



S.A.No.1538 of 2010
and M.P.No.1 of 2010

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

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

S.A.No.1538 of 2010

and

M.P.NO.1 of 2010

Oppliamani Padayachi

...Appellant

Vs.

Muthusamy Padayachi

... Respondent

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 05.09.2007 passed in O.S. No.255 of 2006, on the file of the District Munsif Court, Ariyalur, upholding the decree and judgment dated 20.01.2010 passed in A.S. No.100 of 2007, on the file of the Sub Court, Ariyalur.

For Appellant : Mr.V.Sivaraman for
Mr.K.Balu

For Respondent : Mr.V.Parthiban
for Mr.M.V.Krishnan



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JUDGMENT

The unsuccessful defendant before both the courts below has filed the present second appeal.

2. The respondent/plaintiff filed the suit in O.S. No.255 of 2006, on the file of the District Munsif Court, Ariyalur, for recovery of a sum of Rs.25,000/- from the defendant together with interest @ 12% per annum from the date of plaint till the date of realisation due under a promissory note dated 19.08.2003 (Ex.A1) executed by the appellant/defendant.

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

4. The case of the plaintiff in nutshell is as follows:

The defendant borrowed a sum of Rs.25,000/- from the



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

- i. The signature on the suit promissory note Ex.A1 is admitted. However, the defendant did not receive any amount much less Rs.25,000/- as mentioned in the promissory note.



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- ii. During the year 1994, the defendant borrowed a sum of Rs.1,500/- and executed a promissory note for Rs.3,000/- and paid the interest for two years.
- iii. In the year 1997, the defendant executed another promissory note for a sum of Rs.6,400/- for the balance amount due under the pro-note of the year 1994 and thereafter, on 21.08.2000 he executed another promissory note in favour of the plaintiff for Rs.14,600/- as requested by the plaintiff.
- iv. Subsequently on 19.08.2003 the suit promissory note was executed for a sum of Rs.25,000/-. In fact the balance amount due to be paid to the plaintiff is only Rs.12,500/-. Hence, there is no valid consideration for the suit promissory note and the suit is liable to be dismissed.



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6. On the basis of the above pleadings, the trial Court framed the following issues :

- i. Whether the suit pronote was executed by the defendant in the circumstances stated by him?
- ii. Whether the plaintiff is entitled to a decree as prayed for by him?
- iii. To what relief, if any, the plaintiff is entitled ?

7. In the trial court the plaintiff examined himself and marked Ex.A1 to Ex.A3. The defendant examined himself and marked Ex.B1 to Ex.B2.

8. After full contest, the learned trial court judge decreed the suit filed by the plaintiff, vide his decree and judgment dated 05.09.2007, on the ground that the defendant did not adduce any acceptable evidence to show that there was no consideration for the suit promissory note Ex.A1.



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9. Aggrieved over the same, the defendant filed an appeal in A.S. No.100 of 2007 before the Sub Court, Ariyalur. The learned Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides upheld the findings recorded by the trial Court and dismissed the appeal vide her decree and judgment dated 20.01.2010.

10. Now the present second appeal is filed by the defendant. Notice of motion was issued to the respondent and after several adjournments, the case was posted today for final hearing. Substantial questions of law raised by the learned counsel for the appellant in the grounds of appeal are as follows:

- i. Whether the judgment and decree of the Court below are in conformity with Order XLI Rule 31 CPC for not framing proper and specific issues to determine the actual dispute between the parties?
- ii. Whether the Courts below are justified in invoking Section 118 of the Indian Evidence Act to draw presumption when the defendant



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specifically denied the passing of consideration coupled with the specific pleading that the suit promissory note was executed to discharge the earlier promissory notes dated 25.12.1997 and 21.08.2000?

iii. Whether the Courts below were justified in rejecting Ex.B1 and Ex.B2 when the execution of the same are not denied by the plaintiff?

11. Heard Mr.V.Sivaraman, learned counsel appearing on behalf of Mr.K.Balu, for the appellant and Mr.V.Parthiban, learned counsel appearing on behalf of Mr.M.V.Krishnan, for the respondent.

