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S.A.No.1020 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2023

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THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.1020 of 2022
and
C.M.P.No.21882 of 2022

Dharmaraj
Rep by his power agent
Tamil Selvi

....

Appellant

Vs

Valarmathi

....

Respondent

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 09.12.2021 made in A.S.No.12 of 2020 on the file of the Principal District and Sessions Judge, Ariyalur, confirming the Judgment and Decree dated 18.02.2020 made in O.S.No.340 of 2017 on the file of the Sub Court, Jayankondam.

For Appellant : Mr.M.Senthilvadivu

For Respondent : Mr.S.Nagarajan

JUDGMENT

This second appeal is directed as against the Judgment and Decree dated 09.12.2021 made in A.S.No.12 of 2020 on the file of the Principal District and Sessions Judge, Ariyalur, thereby confirming the



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Judgment and Decree dated 18.02.2020 made in O.S.No.340 of 2017 on the file of the Sub Court, Jayankondam, thereby allowing the suit for recovery of money.

2. The appellant is the defendant in the suit filed by the respondent for recovery of money on the strength of the Promissory Note. The case of the respondent is that the appellant borrowed a sum of Rs.3,50,000/- as loan and agreed to repay the same with interest at the rate of Rs.1/- per month and executed a Promissory Note on 28.12.2015. However, the appellant failed to repay the same and as such, the respondent issued notice on 27.12.2016 and filed a suit.

3. The appellant resisted the suit and filed a written statement stating that the appellant never executed any Promissory Note for a sum of Rs.3,50,000/- and he never agreed to repay the said amount with interest at the rate of Rs.1/- per month. As such, no consideration was passed on in favour of the appellant to execute any Promissory Note in favour of the respondent. In the month of April 2013, the appellant herein borrowed a sum of Rs.1,00,000/- from the husband of the respondent for the purpose of going abroad and executed four Promissory Notes each for a sum of



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Rs.50,000/- dated 15.04.2013, 16.04.2013, 17.04.2013 and 18.04.2013 in

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favour of the husband of the respondent herein. It is common that after borrowal of the amount have to be executed Promissory Note for double the amount. After returning to India, on compulsion, that too, after administering Alcohol with intoxication to the appellant, obtained fresh Promissory Note, since the earlier Promissory Notes were barred by limitation. Therefore, the appellant need not to pay any amount to the respondent herein.

4. On the side of the respondent, she had examined P.Ws. 1 and 2 and marked Exs. P1 to P4. On the side of the appellant, they had examined D.Ws.1 to 4 and marked Exs.D1 to D5.

5. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit in favour of the respondent. Aggrieved by the same, the appellant preferred an appeal in A.S.No.12 of 2020 before the Principal District and Sessions Judge, Ariyalur and the same was also dismissed and the Judgment and Decree of the Trial Court was confirmed. Aggrieved by the same, the present second appeal.



6. The learned counsel for the appellant has raised the following substantial questions of law:

a) Whether the Courts below are justified in ignoring the contradictory deposition of P.W.1 and P.W.2 regarding the execution of Ex.A1.

b) Whether the Courts below are correct in holding in favour of plaintiff in the absence of the evidence to the effect that Ex.A1 Promissory Note was supported by consideration ?

c) Whether the Courts below have committed an error in assuming that the suit promissory note bears the signature of the defendant's husband when there is a specific denial that the signature found in the suit promissory note was created by the plaintiff's husband with his hooligans under the influence of alcohol and in casting the burden on the defendant to prove her defence plea ?

d) Whether the Courts below have committed a grave illegality by drawing presumption under Section 118 of the Negotiable instruments act and decreed the suit in favour of the respondent in the absence of proving the execution of promissory note ?



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e) Whether the Courts below are correct in not framing the points for determination as contemplated under Order 41 Rule 31 of CPC as the same is mandatory ?

7 . Heard, Mr.M.Senthil Vadivu, the learned counsel appearing for the appellant and Mr.Mr.S.Nagarajan, learned counsel appearing for the respondent and perused the materials available on record.

8. The learned counsel appearing for the appellant would submit that the alleged Promissory Note itself is forged and fabricated one and there is no necessity for the appellant to borrow any amount from the respondent. When the appellant was intoxicated with liquors, he was forced to sign new Promissory Note for a period of 2013 to 28.12.2015 with interest at the rate of 3 paise for his own convenience. During the cross examination of P.W.2 , it was established that no consideration was passed on for execution of any Promissory Note. In fact, it is the duty of the respondent to prove the case on the strength of sufficient oral and documentary evidence. Though the respondent failed to prove the case, the Court below decreed the suit.



9. A perusal of the records reveals that the appellant borrowed a sum of Rs.1,00,000/- in the month of April 2013. On such borrowal, he executed four Promissory Notes dated 15.04.2013, 16.04.2013, 17.04.2013 and 18.04.2013. Therefore, there was money transaction between the appellant and the respondent. A specific stand of the appellant was that he had never borrowed any amount and he had never executed any Promissory Note. He was administered with liquor and when he was under intoxication, his signature was obtained in the Promissory Notes and filed a suit.

10. A perusal of Ex.A1-Promissory Note, which was executed by the appellant, reveals that it was registered one before the registering authority. Though the appellant contended that when he was under the influence of alcohol, it was obtained on compulsion and force, the appellant failed to prove the same by substantiate evidence. In fact, even after execution of Ex.A1, the appellant did not take any steps to return the same and even did not file any complaint as against the respondent. If at all, it was obtained on force or compulsion or under influence of alcohol, immediately, he would have lodged a complaint or had taken appropriate action as against the respondent.



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11. As such the Courts below have analyzed the evidences adduced by the parties, both the documentary and oral in detail and by giving cogent reasons, concluded rightly and decreed the suit. Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

12. In view of above, this Second Appeal is dismissed and the Judgment and Decree dated 09.12.2021 made in A.S.No.12 of 2020 on the file of the Principal District and Sessions Judge, Ariyalur, confirming the Judgment and Decree dated 18.02.2020 made in O.S.No.340 of 2017 on the file of the Sub Court, Jayankondam, are confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
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To

1. The Principal District and Sessions Judge, Ariyalur
2. The Subordinate Judge, Jayankondam.



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G.K.ILANTHIRAIYAN, J.

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