IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM

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

S.A.No.730 of 2010 &

M.P. No.1 of 2010

M. Chidambaram ...Appellant

Vs.

Panchavarnammal ... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 30.09.2005 passed in A.S. No.107 of 2004, on the file of the Additional District Sessions Court (Fast Track Court), Kallakurichi, reversing the decree and judgment dated 08.10.2002 passed in O.S. No.170 of 1999, on the file of the Subordinate Court, Kallakurichi.

For Appellant : Mr. NA. Malaisaravanan
For Respondent : Ms. R. Meenal

JUDGMENT

The appellant is the defendant in O.S. No.170 of 1999, on the file of the Subordinate Court, Kallakurichi. The respondent/plaintiff filed the suit against the appellant/defendant for recovery of a sum of Rs.37,740/- together with interest @ 9% per annum due under a pro-note from the date of plaint till the date of realisation.

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

3. The case of the plaintiff is that the defendant borrowed a sum of Rs.34,000/- from her on 09.07.1998 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 her order. The further contention of the plaintiff is that though she demanded the defendant to pay the amount due under the promissory note (Ex.A1), the defendant did not pay any amount. Therefore, she sent a legal notice dated 16.09.1999 (Ex.A2) and even thereafter, the defendant did not come forward to make good the payment and on the contrary the reply notice dated 21.09.1999 (Ex.A3) sent by the defendant contained false

allegations.

4. The defendant in his written statement admitted the execution of the Promissory note dated 09.07.1998 (Ex.A1). However, his contention is that he purchased a land from one Kolanchi ammal and that during the measurement of land, it was found that the property purchased by him was excess in extent than the one on ground and therefore, he agreed to pay additional sum of Rs.17,000/- for the excess land. Since the plaintiff's husband was a mediator, he executed a promissory note (Ex.A1) in favour of the plaintiff as per the custom prevailing in the village for a sum of Rs.34,000/- . He, 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 Promissory Note is true, valid and supported with consideration?

ii. Whether the plaintiff is entitled for the decree as prayed for?

iii. To what other relief?"

6. In the trial court, the plaintiff examined herself and marked Ex.A1 to Ex.A3. The defendant examined himself and one another witness and marked Ex.B1.

7. After full contest, the trial court judge dismissed the suit vide his decree and judgment dated 08.10.2002 by observing thus:

> ""On the basis of the said evidence plaintiff is trying to prove her case that the defendant had borrowed a sum of Rs.34,000/- from the plaintiff on 09.07.1998 and executed a suit promissory note that is Ex.A1. The defendant's specific case is that he admits the execution of the suit promissory note. But it was executed under different circumstances and without consideration. According to the defendant on 09.07.1998 he purchased a site from one Kolanchi Ammal and the plaintiff's husband was a person, who is taking care of her property and he was a person who was dealing with that property and while that property was purchased on that date and executed a sale deed the property was measured and it was found that the area was not in existence according

