



S.A.No.35 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2022

Pronounced on : **05.06.2023**

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

S.A.No.35 of 2022
and
C.M.P.No.661 of 2022

Balasundaram

Vs.

... Appellant

A.Duraisamy

... Respondent

Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree passed in A.S.No.27 of 2017 dated 01.10.2018 on the file of the IV Additional District Court, Coimbatore, confirming the judgment and decree in O.S.No.623 of 2010 dated 23.01.2017 on the file of the Principal Subordinate Court, Coimbatore.

For Appellant : Mr.C.Deivasigamani

J U D G M E N T

The defendant in the suit in O.S.No.623 of 2010 on the file of the Principal Subordinate Court, Coimbatore, is the appellant in the above Second Appeal.



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2.The respondent as plaintiff filed the suit in O.S.No.623 of 2010 on the file of Principal Subordinate Court, Coimbatore, for recovery of a sum of Rs.6,00,366.66 with subsequent interest @ 24% p.a. on the principal sum of Rs.3,50,000/- and for consequential reliefs.

3.The case of the respondent/plaintiff in the plaint is that the defendant borrowed a sum of Rs.3,50,000/- by cash for his urgent business needs, promising to repay the same on demand at the rate of 24% interest. It is also the case of plaintiff that the defendant executed a promissory note on 21.11.2005 acknowledging the receipt. It is stated in the plaint that the defendant, despite several demands by plaintiff, failed to pay any amount towards principal or interest due under promissory note dated 21.11.2005. The suit notice dated 06.06.2008 was sent on behalf of plaintiff by registered post to the defendant calling upon him to pay the amount as per the promissory note dated 21.11.2005 with interest @ 24% p.a. from 21.11.2005 upto the date of payment. It is admitted that the appellant, though received the legal notice on 10.06.2008, did not sent any reply. Finding that the appellant did not respond to the legal notice, the plaintiff/respondent came forward with the suit for recovery of money due under the promissory note.



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4.The appellant filed a written statement denying the averments in the plaint. It is contended by the appellant that he is doing business for the past several years and has earned reputation in his business circle. Stating that he is having enough money to do business and he never indulged in any kind of dealings with the plaintiff, the appellant also contended that he has not signed any promissory note. In short, it is the case of appellant that he did not borrow even a pie from the plaintiff/respondent. It is also contended by the appellant that plaintiff/respondent had fabricated the promissory note. From the written statement, it is seen that the appellant specifically disputed his signature in the promissory note and contended that the promissory note has been fabricated by the plaintiff for the purpose of suit. It is stated by the appellant that he came to know about the fabricated promissory note only after seeing the plaintiff's Advocate notice. The appellant, therefore, disputed the receipt of any payment as well as his signature in the suit promissory note. However, he admits that he did not give any reply to the legal notice dated 06.06.2008 as he did not know even to give a reply to the legal notice.



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5. During the pendency of the suit, the defendant filed an

Interlocutory Application in I.A.No.449 of 2015 in the suit in O.S.No.623 of 2010 to send the document Ex.A1 promissory note for scientific examination and for expert opinion. It is to be noted that the defendant, during the course of evidence, came forward with a new case that the suit promissory note was not executed in 2005, but he had signed in blank promissory note in favour of the Chit Fund Company run by the plaintiff as a subscriber in three Chits as security for the Chit amount, wayback in the year 1990. Therefore, it is stated by the defendant in I.A.No.449 of 2015 that the blank promissory note signed by the defendant in 1990 has been manipulated by the plaintiff to file the suit. In order to prove that the Revenue Stamp affixed in the suit promissory note is an old one published before 1990, the appellant filed the petition in I.A.No.449 of 2015 to send the suit promissory note for scientific examination and to get expert opinion. The said application was dismissed by the trial Court on the ground that mere proof that the Revenue Stamp affixed in the promissory note was obtained even in 1990 is not sufficient to establish the fact that Ex.A1 was executed in the year 1990.



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6.Again, the appellant filed another application in I.A.No.666 of 2016 under Order 16 Rule 1(3)(4) CPC to issue summons to Deputy Collector (Stamps), Coimbatore, to give evidence. Even that application was also dismissed by the trial Court on the ground that mere proof that the Stamp is old, will not affect the case of plaintiff. Since the real question to decide is whether the promissory note was executed in the year 1990 or in the year 2005, the lower Court dismissed the application, pointing out that the burden lies on the parties to prove their respective cases by other evidence.

