IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.279 of 2021
and
C.M.P.No.5647 of 2021

M.Veliyapillai ...Appellant

Vs

S.Muthulakshmi ...Respondent

Prayer: Appeal filed under Section 100 of the CPC against the Judgment and Decree dated 09.09.2020 made in A.S.No.52 of 2016 on the file of the Principal District Judge, Kancheepuram, Chengalpattu confirming the Judgment and Decree dated 27.01.2016 made in O.S.No.104 of 2014 on the file of the Sub Judge, Maduranthagam.

For Appellant	:	Mr.S.Saranraj
For Respondent	:	Mr.Ashok Kumar for Mr.K.S.V.Sethuraman

JUDGMENT

The unsuccessful defendant in a suit for recovery of money before both the Courts below is the appellant before this Court. The facts in brief are herein below narrated and the parties are referred to in the same rank as before the Trial Court for the ease of understanding.

Plaintiff's case:

2. The plaintiff had filed the suit O.S.No.104 of 2014 on the file of the Sub Judge, Maduranthagam against the defendant seeking recovery of a sum of Rs.3,39,833/- together with interest at 12 % from the date of the plaint till the date of repayment. It is the case of the plaintiff that on 20.07.2011 the defendant had borrowed a sum of Rs.2,50,000/- from her agreeing to repay the same together with interest at the rate of 24% p.a, as and when demanded. Although the plaintiff had made several demands, the defendant did not come

forward to make the payment and last of such demand was on 10.07.2014. However, the defendant had failed to repay the said sum. Therefore, the plaintiff has come forward with the suit in question.

Defendant's case:

3. The defendant had filed his written statement inter alia denying the borrowal under the suit promissory note. It is his case that he had borrowed a sum of Rs.30,000/- alone from the plaintiff on 10.06.2010 and out of the said sum he had repaid a sum of Rs.10,000/- leaving a balance of Rs.20,000/-. The payments made by the defendant was noted in a notebook by the plaintiff and further she has obtained the defendant's Left Thumb Impression in blank papers.

4. The defendant would contend that the plaintiff had filed the suit in O.S.No.134 of 2013 on the file of the District Munsif,

Maduranthagam seeking recovery of a sum of Rs.20,000/- due under the promissory note dated 01.06.2010. Thereafter, the defendant had repaid the amounts due under the said promissory note and the plaintiff had withdrawn the said suit.

5. The defendant would submit that the present demand is on the basis of a fabricated promissory note, which has been created making use of the Left Thumb Impression executed by the defendant on blank papers. The defendant would further submit that the falsity of the case is evident from the fact that in the suit promissory note the reason for the borrowal is given as wedding of the defendant's daughter, Vanitha and family expenses. The defendant would submit that his daughter Vanitha got married even as early as on 12.09.2008 and in the year 2009, she had also given birth to a child.

6. The defendant would state that another point, which proves that the promissory note is a fabricated one is evident from the fact

that against the place where the signature of the defendant was required, cross marks have been made, indicating that the signature have been obtained in blank papers since in the second page also the signature is at the same spot thereby there is a huge gap between the written contents and the Left Thumb Impression of the defendant. Therefore, it is evident that the suit promissory note has been created by the plaintiff.

7. The defendant would further submit that the suit promissory note has been created since the plaintiff was angered by the fact that the defendant's son had purchased the ancestral property of the plaintiff from her brother. The defendant had also questioned the wherewithal of the plaintiff to give such a huge amount of Rs.2,50,000/- as loan. The defendant therefore sought for the dismissal of the suit.

Trial Court:

8. The learned Subordinate Judge, Maduranthagam had framed

the following issues:

(i) வழக்குறு கடனுறுதிச் சீட்டை பிரதிவாதி எழுதிக் கொடுத்துள்ளாரா?

(ii) வழக்குறு கடனுறுதிச் சீட்டு வாதியால் மோசடியாக தயாரிக்கப்பட்டதா?

(iii) இவ்வழக்கில் கோரியுள்ள தீர்ப்பாணையை வாதி பெறுவதற்கு அருகதையுண்டா?

(iv) இதரப் பரிகாரம் என்ன?

9. The learned Subordinate Judge, Maduranthagam by his Judgement and Decree dated 27.01.2016 was pleased to decree the suit as prayed for. The learned Subordinate Judge had observed that merely because the reason for borrowal is found to be incorrect and that there is a huge gap between written contents and Left Thumb Impression, the same would not render the negotiable instrument invalid since the Left Thumb Impression is admitted by the

defendant and it is for the defendant to prove that he has not received consideration under the same.

10. The learned Judge relying upon the evidence of Savitha, P.W.2, who has signed as a witness in Ex.A.1, promissory note and who is the daughter of the plaintiff had come to the conclusion that money had changed hands.

Appellate Court:

11. Aggrieved by this Judgement and Decree, the defendant had filed an appeal in A.S.No.52 of 2016 on the file of the Principal District Court, Kancheepuram at Chengalpattu. The learned District Judge by her Judgement dated 09.09.2020 was pleased to dismiss the appeal.

