



S.A.No.1471 of 2010

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.1471 of 2010

Venkatachalam

...Appellant

Vs.

Kannayiram

... Respondent

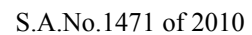
Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 25.01.2010 passed in A.S. No.5 of 2009, on the file of the Subordinate Judge, Gingee, upholding the decree and judgment dated 23.06.2008 passed in O.S. No.406 of 2006, on the file of the Principal District Munsif Court, Gingee.

For Appellant : Mr. A.R. Nixon

For Respondent : Mr. V.R. Appaswamee

JUDGMENT

The defendant who failed before both the courts below had filed the present Second Appeal. The respondent/plaintiff filed a suit O.S. No.406 of 2006 before the Principal District Munsif, Gingee, for



2. For the sake of convenience, the parties are referred to as ranking in the trial court and at appropriate places, their rank in second appeal would also be indicated.

The defendant borrowed a sum of Rs.40,000/- from the plaintiff on 10.07.1995 and executed a Promissory Note (Ex.A1) promising to repay the principal together with interest at the rate of 12% per annum on demand by the plaintiff or to his order. Despite the repeated demands made by the plaintiff, the defendant did not come forward to make good the payment and therefore, the plaintiff issued a legal notice dated 04.06.1998 (Ex.A2). Though the defendant received the said notice, as evidenced by the postal acknowledgment card (Ex.A3), he neither repaid the loan amount nor sent a reply to the notice



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sent by the plaintiff. Hence the suit.

4. The suit was resisted by the defendant on the following grounds:

- I. The defendant borrowed only a sum of Rs.6,300/- from the plaintiff during 1995 and paid interest at Rs.630/- per month.
- II. The plaintiff obtained the signature of the defendant on a blank stamp paper.
- III. However, the plaintiff filled up the blank stamp paper subsequently and had filed the present suit.
- IV. The plaintiff also took away 3 H.P. electric motor belonging to the defendant, which is worth more than Rs.5,000/-.
- V. The defendant had, therefore, prayed for dismissal of the suit.

5. On the basis of the above pleadings, the trial court framed the following issues:

- i. "Whether the suit Promissory Note is a fabricated document?
- ii. Whether the plaintiff is entitled for the suit amount?



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iii. To what relief the plaintiff is entitled?"

6. In the trial court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A3. The defendant examined himself and one another witness. However, no document was adduced on his side.

7. After full contest, the learned Principal District Munsif, Gingee, decreed the suit filed by the plaintiff vide his decree and judgment dated 23.06.2008 on the following grounds:

- i. The defendant had admitted his signature on the suit Promissory Note (Ex.A1). Therefore, there is a presumption under Section 118 of the Negotiable Instrument Act that the suit Promissory Note is supported by consideration unless the contrary is proved.
- ii. The defendant did not adduce any acceptable evidence to show that the suit Promissory Note is not supported by consideration.
- iii. Though in the written statement the defendant had contended that he borrowed only a sum of Rs.6,300/- from the plaintiff and signed



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on a blank stamp paper, he did not state the same clearly during the course of his chief examination.

iv. Moreover, he had also deposed that he signed a blank Promissory Note only during the year 1989 and not in the year 1995.

v. Though an attempt was made by the defendant during his evidence that his signature was obtained under threat, there is no acceptable evidence to show that the signature of the defendant was obtained on the suit Promissory Note by threat or coercion. In fact there is no pleadings in this regard.

vi. The plaintiff had adduced acceptable evidence to show that the suit promissory note is true and valid and is also supported by consideration.

vii. The defendant had not established his contention that the plaintiff had taken away 3 H.P. electric motor belonging to him.

viii. In fact D.W.1 had adduced evidence contrary to his pleadings.

8. Aggrieved over the decree and judgment passed by the trial court, the defendant filed an appeal in A.S. No.5/09 before the



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Subordinate Judge, Gingee. The learned Subordinate Judge, Gingee, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide her decree and judgment dated 25.01.2010.

9. Now the present Second Appeal is filed and admitted on the following substantial questions of law by my learned predecessor.

- i. "Whether any piece of evidence or deposition can be relied upon without raising the pleadings of the plaint?
- ii. Whether a document can be proved without examining the scribe of the documents when the address of the witness was not found a place in the document?
- iii. Whether the plaintiff can be permitted to pick up loopholes or weakness of the defendants case without discharging the initial burden against the plaintiffs?
- iv. Whether mere production of a promissory note itself is enough to shift the burden of the plaintiff to defendant?"



