised by the defendant is that his signature was obtained in Ex.A.1 only by coercion and threat and he did not borrow any amount from the deceased Palanisamy as alleged. The co-brother of the deceased Palanisamy has obtained the signature of the defendant in the blank promissory note by kidnapping him and it is also not supported by any consideration. Immediately the defendant has filed a suit in O.S.No.689 of 2003 for declaration and



the same, the defendant has preferred an appeal in A.S.No.22 of 2012 and the same was also dismissed holding that the plea of the defendant that he was kidnapped and his signature in Ex.A.1 promissory note was obtained on force, as unsustainable.

19. According to the defendant, his son Sakthivel had borrowed loan from Pavunan @ Palanisamy and others and as he could not repay the amount and he filed an insolvency petition in I.A.No.1 of 2002 on the file of the Subordinate Court, Dindigul. The alleged kidnapping, registration of FIR, filing of charge sheet, paper publication, certified copies of depositions and also the decree passed in O.S.No.369 of 2008 are not helpful in substantiating his case. The additional documents already received, did not help the defendant in proving that the alleged Ex.A.1 is an manipulated document or forged one.

20. Further the defendant and his son are in the habit of obtaining loan from several persons and when they could not repay the said amount several suits have been filed against them for recovery of money. The defendant's son has already filed an insolvency petition to declare him as insolvent. Further, to defeat the rights of plaintiffs 2 to 4, the defendant has taken a precautionary plea, as if he was kidnapped under coercion and threat and obtained his signature and left thumb impression in blank stamp papers.

21. Further the defendant was successful in registering a criminal case against the plaintiffs and mere filing of a criminal complaint alleging that he was kidnapped and obtained signature and left thumb impression in the blank papers are not sufficient to prove the case of the defendant. It is pertinent to note that the defendant has not made a mention in the complaint or in his deposition that under coercion and threat he affixed his signature in the blank promissory notes. However, the plaintiffs 2 to 4 have proved that the deceased Palanisamy has lent a sum of Rs.2,50,000/- as demanded by the defendant and Ex.A.1 promissory note was executed for such purpose.

22. From the above facts, it is seen that the defendant has not proved his case by let in appropriate and cogent evidence. However, the plaintiffs 2 to 4 have proved their case that the defendant has executed a promissory note-Ex.A.1, for borrowing a sum of Rs.2,50,000/- from the first plaintiff, who is the father of the plaintiffs 2 to 4 for his agricultural expenses. Therefore, this Court is of the view that the appellant / defendant has not made out a *prima facie* case as prayed for by him and hence, the substantial questions of law are answered against the appellant / defendant and in favour of the respondents/plaintiffs 2 to 4.

23. For the reasons aforesaid, this Court is of the view that there is no illegality or infirmity in the



well-considered judgments and decrees rendered by the Courts below and accordingly, the Second Appeal is liable to be dismissed.

24. In the result, the Second Appeal is dismissed. No costs.

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Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional District & Sessions Judge,
Dindigul.

2.The Principal Subordinate Judge,
Dindigul.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.R.NANDAKUMAR, Advocate, SR-2 dated 03/01/2022

+1 CC to M/s.B.SARAVANAN, Advocate, SR-120 dated 04/01/2022

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