12. The learned Principal District Judge would state that the promissory note was disputed by the defendant and the plaintiff by

examining herself and P.W.2 witness to the suit promissory note has discharged the onus cast upon her and it is for the defendant to prove his contention that the document was not executed by him and no consideration under the same has been passed. The learned Principal District Judge held that this onus has not been discharged by the defendant and he was not able to prove that no consideration had been passed under the suit promissory note, Ex.A.1. Therefore, the learned Judge had proceeded to uphold the authenticity of the promissory note. The learned Judge had also observed that since the promissory note contains a recital that it is also for domestic purposes the promissory note cannot be rejected as a fabricated one. The learned Principal District Judge would further state that normally it is the borrower who gives the reason, which is incorporated in the promissory note. With reference to the gap between the writing and the Left Thumb Impression, the learned Judge has observed that the defendant has not taken any steps to get the Left Thumb Impression inspected to prove that it is not his Left

Thumb Impression and therefore the appeal was dismissed.

13. Challenging the concurrent Judgement and Decree, the defendant is before this Court.

14. Mr.S.Saranraj, learned counsel appearing for the defendant/appellant herein would submit that the suit promissory note is fabricated one for the following reasons:

> *(a) The purpose of borrowal that is shown in the suit promissory note, Ex.A.1 is marriage of the defendant's daughter, Vanitha. Vanitha has been married on 12.09.2008 itself, namely, three years prior to the execution of the alleged promissory note. The said Vanitha has also become mother in the year 2009. Therefore, the reason given is a false reason.*

(b) In the second page of the promissory note, the Left Thumb Impression is found at the end of the page, whereas, the writing is concluded right at the top. The place where the defendant was required to affix his Left Thumb Impression has been indicated with a cross mark and it is the argument of the learned counsel for the defendant that such a cross mark is made only when the signature are taken at a random and not when the person is signing a completed document.

(c) The plaintiff did not have the wherewithal to pay a huge sum of Rs.2,50,000/-

(d) In the earlier suit , namely, O.S.No.134 of 2013 there is no reference to this promissory note, which is of

the year 2011, nearly two years prior to filing of the suit O.S.No.134 of 2013. Admittedly on the date of which the second suit was filed the plaintiff would state that no amount had been paid towards borrowal under Ex.A.1, promissory note.

15. The learned counsel would submit that the Courts below have simply stated that the Left Thumb Impression having been admitted by the defendant, the plaintiff was entitled to a decree.

16. The learned counsel would rely upon the Judgement and Decree of the Hon'ble Supreme Court reported in ***1999 3 SCC 35 - Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Payrelal,*** to show that the presumption under Section 118 of the Negotiable Instruments Act, shifts from one party to the other.

17. Mr.Ashok Kumar, learned counsel representing

Mr.K.S.V.Sethuraman, learned counsel for the respondent/plaintiff argument in response to the argument of the learned counsel for the appellant/defendant were as follows:

(i) The appellant/defendant has admitted the borrowal and execution of the promissory note and has also admitted to the fact that the sum of Rs.20,000/- remained unpaid.

(ii) The amounts were borrowed for meeting family expenses as well and therefore, the argument made by the learned counsel for the appellant/defendant that the reasons given for the borrowal would clearly indicate that the suit promissory note is a fabricated one, is invalid.

(iii) The appellant/defendant having admitted his Left Thumb Impression in the suit promissory note – Ex.A1 in the written statement, has proceeded to deny the same in his cross-examination. However, no steps have been taken to have the signature compared by the expert. He would further submit that the Lower Appellate Court being the final Court of fact has exclusively considered the evidence and dismissed the appeal and hence, the judgment and decree does not call for any interference.

18. Heard the learned counsel on either side and perused the records.

Discussion:

19. On hearing the learned counsel for either side, the following Substantial Questions of law arise for consideration in the above Second Appeal:

(a) Whether the defendant has proved that the suit promissory note is fabricated one by marking Ex.B.2 and Ex.B.3?

(b) Whether the plaintiff has established the passing of consideration under the suit promissory note when the suit O.S.No.134 of 2013 (Ex.A.1) has been filed

after the alleged default under the instant promissory note.

20. In order to consider the above Substantial Questions of law, it would be necessary to set out few dates, which are culled out from the pleadings, filed by the parties.

01.06.2010 - Rs.20,000/- borrowed by the defendant from plaintiff and promissory note executed.

20.07.2011 - Ex.A.1 promissory note alleged to have been executed by defendant in favour of the plaintiff.

03.06.2013 - Notice issued by the plaintiff's counsel in respect of promissory note dated 01.06.2010.

Sep 2013 - Suit O.S.No.134 of 2013 filed for recovery of a sum of Rs.25,400/-. The contents of the plaint would state that borrowal was a sum of Rs.20,000/- as on that date.