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10. Heard Mr. A.R. Nixon, learned counsel for the appellant and Mr. V.R. Appaswamee, learned counsel for the respondent.

11. Mr. A.R. Nixon learned counsel for the appellant contended that the defendant had specifically denied the execution of the suit Promissory Note and in such circumstances, both the courts below had committed an error in decreeing the suit in favour of the plaintiff by placing the burden of proof on the defendant. He relied on the decision in *Ch. Birbal Singh vs. Harphool Khan and another* reported in *AIR 1976 Allahabad 23* wherein it has been held that the execution of a document consists in signing a document written, read over and understood and does not consist of merely signing a blank paper. It is his further submission that the presumption under Section 118 of the Negotiable Instruments Act would not be available to the plaintiff since he signed only on a blank stamp paper. It is also his submission that though the defendant had denied the execution of the Promissory Note, the plaintiff had failed to examine neither the scribe of the Promissory Note nor the witnesses who signed on the Promissory Note. He,

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therefore, prayed for allowing the present Second Appeal.

12. Per contra, Mr. V.R. Appaswamee, learned counsel for the respondent contended that both the Courts below had properly analysed the oral and documentary evidence adduced on both sides and decreed the suit and therefore, no interference is warranted by this Court. According to him, there is no substantial question of law involved in the present second appeal.

13. At the outset it may be observed that the defendant had admitted his signature on the suit Promissory Note Ex.A1. Once the signature is admitted, there is a presumption under Section 118 of the Negotiable Instruments Act that the suit Promissory Note is supported by consideration unless the contrary is proved. Even assuming the case of the defendant that he signed only on a blank stamp paper is true, Section 20 of the Negotiable Instruments Act comes into operation, which reads thus:



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WEB COPY Section 20 in The Negotiable Instruments Act, 1881

20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 1[India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

Moreover, in the instant case, the defendant did not choose to send any reply to the notice sent by the plaintiff. It is pertinent to point out that a Promissory Note does not require to be attested by a witness. Since the defendant had not denied his signature on the suit Promissory Note and the evidence of P.W.1, who spoke about the execution of the suit



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Promissory Note by the defendant, is convincing, both the courts below had decreed the suit in favour of the plaintiff. The defendant had made contradictory statements in his evidence deviating his original pleadings in the written statement and this aspect was also dealt with by both the courts below in extenso. In fact, the first appellate court in paragraph No.9 and 10 had observed as follows:

"9. Moreover the witnesses D.W.2 and D.W.3 have categorically stated that they are not aware of the fact of transaction between the plaintiff and the defendant in respect of anybody.

"gzk; nfhLf;fy; thq;fy; gw;wp njhpahJ".....

D.W.2 and D.W.3 are examined to show the fact that the motor was removed only towards the sum due and to discharge the pronote executed in favour of the plaintiff by the defendant. On the contrary, D.W.2 has stated that he had not given the motor to the plaintiff and has stated that the plaintiff has nothing to do that the removal of motor from the defendant. Moreover he has stated that there was a talk of panchayat and that the defendant had not come to the terms. So there has been some transaction pending.



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10. The defendant/appellant has not proved the fact that the suit pronote or the pronote in issue has been discharged and the suit pronote is nothing but the pronote executed for receiving a sum of Rs.6,300/-. The defendant's case is that the amount due under pronote was totally discharged and when the plaintiff was approached in return the pronote, he had replied that it was lost during the shifting of the shop. Just because the plaintiff has admitted that he was running a tea shop which was removed by Highways would not substantiate the case of the defendant that he has discharged. But the plaintiff was evading to return the pronote on the ground that he has lost. The defendant has failed to discharge the burden caused upon him. The grounds against which the appeal is filed does not find any sort of interference. These issues are decided accordingly."

14. The decision in ***Ch. Birbal Singh vs. Harphool Khan and another*** cited supra may not apply to the facts of the case since in that case the defendant had totally denied the execution of the promissory note and he never admitted his signature on the suit Promissory Note.



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15. All the observations made by the first Appellate Court are based on the evidence on record and it is also a question of fact. I do not find any infirmity in the decree and judgment passed by both the courts below and therefore, the substantial questions of law are answered accordingly. The, Second appeal thus fails and is dismissed.

16. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. the decree and judgment dated 25.01.2010 passed in A.S. No.5 of 2009, on the file of the Subordinate Judge, Gingee, and the decree and judgment dated 23.06.2008 passed in O.S. No.406 of 2006, on the file of the Principal District Munsif Court, Gingee, are upheld.

08.06.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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To

1. The Subordinate Judge, Gingee.
2. The Principal District Munsif Court, Gingee.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.
bga

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