to the documents. So a sum of Rs.17,000/- was withheld from the sale consideration and according to prevailing Village custom twice the amount it was mentioned in the suit promissory note. After perusing the P.W.1's evidence and D.W.1's evidence we can safely conclude that the execution of Ex.A1 is admitted by the defendant. Ones the execution is admitted the benefits under Section 119 of the Negotiable Instrument Act that is statutory presumption will be attracted in favour of the plaintiff. Under this statutory presumption that the contents of the pro note in this case shall be presumed to be true unless the contrary is proved. In this case also the plaintiff entitled for the statutory presumption. So we can safely conclude that plaintiff has proved her initial burden of proving Ex.A1. But this presumption is a rebuttable presumption. The defendant can rebut this presumption with sufficient evidences. We can test whether the defendant has proved or rebutted the presumption satisfactorily. The defendant's specific case is that he purchased the property from Mrs. Kolanchi Ammal on the date of execution of this pro note. D.W.1 purchased a land by a registered sale deed dated 09.07.1998 by which Kolanchi Ammal sold a property to the defendant on 09.07.1998. This document is marked as Ex.B1. The attestor of the document is examined as D.W.2. He also proved the document dated 09.07.1998. He gave explanation that even though plaintiff's husband who was the person doing all such transaction on behalf of kolanchi Ammal did not attest the document because he was a Government servant. This circumstances stated by D.W.1 is also acceptable. In this same way the defendant's further case is that because of shortfall of area the defendant and the plaintiff's husband decided to withhold a sum of Rs.17,000/- from paying towards consideration in respect of Ex.B1. D.W.1 deposed to this effect and D.W.2 also corroborated the evidence of D.W.1. Even though P.W.1 denied the knowledge of all these transactions, during cross examination she had admitted that the property was not measured as promised. In these circumstances the defendant has proved that Ex.A1 was executed as a security for proper repayment of Rs.17,000/- subsequent to the measurement of the property mentioned in Ex.B1. Further P.W.1 who is said to be the person who had given the money did not know the signature of the defendant in the promissory note in which he signed. Further P.W.1 sates that in the morning 9o' clock defendant executed the bond in his chief examination. But in his cross examination she has deposed that in the morning

9.30 defendant has executed the bond. But during the cross examination of D.W.1 there was a suggestion that Ex.A1 was executed at 10 o' clock. Further P.W.1 is a house wife. When this kind of specific case is made out, it is the duty of the plaintiff to prove that she was having an independent income and she had the money. No material records are available to prove that P.W.1 was having independent income. Apart from that P.W.1 deposed that her husband alone would know the denomination the amount which was given to the defendant. Further she had deposed in his cross examination that she had given money only to her husband and her husband alone gave the money to the defendant. When the receipt of money is disputed it is the duty of the plaintiff to prove her case through her husband. So failure to examine plaintiff's husband is fatal to her case. In the above said circumstances the defendant has rebutted the statutory presumption existing in favour of the plaintiff. When the presumption is rebutted then it is the duty of the plaintiff to prove her case independently without any benefit of Section 118 of the Negotiable Instrument Act. But on perusal of records it appears no such material record was available to prove the case of the plaintiff. In the abovesaid circumstances on the basis of D.W.1's admission of execution of Ex.B1 plaintiff had proved that the suit promissory note is true. The suit promissory note is valid as per law. Since it is sufficiently stamped. But the plaintiff is not able to prove that the suit promissory note Ex.A1 is supported with consideration. On the other hand the defendant has proved beyond doubt through P.W.1 and D.W.1 along with B1 that the suit promissory note is not supported with consideration. The issue is answered accordingly."

8. Aggrieved over the decree and judgment passed by the trial court, the plaintiff filed an appeal in A.S. No.107 of 2004, before the Additional District Sessions Court (Fast Track Court), Kallakurichi. The learned Additional District Sessions Judge, after analysing the oral and documentary evidence adduced on both sides, allowed the appeal and set aside the decree and judgment passed by the trial court on the following grounds.

i. The defendant admitted the execution of the suit promissory note Ex.A1both in his written statement and reply notice Ex.A3.

ii. Though he contended that he purchased a land for a sum of

Rs.60,000/- and after measurement agreed to pay additional sum of Rs.17,000/- and executed a Promissory Note for Rs.34,000/- (twice the amount of balance consideration) in favour of the plaintiff, he did not adduce any acceptable evidence to substantiate the same.

iii. The defendant did not adduce any acceptable evidence to show that there was no consideration for the suit Promissory Note.

9. Now the Second Appeal is filed by the defendant. Notice of motion was issued to the respondent and after several adjournments, the case was posted for hearing today. In the Memorandum of Second Appeal, the appellant has raised the following substantial questions of law. -

a) "Whether the Lower Appellate Court is justified in allowing the appeal by holding that the appellant has not produced any documentary evidence to disprove passing of consideration in spite of the oral evidence and the admission made by P.W.1?

b) Whether the judgment and decree of the lower appellate court is in conformity with Order 41 Rule 31 CPC?

