



WEB COPY

A.S.No.148 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.148 of 2022
and
C.M.P.No.5245 of 2022

1.P.Annadurai

2.N.Mani@ Malarmani

... Appellants

Vs.

K.Manoharan

... Respondent

Prayer: Appeal Suit is filed under Section 96 read with Order XVI Rule 1 of the Civil Procedure Code, to set aside the Decree and Judgement dated on 28.09.2021 passed in O.S.No.172 of 2017, on the file of Court of Sessions (Fast Track Mahila) Judge, Namakkal.

For Appellants : Mr.A.Prabhakaran

For Respondent : Mr.T.L.Thirumalaisamy



J U D G M E N T

The Appeal Suit has been instituted against the decree and judgment dated 28.9.2021 passed in O.S.No.172 of 2017.

2. The appellants are the defendants in the Suit and the respondent / plaintiff instituted a Suit for recovery of money. The plaint filed by the respondent herein reveals that the plaintiff is doing transport business and owns a lorry. The defendants are the husband and wife and the 1st defendant is doing building construction on contract basis. For their professional and family needs, the defendants 1 and 2 have jointly borrowed a sum of Rs.12,00,000/- from the plaintiff, promising to repay the same with the rate of interest of 18% per annum and jointly executed the promissory note on 24.04.2016 at Sandaipettipudur, Namakkal Town. The defendants failed to repay the borrowed amount along with the interest and the demands made by the plaintiff went in vain. Thus, the plaintiff instituted a Suit for recovery of money along with interest.

3. The defendants filed a written statement stating that the averments made in the plaint is false. The defendants have not borrowed a sum of



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Rs.12,00,000/- from the plaintiff with the interest at the rate of 18% per annum and executed a promissory note on 24.04.2016. The plaintiff averments are denied by the defendants and the signature and left thumb impression in the promissory note is also denied. It is contended that the promissory note is a forged document and therefore, the Suit is to be dismissed *in limine*.

4. The Trial Court framed the following issues, which reads as under:

1. *Whether it is true that the defendants borrowed a sum of Rs.12,00,000/- from the plaintiff and executed the suit promissory note dated 24.04.2016?*
2. *Whether the plaintiff is entitled to recovery of the amount with cost claimed in the suit?*
3. *What other relief is the plaintiff entitled into?*

5. On the side of the plaintiff, PW1 and PW2 were examined and Ex.A1 was marked. On the side of the defendants, DW1 was examined and Ex.B1 to Ex.B3 were marked. With issue Nos.1 and 2, the Trial Court considered the deposition of PW1 and PW2 and made a finding that PW2 Suresh Kumar is one of the witness to the Ex.A1 promissory note. PW2 in



his deposition, specifically stated about the mode of execution of the Suit promissory note Ex.A1. No questions or suggestions, challenging the contents in the proof of affidavit with regard to the mode of execution of Ex.A1 promissory note has been asked during the cross-examination of PW2 Suresh Kumar by the defendants. Contrarily a suggestion was put that the PW2 Suresh Kumar was giving false evidence and he has not signed Ex.A1. Mere suggestion in this regard was found to be unacceptable by the Trial Court and the clear deposition of PW2 Suresh Kumar was taken into consideration for the purpose of deciding the issue Nos.1 and 2.

6. PW2 Suresh Kumar was a summoned witness and he has deposed that the defendants Annadurai and Mani @ Malarmani had borrowed Rs.12,00,000/- in his presence from the plaintiff and the 1st defendant had called him for signing as a witness in the promissory note and he had signed as 1st witness in the Ex.A1 promissory note. In the cross-examination he has specifically stated that he along with the defendants went to the plaintiff's house and the money was given by the plaintiff to the defendants in his presence. He has also stated that the nature of notes given by the plaintiff. PW2 witness to the Ex.A1 promissory note has stood over the cross-



examination and specifically stated that execution of the Ex.A1 promissory note and passing of consideration from the plaintiff and the defendants.

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7. The Trial Court had taken note of the ingredients in Section 118 of the Negotiable Instrument Act, which reads as under:

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

- a) 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) that every negotiable instrument bearing a date was made or drawn on such date;*
- c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*
- d) that every transfer of a negotiable instrument was made before its maturity;*
- e) that the indorsements appearing upon a negotiable instrument were made in the*



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- order in which they appear thereon;*
- f) that a lost promissory note, bill of exchange or cheque was duly stamped;*
- g) that the holder of a negotiable instrument is a holder in due course.”*

8. Based on the deposition of PW2 and considering the promissory note Ex.A1, the Trial Court formed an opinion that passing of consideration from the plaintiff to the defendants had been proved by the evidence of PW1. The plaintiff and the witnesses PW2, who have deposed that the money was handed over to the defendants in their presence.

9. The two different stands taken by the defendants are found to be self contradictory with each other, since the defendants, on the one hand totally denied the signatures and thumb impression in Ex.A1 promissory note. On the other hand, they have taken the stand that they have signed in a blank paper as promissory note Ex.A1 only as a security. The said two different stands taken in respect of Ex.A1 promissory note was found to be contradictory and thus, the Trial Court has not trusted upon the version of the defendants and arrived at a conclusion that the passing of consideration



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from the plaintiff to the defendants have been proved and furthermore, PW2 is the eye witness, who was present at the time of passing of the consideration from the plaintiff to the defendants.

10. Considering the facts, documents, evidences and also the categorical findings of the Trial Court, this Court do not find any further reason to interfere with the judgment and decree passed by the Trial Court. The grounds raised in the Appeal Suit along with the facts were elaborately considered by the Trial Court and thus, this Court is not inclined to interfere with the judgment and decree passed by the Trial Court.

11. Accordingly, the judgment and decree dated 28.09.2021 passed in O.S.No.172 of 2017 stands confirmed and consequently, the Appeal Suit in A.S.No.148 of 2022 is dismissed. No costs. Connected Miscellaneous Petition is closed.

09.02.2023

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Index : Yes
Speaking order
Neutral Citation : Yes



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To

The Judge,
Court of Sessions (Fast Track Mahila),
Namakkal.



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S.M.SUBRAMANIAM, J.

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