7.The plaintiff examined himself as P.W.1 and one Thirumoorthy, the attester of Ex.A1 promissory note, as P.W.2. On the side of plaintiff, Exs.A1 to A5 were marked. Defendant examined himself as D.W.1. Defendant also examined one K.Jayabalan as D.W.2 to speak about the relationship between the plaintiff and one Umamaheswari Chit Funds Pvt. Ltd. On the side of defendant, Exs.B1 to B3 were marked.

8.The trial Court found that merely because the plaintiff is also the owner of a private Chit Fund Company, the case of plaintiff cannot be rejected, since the defendant did not adduce any evidence to prove his case that the promissory note was given long back (1990) and that the defendant



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put his signature in a blank promissory note. Since the evidence of P.W.1 regarding execution of promissory note by defendant and passing of consideration is corroborated by P.W.2, the attestor of Ex.A1 promissory note, the trial Court found that the execution of suit promissory note and passing of consideration is proved. Considering the pleadings in the written statement and the nature of evidence given by D.W.1 and D.W.2, the trial Court rendered a finding that the defendant has not come forward with clean hands and held that the plaintiff is entitled for the suit claim as prayed for, and accordingly, decreed the suit.

9. Aggrieved by the judgment and decree of the trial Court, the appellant/defendant preferred an appeal in A.S.No.27 of 2017 before the IV Additional District and Sessions Court, Coimbatore.

10. The lower Appellate Court also confirmed the findings of the trial Court and held that the plaintiff has proved the execution of promissory note and receipt of consideration as pleaded by the plaintiff. The evidence of P.W.2 was also accepted by the lower Appellate Court. Since the defendant has come forward with a new case quite contrary to the stand taken by him in the written statement, the Appellate Court did not find an option except to



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hold that the plaintiff has established his case regarding borrowal of a sum of Rs.3,50,000/- as per the promissory note Ex.A1 dated 21.11.2005 and that the defendant failed to make payment except a sum of Rs.45,000/- paid during the pendency of execution proceedings after the suit was decreed *ex parte*.

11. Aggrieved by the concurrent judgment and decree of the Courts below, the above Second Appeal is preferred by the defendant in the suit.

12. In the memorandum of grounds, the appellant has raised the following substantial questions of law :

- i. Whether a chit company can lend money without getting sanction from the Government ?*
- ii. Whether the money transaction should be shown in the Income Tax Assessment ?*
- iii. Whether non-prosecution of income tax returns would amount of suppression of facts or not ?*
- iv. Whether the respondent has proved the pro note according to law ?*
- v. Whether the pro note produced is genuine or not as per law ?*
- vi. Whether the dismissing of the I.A.No.449 of 2015 filed by the appellant is valid in law ?*

vii. Whether the I.A.No.666 of 2016 under Order 16 Rule 1(3)(4)



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of C.P.C. is valid in law ?

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13.Learned counsel appearing for the appellant submitted that a Chit Company is not supposed to carry on any business. Stating that the lending of money by plaintiff is prohibited, the learned counsel appearing for the appellant submitted that the suit filed by the plaintiff is neither maintainable nor can be decreed. Learned counsel submitted that the plaintiff has not proved the promissory note in the manner known to law. Since the genuineness of the promissory note is specifically disputed by the appellant in the written statement, the learned counsel further submitted that the Courts below failed to consider the serious issue raised by the appellant as to the genuineness of Ex.A1 promissory note. Learned counsel appearing for the appellant then submitted that the trial Court dismissed I.A.No.449 of 2015 and I.A.No.666 of 2016 erroneously and therefore, the judgment of the trial Court is vitiated.

14.Learned counsel appearing for the appellant relied upon Section 12 of the Chit Funds Act, 1982, which read as follows :

“12.Prohibition of transacting business other than chit business by a company.—(1) Except with the general or



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special permission of the State Government, no company carrying on chit business shall conduct any other business.

(2) Where at the commencement of this Act, any company is carrying on any business in addition to chit business, it shall wind up such other business before the expiry of a period of three years from such commencement:

Provided that the State Government may, if it considers it necessary in the public interest or for avoiding any hardship, extend the said period of three years by such further period or periods not exceeding two years in the aggregate. ”

15.First of all, the plaintiff in the present case is an individual. It is not the case of plaintiff that the suit promissory note was executed by defendant in favour of Chit Funds Company run by the plaintiff. The issue raised before this Court in the memorandum of grounds was not raised before the trial Court or the lower Appellate Court. Therefore, the question of law which is based on certain facts cannot be permitted to be raised at the Second Appellate stage.

