



S.A.No.622 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.622 of 2021

and

C.M.P.Nos.26852 of 2023 and 12942 of 2021

R.Dhandapani

... Appellant

Vs.

V.Durairaj

... Respondent

Prayer:- Appeal is filed under Section 100 of C.P.C against the judgement and decree dated 05.09.2019 passed in A.S.No.19 of 2018 on the file of the Principal District Judge, Tiruvannamalai, confirming the judgement and decree dated 23.01.2018 made in O.S.No.174 of 2015 on the file of the Principal Subordinate Judge, Tiruvannamalai.



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For Appellant : Mr.E.P.Senniyangiri

For Respondent : Mr.A.Kumar

JUDGEMENT

The above Second Appeal is filed by the defendant who has suffered a concurrent judgment and decree against him. The facts are briefly set out herein and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.174 of 2015 on the file of the Principal Sub Judge, Tiruvannamalai for recovery of amounts due under 7 promissory notes. It is the case of the plaintiff that the defendant had borrowed a sum of Rs.1,00,000/- on 01.05.2012 and executed the 1st promissory note. On 02.05.2012, the defendant had borrowed yet another sum of Rs.1,00,000/- and executed the 2nd promissory note. On 03.05.2012, a further sum of Rs.1,00,000/- was



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borrowed and the 3rd promissory note came to be executed. Similarly, on 04.05.2012, 05.05.2012 and 06.05.2012 the defendant had borrowed a sum of Rs.1,00,000/- each and executed the 4th, 5th and 6th promissory notes respectively. On 07.05.2012, the defendant had borrowed a sum of Rs.50,000/- and executed the 7th promissory note. Therefore, in all, the defendant had borrowed a sum of Rs.6,50,000/- and he had agreed to repay the same with interest at 12% per annum.

3. It is the case of the plaintiff that despite repeated requests the defendant had not come forward to repay the above amounts. Therefore, the plaintiff had issued a notice on 27.03.2015, to which there was neither a response nor a payment. Hence, the present suit for recovery of a sum of Rs.8,21,155/- together with interest had been filed.

4. The defendant had filed a written statement inter alia denying



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the execution of the promissory notes and contending that no consideration had passed. The defendant would submit that when he was traveling in a bus, the said bus had collided with a lorry, as a result of which, he had sustained grievous injuries and had become unconscious. Initially, he was treated at the Government Hospital, Tiruvannamalai and thereafter shifted to the CMC Vellore. From there he had been shifted to Shri Ramachandra Hospital, Chennai. The defendant would submit that he was an inpatient in Shri Ramachandra Hospital, for over a month and was in I.C.U. for 28 days. When he had regained consciousness, he was shifted to the General Ward of the hospital where he was taking treatment for over a month and he was discharged thereafter from the Hospital.

5. The defendant would submit that his family has spent a considerable amount for his treatment. The plaintiff's son who was a doctor at Shri Ramachandra Hospital had befriended the defendant's



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son and promised that he would make arrangements for the defendant's free treatment at the Government General Hospital, Chennai and that he would get a necessary insurance coverage for his treatment. The son of the defendant was taken in by these words and on the direction of the plaintiff and his son doctor Ramesh, he had signed the suit promissory notes as if it was the defendant who had signed the same. The defendant would submit that at that juncture he was not in his proper senses as he had suffered a head injury and had therefore suffered from poor memory which has been certified by various hospitals where he had taken treatment.

6. The defendant would submit that before the accident he was running a business and for this business, he had borrowed money from the Indian Bank, Temple View Branch, Tiruvannamalai by mortgaging all his properties. Towards this loan, he had executed a registered Mortgage by deposit of title deeds. The defendant had borrowed a sum

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of Rs.11,00,000/- for which he was regularly paying the dues till the date of the accident. After the accident, when he was in a comatose state and was not able to carry on his business as a result of which the bank had initiated a proceeding before the Debts Recovery Tribunal-III, Chennai in O.A.No.376 of 2013 and the defendant is contesting the same.

7. The defendant would submit that in all the promissory notes his signatures has been signed by his son as though the defendant had borrowed the money. However, in reality, the defendant had not signed the promissory notes and received any amounts. The promissory notes have been signed by his son at the instigation of the plaintiff and his doctor son, Ramesh. Therefore, he sought for a dismissal of the suit.

8. The learned Trial Judge had framed the following issues:-



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*1. Whether the suit promissory notes are valid,
true and executed for valid consideration?*

*2. Whether the suit promissory notes were
obtained fraudulently from the defendant as alleged?*

*3. Whether the plaintiff is entitled for the suit
claim?*

4.To what relief?

9. The plaintiff to prove his contentions had examined himself as P.W.1 and one Mr.Prabakaran who had witnessed the execution of the promissory notes as P.W.2 and had marked Ex.A.1 to A.10. On the side of the defendant, the defendant examined himself as D.W.1 and marked Ex.B.1 to B.9.



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10. The learned Trial Judge on perusing the evidence on record held that the promissory notes had been executed by the defendant and he had also received consideration for the same. Therefore, the suit was decreed as prayed for.

11. Challenging the same, the defendant had filed AS.No.19 of 2018 on the file of the Principal Judge, Trivalamalai. The Lower Appellate Court had also confirmed the judgement and decree of the Trial Court. It is challenging the same, the present Second Appeal has been filed.

