



SA.No.1539 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.1539 of 2008

and

M.P.No.1 of 2008

1. Mr.Makbul Sherrif

2. Smt. Meharunnisa (died)

3. Tmt. Sharmila Bannu

4. Tmt. Gowsunnisa

5. Tmt. Jenifer

6. Tmt.Parveen

... Appellants

(A3 to A6 are brought on record as
legal heirs of the deceased A2 vide Court
order dated 10.11.2023 in C.M.P.No.12203 of 2021
by CKJ)

- Vs -

Durairaj

... Respondent

Second Appeal filed under Section 100 of the Civil Procedure Code to
set aside the Judgment and decree in O.S.No.459 of 2005 dated 18.04.2006



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on the file of II Additional District Munsif Court, Virudhachalam confirming in A.S.No.101 of 2006 dated 30.11.2006 on the file of the Principal Sub-Judge, Virudhachalam and allow this second appeal.

For Appellants 1,3 and 6 : Mr. B. Gopalakrishnan

Respondent : Private Notice returned as
“ Insufficient address”

JUDGMENT

The instant second appeal has been filed at the instance of the defendants. The respondent herein is the plaintiff before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the Trial Court.

3. The brief facts which led to filing of the suit are as follows:

The defendants borrowed a sum of Rs.66,000/- from the plaintiff by executing a promissory note on 27.07.2003, agreeing to repay the same with interest at the rate of 12% per annum. As nothing was re-paid, the plaintiff has issued a legal notice on 22.08.2005 demanding the defendants to pay the



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amount, for which, the defendants sent a reply notice with untenable
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pleadings. Hence, the plaintiff came forward with the suit for recovery of pronote dues.

4. The said suit was resisted by the defendants by contending that the alleged pronote was obtained by the plaintiff by undue influence and coercion and that the pronote was not supported by any consideration.

5.Evidence and Documents:-

Before the Trial Court, the plaintiff himself examined herself as P.W.1 and one more witness was examined as P.W.2. On behalf of the defendants, the first defendant was examined as D.W.1 and apart from that, four more witnesses were examined as D.W.2 to D.W.5. On behalf of the plaintiff, 3 documents were marked as Ex.A1 to Ex.A3 and on behalf of the defendants, 3 documents were marked as Ex.B1 to Ex.B3.

6.Findings of the Court below:-

After having considered either side submissions, the Trial Court decreed the suit. Aggrieved by the Judgment of the Trial Court, the



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defendants preferred an appeal. However, the First Appellate Court has also concurred with the findings recorded by the Trial Court and dismissed the appeal. Aggrieved by the Judgment of the First Appellate Court the defendants are before this Court.

7.Submissions of the appellants' counsel

The learned counsel for appellants would vehemently contend that the plaintiff's father was an influential person and that the D1 was working as a collection agent in a bank, where the plaintiff's father was working. The learned counsel would further contend that the plaintiff's father by using his influence, with the help of the police, had obtained signatures from the defendants in blank promissory note and that the disputed promissory notes was not supported by valid consideration, though it was signed by the defendants. He further submits that there was also a criminal complaint filed by the father of the plaintiff and it was also spoken by D.W.2 to D.W.5. But, the Trial Court did not take into consideration the said aspects and decreed the suit. Hence he, prayed to allow the second appeal by interfering with the Judgments of both the Court below.

8. The private notice sent to the respondent as been returned as



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“Insufficient address”

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9.This Court has given its anxious consideration to the submission of the learned counsel for the appellants.

10.Analysis of the Submissions

If we closely peruse the defence put forth by the defendants qua the appellants , it was on two folds. On the one hand, the defendants contended that though the signatures found in the promissory notes were that of the defendants, it was not supported by valid consideration. On the other hand, the defendants contended that they signed only in the blank promissory notes. After having taken into consideration of these defences, the Trial Court as well as the First Appellate Court had relied upon the provisions under Section 118 of the Negotiable Instruments Act and drawn the presumption in favour of the plaintiff. It was also the finding of the both the Courts below that the defendants have not rebutted the presumptions drawn by the both the Courts below. It is also relevant to mention that the Trial Court relied upon the Judgment rendered by the Hon'ble Supreme Court in the case of *Bharath Parel and Drum producers limited Vs Amar chand* [reported in AIR 1999 SC 1008], wherein it has been held that as to how the presumption under Section 118 of the said Act could be drawn and how



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such presumption could be rebutted.

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11. On perusal of the Judgments passed by both the Courts below, this Court does not find any perversity nor any reason to interfere with such well merited finding. Further, there is no substantial question of law involved in this matter.

12. In the result, this second appeal is dismissed by confirming the Judgments and decrees passed by both the Courts below. No order as to costs. Consequently the connected miscellaneous petition is also closed.

14.12.2023

smn

Index: yes / no

Neutral citation

Speaking / Non speaking order

To

1.The I Additional District Munsif Court, Viudhachalam

2. The Principal Sub-Judge, Virudhachalam



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