



A.S.No.341 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 07.11.2023

CORAM:

THE HON'BLE Mr. JUSTICE R.SUBRAMANIAN
AND
THE HON'BLE Mr. JUSTICE N.SENTHILKUMAR

A.S.No.341 of 2018 and
C.M.P.No.8495 of 2018 and
C.M.P.No.13099 of 2018

Deivasigamani

... Appellant

Vs.

1.M.Jayanthi
2.G.Gokhila @ Reena
3.M.Kalaivani

... Respondents

Prayer : Appeal filed under Section 96 of the Code of Civil Procedure read with under Order 41 Rule 1 of C.P.C. praying to set aside the judgment and decree dated 19.01.2018 passed in O.S.No.69 of 2012 on the file of the learned Principal District Juge, Tiruppur.

For Appellant : Mr.S.Parthasarathy
Senior Counsel
assisted by Mr.K.S.Navin Balaji

For Respondents : Mrs.Hema Sampath
Senior Counsel
assisted by Mr.C.Prakasam



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JUDGMENT

WEB COPY [Judgment of the Court was delivered by R.SUBRAMANIAN, J.]

The plaintiff is on appeal aggrieved by the partial dismissal of his suit for recovery of money in O.S.No.69 of 2012 on the file of the Principal District Court, Tiruppur. The plaintiff laid a suit for recovery of sum of Rs.46,77,550/- against the defendants, who are the legal heirs of one C.K.Manoharan who died on 11.03.2012, claiming that the said C.K.Manoharan has borrowed a sum of Rs.41,00,000/- from the plaintiff on 09.11.2011 and 10.11.2011. According to the plaintiff, as a security for repayment of the said sum of Rs.41,00,000/-, the said Manoharan had executed 38 promissory notes. Out of 38 of the promissory notes, 30 of them were executed on 09.11.2011 and 8 were executed on 10.11.2011. Contending that since the said Manoharan passed away on 11.03.2012, the defendants 1 to 4, who were the legal heirs, are liable to pay the suit amount from and out of the estate available in their hands.

2. The suit was resisted by the defendants viz., the legal



representatives of the deceased Manoharan contending that the entire borrowing is the cooked up story. They admitted that Manoharan had borrowed a sum of Rs.5,00,000/- from the plaintiff and had repaid the same. They also expressed their apprehension that the plaintiff would have taken signatures of Manoharan and blank unfilled promissory notes which have been used or that these promissory notes have been created using the signature of Manoharan which was available with the plaintiff. On the above pleadings, the trial Judge framed the following issues:

1. Whether the plaintiff is entitled for a decree directing the defendants 1 to 4 to pay the suit amount with subsequent interest from out of the estate of the deceased in their hands?
2. To what relief the parties are entitled to?

3. On the side of the plaintiff, P.W.1 - plaintiff, P.W.2 – an attester to the 30 promissory notes dated 09.11.2011 and P.W.3 - the scribe and attester of all the 38 promissory notes were examined and Exs.A.1 to A.52 were marked. On the side of the defendants, the 3rd defendant was examined as D.W.1 and one Natarajan was examined as D.W.2.



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4. The trial Court upon consideration of the evidence on record concluded that the plaintiff has not established passing of consideration and his evidence regarding consideration stood rebutted. The trial Court found that the conduct of the plaintiff in obtaining 38 promissory notes for borrowing of Rs.41,00,000/- in two days is very strange. The reason assigned for such breaking up of the borrowing into 38 promissory notes was also disbelieved by the learned trial Judge.

5. The claim of the plaintiff is that regarding source of the funds for lending such huge sum of Rs.41,00,000/- in two days was also not believed by the trial Court. The learned trial Judge found that the evidence of P.W.1 to P.W.3 was not very reliable inasmuch as the entire claim was based upon very feeble evidence which cannot form the basis for a decree. The trial Judge however found that the discharge of the loan of Rs.5,00,000/- pleaded by the defendants was not proved. Therefore, on the strength of admission of borrowing of Rs.5,00,000/-, the trial Court granted a decree for the sum of Rs.5,00,000/- with interest and dismissed the suit for the balance amount.



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Aggrieved, the plaintiff is on appeal.

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6. We have heard Mr.S.Parthasarathy, learned Senior Counsel assisted by Mr.K.S.Navin Balaji, learned counsel appearing for the appellant and Mrs.Hema Sampath, learned Senior Counsel assisted by Mr.C.Prakasam, learned counsel appearing for the respondents.

7. Mr.S.Parthasarathy, learned Senior Counsel appearing for the appellant would vehemently contend that inasmuch as the plaintiff has specifically pleaded that the defendant had prepared the promissory notes to suit his convenience, the Court ought not to have drawn an inference against him merely because of the fact that the borrowing of Rs.41,00,000/- was sought to be supported by 38 promissory notes.

