



S.A.No.706 of 2010
and M.P.No.1 of 2010

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

CORAM

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

S.A.No.706 of 2010
and M.P.No.1 of 2010

Kuppusamy

...Appellant

Vs.

Manoharan

... Respondent

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 09.03.2007 passed in A.S. No.18 of 2005, on the file of the Sub Court, Kallakurichi, upholding the decree and judgment dated 02.11.2004 passed in O.S. No.219 of 2003, on the file of the III Additional District Munsif Court, Kallakurichi.

For Appellant	: Ms.B.Sivagami
	for M/s.R.Balasubramanian
For Respondent	: Mr.Gokul
	for M/s.P.V.Law Associates



S.A.No.706 of 2010
and M.P.No.1 of 2010

WEB COPY

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.219 of 2003, on the file of the III Additional District Munsif Court, Kallakurichi, for recovery of a sum of Rs.25,395/- together with interest and thereafter at the rate of 9% per annum on the principal amount of Rs.20,000/- from the date of plaint till the date of realization from the appellant/defendant due under a promissory note dated 18.03.2000 (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.



S.A.No.706 of 2010
and M.P.No.1 of 2010

WEB COPY

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

The defendant executed a promissory note (Ex.A1) for Rs.20,000/- on 18.03.2000 in favour of one Jayamani, who in turn assigned the same (Ex.A2) in favour of the plaintiff on 23.08.2000. Thereafter, the plaintiff demanded the amount due under the promissory note from the defendant. Despite repeated demands made by the plaintiff, the defendant did not come forward to make good the payment. Therefore, the plaintiff issued a legal notice dated 11.02.2003 (Ex.A3) to the defendant and requested the latter to pay the amount due under the promissory note (Ex.A1). The defendant received the said notice, as evidenced by the postal acknowledgment card (Ex.A4), and sent a reply notice dated 14.02.2003 (Ex.A5), which contained false allegations. Hence the suit.

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

- i. The defendant did not borrow any amount from the assigner Jayamani Ammal and executed the suit



WEB COPY



S.A.No.706 of 2010
and M.P.No.1 of 2010

promissory note.

- ii. Jayamani Ammal's husband borrowed a sum of Rs.45,000/- from the defendant on 10.07.2000 and executed a promissory note in his favour. Since the defendant demanded the amount due under the promissory note from Jayamani Ammal's husband, Jayamani Ammal fabricated the present promissory note (Ex.A1) and made over the same in favour of the plaintiff.
- iii. Hence, there is no valid consideration for the suit promissory note and therefore, the suit filed by the plaintiff should be dismissed.

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

- i. Whether the suit pronote is fabricated document ?
- ii. Whether the plaintiff is entitled to the suit claim ?
- iii. To what relief, if any, the plaintiff is entitled ?



S.A.No.706 of 2010
and M.P.No.1 of 2010

WEB COPY

7. In the trial Court, the plaintiff examined himself and four other witnesses and marked Ex.A1 to Ex.A5. The defendant examined himself. However no documentary evidence was adduced on his side.

8. After full contest, the learned III Additional District Munsif, Kallakurichi decreed the suit in favour of the plaintiff, vide his decree and judgment dated 02.11.2004 on the following grounds :

- i. The plaintiff has proved the execution of the suit promissory note by examining the scribe and the assigner as PW4 & PW5 respectively and the defendant did not take steps to prove that the signature found on the promissory note (Ex.A1) is not that of his.
- ii. Mere denial of execution in the written statement without valid evidence cannot be accepted.
- iii. The executor cannot dispute the absence or inadequacy of consideration in a suit filed by the assignee.



S.A.No.706 of 2010
and M.P.No.1 of 2010

WEB COPY

9. Aggrieved over the same, the defendant filed an appeal in A.S. No.18 of 2005, before the Sub Court, Kallakurichi. The learned Subordinate Judge, Kallakurichi, after analysing the oral and documentary evidence adduced on both sides upheld the findings recorded by the trial Court and dismissed the appeal filed by the defendant vide his decree and judgment dated 09.03.2007.

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 or not the trial court has committed error in interpreting the scope and ambit of the Negotiable Instruments Act, 1881 ?
- ii. Whether or not the trial court has committed error in holding that the executor cannot dispute the absence of or inadequate consideration in a suit filed by the assignee?