10. Heard Mr. NA. Malaisaravanan, learned counsel for the appellant, and Ms. R. Meenal, learned counsel for the respondent.

11. Mr. NA. Malaisaravanan, the learned counsel for the appellant contended that though the trial court after analysing the evidence adduced on both sides held that the plaintiff has not proved the execution of the Promissory Note by the defendant and that the Promissory Note was not supported with consideration, the first appellate court without any basis had reversed the findings of the trial court and therefore, the present Second Appeal is liable to be allowed.

12. Per contra Ms. R. Meenal, learned counsel for the respondent would contend that the first appellate court had rightly held that the execution of the suit Promissory Note was never denied by the defendant but his only contention was that there was no consideration for

the suit promissory though he admitted that he is liable to an extent of Rs.17,000/-. When the execution of Promissory Note is admitted by the defendant, there is a presumption under Section 118 of the Negotiable Instrument Act that it is supported by consideration unless the contrary is proved and that in the instant case, the defendant had not adduced any acceptable evidence to show that the Promissory Note is not supported with consideration and in such circumstances the first appellate court was right in decreeing the suit in favour of the plaintiff. She therefore, prayed for dismissal of the present Second Appeal.

13. The plaintiff filed the suit for recovery of a sum of Rs.37,740/- due under the Promissory Note (Ex.A1) from the defendant together with interest at the rate of 9% per annum from the date of plaint till the date of realisation. The defendant in his written statement had admitted the execution of the Promissory Note in favour of the plaintiff. His only contention is that there was no consideration for the suit Promissory Note since the same was executed for the payment of balance sale consideration of Rs.17,000/-, which he has to pay to Kolanchi

Ammal. According to him, he purchased a land from Kolanchi Ammal for Rs.60,000/- and when the land was measured, the actual extent on ground was higher than the one conveyed to him and hence he promised to pay Rs.17,000/- for the excess land and executed the suit pro-note in favour of the plaintiff for twice the amount he is supposed to pay as the plaintiff's husband was the mediator in that land transaction. The trial court in its judgment had wrongly placed the burden of proof on the plaintiff especially when the defendant had admitted the execution of the suit Promissory Note. The trial court had gone to the extent of observing that the plaintiff did not have any independent source of income to lend the amount mentioned in the Promissory Note to the defendant. When the Promissory Note Ex.A1 is pressed into service and the execution of same is admitted by the defendant, the trial court ought not to have held that the plaintiff did not have sufficient income to lend the amount. In fact this was not even pleaded by the defendant in his written statement. Even in the reply notice such a stand was not taken by the defendant. When the execution of the Promissory Note is admitted, there is a presumption under Section 118 of the Negotiable Instrument Act that the pro-note is supported by consideration unless the contrary is proved. Thus the burden of proof heavily lies on the defendant. In the instant case, the defendant did not adduce any acceptable evidence to substantiate his contention that there was no consideration for the suit Promissory Note. On the other hand, the plaintiff had proved the execution and passing of consideration and therefore, the appeal is liable to be dismissed. In fact the first appellate court analysed the evidence on record threadbare and no interference is called for by this Court. Moreover, there is no substantial question of law involved in the present case.

14. In the result,

i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is dismissed.

ii. The decree and judgment dated 30.09.2005 passed in A.S. No.107 of 2004, on the file of the Additional District Sessions Court (Fast Track Court), Kallakurichi, is upheld.

iii. The decree and judgment dated 08.10.2002 passed in O.S. No.170 of 1999, on the file of the Subordinate Court, Kallakurichi, is set aside.

20.04.2023

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

To

1. The Additional District Sessions Judge (Fast Track Court), Kallakurichi.
2. The Subordinate Judge, Kallakurichi
3. The Section Officer, VR Section, High Court, Madras.

R. HEMALATHA, J.
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