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S.A.No.57 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.02.2023

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THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.57 of 2023

Cheperumal

...Appellant

Vs.

Palaniammal

...Respondent

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the decree and judgment of the learned Principal District and Sessions Judge, Ariyalur passed in A.S.No.6 of 2021 dated 10.10.2022; reversing the decree and judgment of the Additional Sub Judge at Ariyalur in O.S.No.36 of 2018 dated 13.12.2019.

For Appellant : Mr.N.Shanmugam

JUDGMENT

This second appeal is directed as against the judgment and decree dated 10.10.2022 made in A.S.No.6 of 2021 passed by the learned Principal District and Sessions Judge, Ariyalur, reversing the judgment and decree dated 13.12.2019 passed in O.S.No.36 of 2018 on the file of the Additional Sub Judge at Ariyalur, thereby decreed the suit for recovery of money.



S.A.No.57 of 2023

2. The appellant is the plaintiff and the respondent is the defendant. The case of the appellant is that the respondent borrowed a sum of Rs.1,00,000/- on 09.03.2015 and Rs.68,000/- on 15.03.2015. On the said borrowal, the respondent agreed to repay the said amount with interest at the rate of 12% per annum and also executed the suit pro-notes to the appellant. However, as agreed by the respondent herein, she failed to repay the amount and as such, the appellant filed a suit for recovery of money to the tune of Rs.2,13,174/- along with interest at the rate of 9% per annum.

3. Resisting the above contentions of the plaintiff, the respondent filed written statement stating that she never borrowed any amount as alleged by the appellant on 09.03.2015 and 15.03.2015 and she never executed any suit pro-notes. Actually, she borrowed a sum of Rs.20,000/- in the year 2009 from the appellant and she executed one pro-note, for which she has repaid entire loan amount with interest even in the year 2015 itself. Even after discharging the entire loan amount from the appellant, the appellant had used the same to create the forged documents and filed a suit. She further stated that after lapse of limitation period, the appellant having forged the signature of the respondent, found in the said earlier pro-note, filed the suit only to extract more money from the respondent herein. In



S.A.No.57 of 2023

fact, the appellant also failed to send any pre-suit notice.

WEB COPY

4. On the basis of the said pleadings, the Trial Court had framed the following issues:-

- (i) Whether the suit promissory note is true and genuine?
- (ii) Whether the plaintiff is entitled to claim amount with interest? And
- (iii) To what other relief the plaintiff is entitled?

5. On the side of the appellant, PW1 to PW3 were examined and documents were marked as Ex.A1 to Ex.A3. On the side of the respondent, she had examined as DW1 and no documents were marked. On considering the oral and documentary evidence, the trial Court decreed the suit for a sum of Rs.1,68,000/- along with interest at the rate of 6% per annum. Aggrieved by the same, the respondent filed an Appeal Suit, which was allowed setting aside the decree passed by the Trial Court. Hence, the present Second Appeal is filed by the plaintiff.

6. This Second Appeal is filed on the following substantial questions of law:-



S.A.No.57 of 2023

WEB COPY

(i) Whether the First Appellate Court is justified in considering that legal presumption under Section 118 of the Negotiable Instruments Act, regarding the consideration which has been sufficiently rebutted?

(ii) Whether the First Appellate Court had acted within its scope in contradicting the preponderance of probabilities drawn by the trial Court in this case, when the evidence had been fully adjudged?

(iii) Whether the First Appellate Court is correct in disregarding the promissory note, which had satisfied all the conditions illustrated under Section 4 of the Negotiable Instruments Act?

(iv) Whether the First Appellate Court is correct in drawing the judgment based on the conduct of the plaintiff, as to whether he had made any demand for payment, when the fulcrum of the case is the factum of consideration and the conduct of the plaintiff does not mark any relevance on his legal rights? And

(v) Whether the First Appellate Court is justified in doubting the reliability of the pro-note based on the absence of the address of the witnesses and the father's name of the same,



S.A.No.57 of 2023

WEB COPY

when the learned trial Judge has already passed judgment based on probabilities and any reversal of the same would be a travesty of justice, when the plaintiff cannot submit additional supplemental proof to the same?

7. The learned counsel for the appellant submitted that the respondent had categorically admitted the pro-notes executed on behalf of the appellant, which were marked as Ex.A1 and Ex.A2. The appellant has also examined himself as PW1 and one Kolanchinathan, who was scribe to the suit pro-note was examined as PW2 and another one Kolanchi, who was attester of the suit pro-note was examined as PW3, thereby he categorically proved his case. Therefore, the trial Court rightly decreed the suit and unfortunately the First Appellate Court, without considering the facts and circumstances of the case, dismissed the Appeal Suit.

8. Heard the submissions made by Mr.N.Shanmugam, learned counsel for the appellant and perused the materials available on record.

9. On a perusal of the records, it reveals that the appellant filed a suit for recovery of money on the strength of Exs.A1 and A2. According to the



S.A.No.57 of 2023

appellant, the respondent had borrowed a sum of Rs.1,00,000/- on 09.03.2015 and another sum of Rs.68,000/- on 15.03.2015 and had executed pro-notes, which were marked as Exs.A1 and A2. On a perusal of the pro-notes, the names of PW2 and PW3 were simply mentioned and no address was mentioned in the pro-notes. In fact, their father's name was also not mentioned in the pro-notes, which is also categorically admitted by PW1 to PW3. That apart, the case of the appellant is that the said pro-notes and stamps were purchased by the appellant herein. However in the cross examination, he admitted that the said pro-notes were not purchased by the appellant and pro-notes were readily available in his hands. He further admitted that the other documents were executed by the respondent within the hands of the appellant herein. Further, the appellant also failed to issue any pre-suit notice calling upon the respondent to pay the amount. In order to evade the limitation, the plaintiff did not cause any pre-suit notice and simply filed the suit as if the respondent borrowed a sum of Rs.1,68,000/- on two different dates. Therefore, the appellant failed to prove his case and the First Appellate Court had rightly allowed the appeal and dismissed the suit filed by the appellant herein. Hence, this Court finds no infirmity or illegality in the order passed by the First Appellate Court.



S.A.No.57 of 2023

10. Accordingly, this Court finds that there is no question of law,
much less the substantial question of law in the present Second Appeal.

Accordingly, the Second Appeal is dismissed in limine, without being
admitted.

03.02.2023

Index : Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/no

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To

- 1.The Principal Judge, Ariyalur.
- 2.The Additional Sub Judge, Ariyalur.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



WEB COPY



S.A.No.57 of 2023

G.K.ILANTHIRAIYAN, J.

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S.A.No.57 of 2023

03.02.2023