12. By order dated 25.08.2021, this Court was pleased to admit the above Second Appeal on the following Substantial Questions Law:

*“(a)Whether the Courts below are correct in Law
in not appreciating the fact that the plaintiff has not
proved the execution of promissory notes and the*



source of income especially when the plaintiff and the defendant questioned the same?

(b)Whether Ex.A1 to Ex.A7 is a valid instrument as per the Negotiable Instruments Act to maintain a suit, when the same is not supported by consideration, particularly in view of Ex.B1 to B.7 medical records?

(c)Whether the courts below are right in decreeing the suit when the defendant has rebutted the presumption under section 118 of the Negotiable Instruments Act by adducing evidence and raising a probable defence?



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(d)Whether the courts below are right in decreeing the suit merely on assumptions when the duty is cast on the plaintiff to prove his case for obtaining a decree basing on Ex.A1 to A7 particularly when the presumption has been rebutted?”

13. Mr. E.P.Senniayangiri, learned counsel appearing on behalf of the appellant/defendant would submit that despite the fact that the defendant has denied his signature as well as receipt of money under the various promissory notes, the plaintiff has not taken any steps whatsoever to prove the same. He would submit that in response to Ex.A.8, the legal notice dated 27.03.2015, the defendant had issued a reply dated 17.04.2015 clearly denying the execution of the promissory notes and also keeping the plaintiff informed about his injuries and the difficulties suffered by him on account of the same.



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14. The learned counsel for the appellant/defendant would draw the attention of the Court to the evidence of P.W.1, wherein he would submit that the defendant had borrowed the money for putting up a construction however this reason has not been endorsed in the promissory notes. He would also draw the attention of the Court to the fact that during the cross-examination, the plaintiff had admitted that his son is working as a Neuro Surgeon in the Rajiv Gandhi Government Hospital, Chennai and that his son is at a very influential position in Chennai. He would also draw the attention of the Court to the fact that the defendant's son had affixed his signature as a witness in all the promissory notes. He would submit that the Courts below have overlooked the defendant's evidence that he has not executed the promissory notes.

15. Per contra, Mr.A.Kumar, learned counsel appearing on

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behalf of the plaintiff would submit that the defendant has come forward with a different defenses at each stage. i) In the reply notice which has been marked as Ex.A.9, the defendant had contended that the plaintiff's son had forcibly obtained his signature; ii) In the written statement, the defendant had taken a stand that it was his son who had been lured into signing the promissory notes by the plaintiff and his doctor son; and iii) In his chief examination, the defendant would submit that his son had executed the promissory notes as if it was executed by the defendant.

16. He would further submit that the Medical Records which have been produced would clearly show that on the date of the execution of the promissory notes the defendant was not incapacitated. He would therefore, submit that the defense that has been put forward by the defendant has been rightly ignored by the Courts below and this Court ought not to re-appreciate the evidence more particularly when

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the defendant has not made out a case that the judgment and decree of the Courts below are erroneous and have to be set aside.

17. Heard the counsel on either side.

18. The plaintiff has come forward with a contention that 7 promissory notes have been executed by the defendant for a sum of Rs.6,50,000/- promising to repay the same with interest at 12% per annum. With reference to the execution of the promissory notes, the defendant has taken different defenses. In one breath he would say that the plaintiff's son had forcefully obtained the signatures at the time when the defendant was mentally unsound. In the written statement and in his evidence, he would submit that his son has signed the promissory notes as if the same has been signed by him, in other words his son has forged the plaintiff's signature. The plaintiff on his side has examined P.W.2 who has clearly and categorically

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deposed to the fact that the promissory notes have been executed by the defendant and he had received consideration for the same. Substantial Questions of law (a) and (b) are answered against the defendant.

19. The plaintiff in his evidence has submitted that he is a farmer owning 30 acres of land and that he has 3 sons of whom one son is working with a Hospital in Chennai. He has also contended that he is doing business of lending money for interest. The plaintiff has also deposed that he is normally not in the habit of giving huge amounts as a loan but however, he had given money to the defendant as he belongs to a neighbouring village with whom the plaintiff was on good terms.

20. It is also seen that the defense which has been put forward by the defendant that he was medically unfit and mentally unsound



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and therefore the execution of the promissory notes appear suspicious cannot be countenanced for the fact that the treatment has taken place much prior to the execution of the promissory notes. That apart, the defendant has not been able to establish the fact that he was mentally unsound at least for a limited period in time. The certificates issued in his favour do not truly reflect the same. That apart, the defendant would contend that it was his son, Gokul who had impersonated him and put the signature as if the signature had been put by the defendant. However, he has not chosen to examine the said Gokul which compels the Court to draw an adverse inference for his non examination. Substantial Questions of law (c) and (d) are answered in favour of the plaintiff.

21. The Courts below on considering the evidence on record have come to the conclusion that the promissory notes have been executed by the defendant and consideration had also passed in favour



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of the defendant and therefore the defendant who has not repaid the amounts borrowed is bound to do so and I see no reason to interfere with the well considered judgement and decree of the Courts below. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Principal District Judge, Tiruvannamalai
2. The Principal Subordinate Judge, Tiruvannamalai.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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