12. Mr.V.Sivaraman, learned counsel for the appellant would contend that though it was specifically pleaded in the written statement that there was no consideration for the suit pro-note, both the Courts below erred in decreeing the suit. His further contention is that the defendant borrowed only a sum of Rs.1500/- from the plaintiff in the year 1994. According to him, the suit promissory note was executed at



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the request of the plaintiff for twice the amount of his actual liability and also substantiated the same by adducing two pro-notes executed by him (Ex.B1 & Ex.B2). He would therefore prayed for allowing the appeal.

13. Mr.V.Parthiban, learned counsel for the respondent contended that when the defendant had admitted his signature on the suit promissory note burden lies on the defendant to prove that there was no consideration for the promissory note and that he did not discharge his burden by adducing acceptable oral and documentary evidence. In such circumstances, both the Courts below had analysed the oral and documentary evidence adduced on both sides in the proper perspective and no interference is called for by this Court. According to him, there is no substantial question of law involved in the present second appeal.

14. At the outset it may be observed that the defendant admitted his signature on the promissory note dated 19.08.2003 (Ex.A1). However, his contention is that this promissory note was executed by him for the amount borrowed by him in the year 1994. Nevertheless, he



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did not adduce any acceptable evidence to substantiate his contention in this regard. He did not examine either the scribe or the attesor to the promissory note (Ex.A1) Section 118 of the Negotiable Instrument Act, 1881 reads as follows :

"118 Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:—

(a)of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b)as to date —that every negotiable instrument bearing a date was made or drawn on such date;

(c)as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d)as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;

(e)as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f)as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;

(g)that holder is a holder in due course —that the holder of



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a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

15. In the instant case except for the bare denial of passing of consideration, there is absolutely no evidence on the side of the defendant to rebut the presumption envisaged under Section 118 of the Negotiable Instrument Act. In fact the first appellate court, in Para 12 and 13 had analysed the oral and documentary evidence adduced on both sides and observed as follows:

"12. Therefore from the above evidence and pleadings on the side of the defendant, I find it is a clear admission of execution of Ex.A1 by the defendant himself. Since execution of ex.A1 has been clearly admitted, it is the bounden duty of the defendant to prove that no valid consideration passed. But in this case, on the side of the defendant, he himself has been examined as D.W.1. No other independent witnesses such as attester or scribe examined to disprove about the passing of consideration. But on the side of the defendant, Ex.B1, B2 marked. Those document are the pro-notes as alleged in his written statement. On the side of the plaintiff, it is vehemently argued that those. Ex.B1, B2 are self serving document and have no evidentiary value. I do find substance in the above



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contention for the reason that mere marking of document Ex.B1, B2 did not help any way the defendant, in absence of proving the same. Defendant has not taken any steps to examined the witnesses nor the scribes of Ex.B1 and B2. So the Ex.B1 and B2 remained unproved. From the whole, I find that defendant has not discharged his burden about the passing of consideration. Since execution of Ex.A1 admitted by the defendant, by applying the Section 118 of negotiable instrument Act, the contents of Ex.A1 also deemed to be proved.

13.From the above findings and discussion, I hold the point for the determination in favour of the respondent/plaintiff and as against appellant/defendant to the effect that the trial court has correctly observed and has come to the conclusion by decreeing the suit and thus. I don't find any merit in this appeal."

16. The above observation of the first appellate court cannot be said to be perverse. Moreover the second appeal filed under Section 100 CPC is a jurisdiction confined to substantial questions of law only. In the decision in **Madamanchi Ramappa and Another Vs Muthalur Bojjappa** reported in **(1964) 2 SCR 673**, the Apex Court observed as follows:

"12.The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open



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to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition.

.....

If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

There is no substantial question of law involved in the present appeal.

Therefore, the second appeal deserves to be dismissed.



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17. In the result,

i. the Second Appeal is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

ii. the decree and judgment dated 05.09.2007 passed in O.S. No.255 of 2006, before the District Munsif Court, Ariyalur, and the decree and judgment dated 20.01.2010 passed in A.S. No.100 of 2007, before of the Sub Court, Ariyalur, are upheld.

24.04.2023

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

To

1. The District Munsif Court, Ariyalur.
2. The Sub Court, Ariyalur.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.
mtl

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