------ - Receipt issued by the plaintiff stating that only a sum of Rs.20,000/- is due from the defendant.

18.07.2014 - O.S.No.104 of 2014 (The subject matter of the Second Appeal) is filed.

21. The defendant has put forth a defense that it was only a sum of Rs.20,000/- that he had borrowed from the plaintiff and the said sum has also been paid pursuant to the filing of the suit O.S.No.134 of 2013. The defendant would also state that even according to the plaintiff as per Ex.B.4, as on 03.06.2013 only a sum of Rs.20,000/- was due from the defendant.

22. The documents would reveal that even at the time of filing of the earlier suit O.S.No.134 of 2013 the amounts alleged to be payable were outstanding towards the present promissory note. This is evident from the fact that in paragraph no.3 of the plaint the plaintiff would state that the promissory note was executed on 20.07.2011 agreeing to repay the sum of Rs.2,50,000/- with interest at 24% per annum. The plaintiff would state that she had demanded

these amounts on many occasions and the last of such demand was on 10.07.2014. Therefore, it is the case of the plaintiff that the sum of Rs.2,50,000/- was outstanding from the defendant. In these circumstances, there is no explanation as to why no claim under this promissory note has also not been included in the earlier suit O.S.No.134 of 2013.

23. That apart, Ex.B.3, which is an undated receipt signed by the plaintiff should have been created pending O.S.No.134 of 2013 since the plaintiff had clearly stated in the suit O.S.No.134 of 2013 that it is only a sum of Rs.20,000/- that is due and payable by the defendant. Therefore, it is clearly evident that as on the date of the filing of the earlier suit i.e., O.S.No.134 of 2013 the amount payable by the defendant was only a sum of Rs.20,000/-. Ex.B.3 would further confirm the above fact.

24. The Courts below have failed to appreciate the onus of proof under Section 118 of the Negotiable Instruments Act, shifts

from one person to the others. The Left Thumb Impression in Ex.A.1, promissory note has been admitted by the defendant but not its contents. Therefore, the onus to prove that the document was not executed by him was on the defendant. This exercise has been discharged by the defendant by proving that the plaintiff even as early as in the year 2013 has stated that it is only a sum of Rs.20,000/- that was due and payable by the defendant under Ex.B.4 legal notice. The said statement cannot be read as one connected only to the earlier promissory note of the year 2010 since on the date of the issue of the legal notice under Ex.B.4, if the contents of the plaint is taken into consideration, amounts were due from the defendant to the plaintiff under the suit promissory note. Further, the defendant has been able to bring out suspicious circumstances regarding the preparation of Ex.A.1, promissory note.

25. The three striking features which proves the defense are :-

(a) Cross marks given at the end of the page.

(b) The huge gap between written contents and the Left Thumb Impression in the second page.

(c) The reasons for the borrowal have been proved to be wrong.

The onus therefore has shifted to the plaintiff to disprove the allegations made by the defendant, which the plaintiff has failed to do. In the light of the above, the argument of the learned counsel for the respondent/plaintiff that having admitted the outstanding of Rs.20,000/-, it should be presumed that the defendant has borrowed the money and executed the suit promissory note, cannot be countenanced.

26. The defendant has also raised an issue regarding the wherewithal in this regard. The plaintiff as P.W.1 has stated that she is selling Sarees by the road side and that she earns enough income to give a loan of Rs.2,50,000/-. P.W.2, who is none other than the daughter of the plaintiff, and who is stated to be the witness

of Ex.A.1 would state that her mother, the plaintiff, had obtained the amounts from the Insurance Company and was doing business in Saree sales, from out of which the sum of Rs.2,50,000/- has been given to the defendant. However, no proof of the receipt of the money from the Insurance Company is before the Court. It is seen that Savitha, P.W.2 is an interested witness being the daughter of the plaintiff. In the light of the specific defense being taken by the defendant that the plaintiff did not possess wherewithal to give a sum of Rs.2,50,000/-, the evidence to rebut this defense is wanting.

27. That apart, when the sum of Rs.2,50,000/- was alleged to be given as a loan to the defendant, the defendant was already due and owing a sum of Rs.20,000/- to the plaintiff. It is rather surprising that when a person is unable to repay a sum of just Rs.20,000/- the plaintiff would give a further loan of a huge sum of Rs.2,50,000/-.

28. On a conspectus of the above, the suspicious circumstances surrounding the execution of Ex.A.1 has not been properly rebutted by the plaintiff, therefore, the execution of Ex.A.1 promissory note by the defendant has not been proved. Therefore, the plaintiff is not entitled to the decree for recovery of money.

29. In fine, the Second Appeal is allowed and the Judgement and Decree of the Courts below is set aside. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

20.12.2023

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
ssa

To
1. The Principal District Judge,
Kancheepuram,
Chengalpattu

2. The Sub Judge,
Maduranthagam.

3.The Section Officer,
V.R.Section,
High Court, Madras.

P.T. ASHA. J,

ssa

S.A.No.279 of 2021

20.12.2023

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