16.Further, Section 12 of the Chit Funds Act prohibits any company carrying on Chit business from conducting any other business. The



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prohibition under Section 12 is to carry on any other business in addition to Chit business. Absolutely, there is no pleading in the written statement about the Chit business run by the plaintiff in different names. In the absence of any specific pleading suggesting any irregularity, this Court is unable to consider the first question of law raised in the memorandum of appeal as a pure question of law under Section 100 of Code of Civil Procedure.

17.The substantial questions of law Nos.(ii) and (iii) are with regard to proof of payment. When the plaintiff has proved the promissory note by producing the document as well as by examining the attester of promissory note Ex.A1, this Court cannot interfere with the findings of Courts below merely on the ground that the plaintiff ought to have produced some more documents like Income Tax assessment and Tax Returns to prove the consideration for the promissory note. There is a statutory presumption to infer passing of consideration. Therefore, there is no substance in the questions of law Nos.(ii) and (iii) raised in the memorandum of appeal.

18.The next question is also regarding proof of promissory note. The promissory note is required to be proved like any other document. The specific case of plaintiff is that the defendant borrowed money to the tune of



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Rs.3.5 Lakhs and executed a promissory note acknowledging the receipt of payment. The defendant disputed any relationship between the plaintiff and defendant. Defendant pleaded as if he has no acquaintance with the plaintiff. There is no whisper about any Chit transaction in the written statement. For the first time, during evidence, the defendant came forward with a new case that the promissory note was signed by him when it was blank and that the suit promissory note is the one handed over to the plaintiff by the defendant in connection with the Chit business the defendant had with plaintiff earlier. It is well settled that no amount of evidence can be looked into without a specific plea. The plaintiff has proved Ex.A1 by examining himself as P.W.1 and by examining the attesting witness as P.W.2. Courts below, on appreciation of evidence of plaintiff and defendant and witnesses examined on behalf of plaintiff, came to the conclusion that the suit promissory note was proved in the manner known to law and that the plaintiff has established his case that the defendant borrowed a sum of Rs.3,50,000/- agreeing to repay the same with interest @ 24% p.a. This Court finds no reason to interfere with the findings of Courts below on facts.

19.The defendant has admitted his signature in the suit promissory note. His case before the trial Court was peculiar during evidence that he



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signed blank promissory note in connection with Chit transaction. After admitting his signature in the promissory note, the appellant wanted to establish that the Stamp affixed in the promissory note is very old and the Stamp might have been issued prior to 1990. It is for the said purpose, he filed I.A.No.449 of 2015 to send Ex.A1 suit promissory note for scientific examination to get an expert opinion to prove that the Stamp affixed in the promissory note is very old. The trial Court has dismissed the application on the ground that the execution of promissory note cannot be presumed to be earlier merely because the Stamp affixed in the promissory note was issued long back. Similarly, another application in I.A.No.666 of 2016 is also filed to summon the Deputy Collector (Stamps), Coimbatore, to give evidence as to the date of issuance of the Stamp affixed in Ex.A1 promissory note. This application was also dismissed by trial Court for identical reasons. This Court is unable to find fault with the trial Court dismissing the applications in I.A.Nos.449 of 2015 and 666 of 2016. Even assuming that the orders of trial Court dismissing the two Interlocutory Applications are inappropriate or erroneous, the appellant admits that the revision petition filed by the appellant has also been dismissed by this Court. This Court finds no error or irregularity in the orders dismissing the Interlocutory Applications filed by the appellant in I.A.Nos.449 of 2015 and 666 of 2016 in O.S.No.623 of



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2010. The appellant, by sending the document for expert opinion, cannot establish his case that the promissory note itself was executed only in the year 1990 in connection with the Chit transaction between the plaintiff and defendant. As a matter of fact, the appellant could not adduce any independent evidence. In the absence of any pleading to support his case, this Court is not inclined to appreciate the arguments of learned counsel appearing for the appellant that the promissory note was executed in connection with the Chit transaction.

20. Therefore, this Court is unable to find any substance in any of the questions of law raised by the appellant in the grounds of appeal. As a result, **this Second Appeal is dismissed with costs.** Consequently, connected miscellaneous petition is closed.

05.06.2023

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Internet : Yes

Index : Yes / No

To

1. The IV Additional District and Sessions Judge,
Coimbatore.

2. The Principal Subordinate Judge,

<https://www.mhc.tn.gov.in/judis>



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S.S. SUNDAR, J.

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Judgment in
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