S.A.No.706 of 2010
and M.P.No.1 of 2010

WEB COPY

- iii. Whether or not the trial court has committed error in decreeing the suit on the basis of evidence of PW5, when especially Ex.A2 discloses the payment of Rs.25,000/- for the made over, but in the cross examination she has deposed that the made over was executed by her in lieu of the loan amount due by her to the respondent/plaintiff?
- iv. In any event, when the respondent/plaintiff or PW5/Assigner have not placed any account books, or any anterior records to prove that the respondent/plaintiff has advanced a loan of Rs.25,000/- to PW5, the trial court ought to have taken adverse inference under Section 114 of Evidence Act?
- v. Whether the Courts below are correct in holding that the appellant/defendant has not established/proved that the signature found in Ex.A1 is not that of his signature, when especially the appellant/defendant has denied the execution of Ex.A1 from the initial stage?



S.A.No.706 of 2010
and M.P.No.1 of 2010

WEB COPY

11. Heard Ms.B.Sivagami, learned counsel for the appellant and Mr.Gokul, learned counsel for the respondent.

12. Ms.B.Sivagami, learned counsel for the appellant would contend that when the scribe of the promissory note (EX.A1) turned hostile, the Courts below should not have taken into account his evidence and that there are discrepancies in the evidence of PW1, PW4 & PW5. It is also her contention that initial burden of proof heavily lies on the plaintiff and that when he did not discharge the same, both the Courts below should not have decreed the suit in favour of the plaintiff.

13. Per contra, Mr.Gokul, learned counsel for the respondent contended that both the Court below after appreciating the oral and documentary evidence adduced on both sides had rightly held that the plaintiff had proved the execution of the promissory note and that there is no substantial question of law involved in the present second appeal. Therefore, he prayed for dismissal of the present second appeal.



S.A.No.706 of 2010
and M.P.No.1 of 2010

WEB COPY

14. It is true that the defendant in his written statement denied the execution of the promissory note. In order to prove the same, the plaintiff examined himself as PW1 and also the scribe of the promissory note as PW4. The scribe turned hostile. However, a perusal of his evidence shows that he had identified the signature of the defendant on the suit promissory note (Ex.A1). The First Appellate Court accepted the particular portion of the evidence of PW4 with regard to the execution of Ex.A1 by the defendant since there was no cross examination by the defendant to the PW4 on this aspect. Apart from examining the scribe the plaintiff had examined the assignor as PW5 and she had deposed about the execution of the promissory note by the defendant and deposed that after borrowing a sum of Rs.20,000/-. The evidence of PW1 and PW5 coupled with Ex.A1 clearly shows that the defendant executed the suit promissory note. The defendant also did not take any steps to send Ex.A1 to an expert to show that the signature found on Ex.A1 is not that of his. Therefore, both the Courts below were right in observing that mere denial of execution without valid evidence cannot be accepted.



S.A.No.706 of 2010
and M.P.No.1 of 2010

WEB COPY

Apart from that, the defendant except examining himself did not examine any other witness to prove his contentions raised in the written statement. His specific contention is that one Muthu Chettiar husband of Jayamani Ammal borrowed a sum of Rs.45,000/- from him and that when he demanded the said amount from Muthu Chettiar he clandestinely made his wife to fabricate Ex.A1 and also assigned the same in favour of the plaintiff. Except the *ipse dixit* of the defendant there is no other evidence on the side of the defendant. Therefore, both the Courts below were right in holding that the defendant executed the promissory note (Ex.A1) and there is a valid assignment in favour of the plaintiff. In fact, there is no substantial question of law involved in the present second appeal and therefore, deserves to be dismissed.

15. In the result,

i. the Second Appeal is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.



S.A.No.706 of 2010
and M.P.No.1 of 2010

WEB COPY

ii. the decree and judgment dated 09.03.2007 passed in A.S. No.18 of 2005, before the Sub Court, Kallakurichi, and the decree and judgment dated 02.11.2004 passed in O.S. No.219 of 2003, before the III Additional District Munsif Court, Kallakurichi, are upheld.

02.06.2023

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

To

1. The Sub Court, Kallakurichi.
2. The III Additional District Munsif Court, Kallakurichi.
3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A.No.706 of 2010
and M.P.No.1 of 2010

R. HEMALATHA, J.
mtl

S.A.No .706 of 2010
and M.P.No.1 of 2010

02.06.2023