8. The learned Senior Counsel would draw our attention to the evidence of P.W.1 to P.W.3 would submit that there is nothing in the cross examination of these witnesses that would discredit their evidence and therefore the trial Court ought to have believed their evidence. He would also point out that atleast to an extent of Rs.15,00,000/- there is some



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evidence in the form of the photocopy of Ex.A.51 - Passbook of the plaintiff's savings account with South India Bank to show that he had received a sum of Rs.15,00,000/- on 04.11.2011 in his bank account and he has withdrawn the same on 05.11.2011, therefore the learned Judge should have atleast granted a decree for the said sum of Rs.15,00,000/- along with sum of Rs.5,00,000/- that had already been admitted.

9. Contending contra, Mrs.Hema Sampath, learned Senior Counsel appearing for the respondents would submit that, a reading of the plaint and the proof affidavit of P.W.1 would show that the plaintiff's claim is unbelievable. She would point out to the evidence regarding the source of the money and submit that the entire evidence is wholly very feeble and the same deserves to be rejected and the trial Court has rightly rejected it. As regards Rs.15,00,000/- also the learned Senior Counsel would submit that, it is very hard to believe that a person withdrew Rs.15,00,000/- on 05.11.2011 for lending on 09.11.2011. She would also point out that the plaintiff filed the income tax return which only relates to the subsequent year and the income tax return that has been produced as Ex.A2 was filed after the suit in 2014 and it was the belated return. Therefore, the learned Senior Counsel



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would submit that a last ditch effort was made by the plaintiff by introducing the income tax return to substantiate the claim of lending of Rs.41,00,000/-.

10. We have considered the said submissions made by the learned Senior Counsel appearing on either side, the following points are raised for determination in the appeal.

- (i) Whether the plaintiff has established execution of promissory notes?
- (ii) Whether the Court could presume passing of consideration?
- (iii) Whether the defendants have rebutted the claim of the plaintiff regarding consideration?

11. The trial Court has found that the execution of the documents has been established. It has at the same time found that the defendants have rebutted the presumption regarding passing of consideration. The evidence of the plaintiff as P.W.1 itself creates suspicion regarding the passing of consideration. No doubt, once it is found that the promissory note has been executed by the defendant, a presumption arises under Section 118 of the



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Negotiable Instruments Act, 1881 and the Court has to presume passing of consideration. Such presumption is rebuttable. Such rebuttal need not be by way of evidence on the side of the defendant, such rebuttal can happen even when it is shown that the evidence of the plaintiff regarding passing of consideration is wholly unbelievable. The plaintiff explains the source of the consideration of Rs.41,00,000/- in the plaint as well as in his proof affidavit as borrowings from various people. He claims to have borrowed from his father-in-law, his brother, his sambhandhi (parent-in-law of his son or daughter) and also from one Manjunath Mills. He has not chosen to examine anyone of them to show that they have lent money to enable him to lend to the deceased Manoharan. These particulars of borrowing are not shown in the plaint. No doubt, the Passbook – Ex.A.51 shows that there is a credit entry for Rs.15,00,000/- and there is a debit entry of Rs.15,00,000/- on 04.11.2011 and 05.11.2011 respectively. That by itself cannot be taken as evidence of passing of consideration for the suit transaction which took place much later. It is very hard to believe that a person would borrow from all and sundry in order to lend money that too without security. The trial Court has rightly held that the evidence of the plaintiff with reference to the



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payment of consideration is wholly inadequate and the very evidence of the plaintiff himself would rebut the presumption that the Court is bound to draw under Section 118 of the Negotiable Instruments Act. Once it is shown that the plaintiff has miserably failed to prove the consideration and the very transaction on the face of it unbelievable, we are unable to fault the trial Court for having disbelieved the plaintiff's case on payment of consideration and coming to the conclusion that the plaintiff is entitled a decree only for the admitted amount of Rs.5,00,000/-.

12. We have also perused the evidence of P.W.2 and P.W.3. They seem to be witnesses who had obliged the plaintiff and P.W.3 is related to the plaintiff. Therefore, we are unable to fault the trial Court for having disbelieved the above two witnesses. Beyond all that the very conduct of the plaintiff in obtaining 38 promissory notes for borrowing of Rs.41,00,000/- over a period of two days creates a very serious suspicion in our mind and the evidence that is available or the reason that is being given for such conduct is not convincing for us to brush aside the conduct and interfere with the findings of the trial Court.



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13. We do not therefore find any reason to interfere with the judgment of the trial Court. The appeal fails and accordingly it is dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

[R.S.M. J]

[N.S. J.]

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

Sgl

To

The Principal District Juge,
Tiruppur.



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