



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.7.2023

Delivered on : 20.7.2023

Coram:

The Honourable Mr.Justice **A.D.JAGADISH CHANDIRA**

S.A.No.472 of 2023

and

C.M.P.No.14397 of 2023

S.Senniappan

.. Appellant

Vs.

Muthulakshmi

.. Respondent

Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated 28.02.2023 made in A.S.No.10 of 2016 on the file of the 1st Additional District Judge, Coimbatore confirming the judgment and decree dated 30.11.2015 made in O.S.No.6 of 2014 on the file of the Subordinate Judge, Pollachi.

For Appellant : Ms.R.Gouri

JUDGMENT

Judgment and decree of the Trial Court granting the relief of recovery of money and the concurrence thereupon by the first appellate court are put to challenge in the present second appeal by the defendant.

2. Though the Second Appeal came up for admission, on a perusal of the questions of law, which are six in number, this court found that the appellant has sought to raise such questions only on



factual aspects to the effect that the plaintiff has not discharged her burden of proof with regard to execution of the suit promissory note and that she had sufficient means to lend the money and thereby, this court feels that it is suffice to see whether the courts below have considered the defence of the appellant/defendant in a proper perspective rather admitting the second appeal.

3. The case of the plaintiff is as under:-

i) The defendant had borrowed a sum of Rs.3,00,000/- from the plaintiff on executing a promissory note agreeing to repay the amount with an interest of 12% per annum on her demand. The defendant had executed the said promissory note in the residence of the plaintiff in the presence of the scribe and witness.

ii) Since the defendant had not paid any amount towards principal or interest inspite of repeated demands by the plaintiff, a legal notice was sent on 18.11.2013 for which the defendant had replied on 23.11.2013 with false allegation. The plaintiff suitably replied to the same on 28.11.2013.

iii) Still, the defendant had not repaid the amount he borrowed and instead, he was making attempts to sell away his only property with an intention to defraud the plaintiff's claim in respect of the suit promissory note and hence, the suit has been filed for recovery of a sum of Rs.3,00,000/- with interest at 12% per



annum.

WEB COPY

4. A written statement was filed by the defendant raising the following contentions:-

i) The defendant neither borrowed any money from the plaintiff nor executed any promissory note in her favour.

ii) The legal notice sent by the plaintiff was suitably replied.

iii) It is incorrect to say that the defendant is attempting to sell away the property belonging to him to defraud the plaintiff's claim in respect of the suit promissory note. In fact, the said was constructed with the permission of the State Government and its aid for constructing green house with solar energy.

iv) To develop the said house, the defendant had borrowed some amount from Guhan Enterprises at Pollachi-Palakkad road and in that process, the Proprietor of the said firm viz., one Mr.Guhan had obtained the title deed in respect of the property and signed but, unfilled papers and stamp papers and thereupon paid the loan amount, which was also duly repaid by the defendant, but, when the defendant demanded for return of such documents, he was redirected to one Manikandan, who happened to be a broker of the said firm and guarantor for the said loan amount, by contending that the documents had been entrusted to him. The said Manikandan is none other than the son of the plaintiff.



v) The above documents had been fabricated as if they had been executed in favour of the plaintiff, mother of the said Manikandan. The plaintiff had lodged a complaint with the Pollachi Police Station against the plaintiff in respect of the fraudulent act committed by her whereupon, the plaintiff, after enquiring the parties, had advised the defendant to approach appropriate court for her remedy and hence, she had filed a suit in O.S.No.10 of 2014 before the Trial Court.

vi) The Proprietor of Guhan Enterprises viz., Guhan is a necessary party to the suit.

vii) The defendant has to prove the execution of the suit promissory note. Since the defendant had not borrowed any money from the plaintiff nor executed any promissory note, he is not liable to pay any money to the plaintiff and the suit is liable to be dismissed.

5. On the above pleadings, the Trial Court framed the following issues:-

- i) Whether the plaintiff is entitled to the relief claimed for?
- ii) Whether the promissory note and the consideration is true?
- iii) To what other reliefs the plaintiff is entitled to?



6. Before the Trial Court, the plaintiff had examined himself as PW1 and examined one Sivakumar as PW2 and marked 8 documents Exs.A1 to A8. On the side of the defendant, the defendant had examined himself as DW1 and examined one Senthilkumar as DW2 and marked 5 documents as Exs.B1 to B5.

7. On considering the oral and documentary evidence, the Trial Court had decreed the suit for recovery of money. On examination of the entire materials and the judgment of the Trial Court, the first Appellate Court concurred with the finding of the Trial Court. Aggrieved against the same, the defendant has come up with the present Second Appeal.

8. Heard the learned counsel appearing for the appellant and perused the judgments of the courts below in the light of the questions of law raised by the Appellant.

9. The suit filed by the plaintiff is for recovery of money, which, according to her, was lent to the defendant on the suit promissory note, whereas, the defendant denies the entire transaction of borrowal and execution of the promissory note itself. Sofar as the promissory note is concerned, he pleads that the plaintiff has not proved the execution of the suit promissory note



and in fact, it is a fabricated one in favour of the plaintiff using the blank papers and stamp papers signed by him and entrusted to Guhan Enterprises in lieu of the financial assistance he had availed, which also, he had repaid, but, he faced with some difficulties in getting back the signed and blank papers and stamp papers. He also takes a stand as if the plaintiff had no means to lend any money to the defendant.

10. Therefore, the defence taken by the defendant is two fold, one being execution of the promissory note and the other being the financial means of the plaintiff to lend money.

11. Sofar as the financial means of the plaintiff is concerned, the Trial Court has rightly observed that the plaintiff, by producing certified copies of sale deeds standing in her name viz., Exs.A7 and A8 dated 16.9.2004 and 6.11.2013. Therefore, the only aspect which needs to be considered is execution part.

12. With regard to execution of the suit promissory note, the Trial Court has observed that the second witness to the promissory note has been examined as PW2, who has clearly spoken about the execution of the suit promissory note.



13. It is also relevant to note that the Trial Court had also traversed into the evidence of the defendant and found out the discrepancies and conflicting stand taken by the defendant. It is seen that the defendant, on one hand, takes a stand as if the signature found in the suit promissory note is not the one made by him and on the other hand, he takes a stand as if he had availed financial assistance from Guhan Enterprises for development of his house and even after repayment of the loan amount, he was not given back the signed and blank documents handed over by him to the said Firm and a broker of the said Firm, by name Manikandan, being the son of the plaintiff, misused such blank documents when they were returned by the Firm through him, by filling up the contents as if the defendant had borrowed money from the plaintiff, who is none but, his mother. It is still worse that he takes a third stand as if the promissory note he handed over to Guhan Enterprises was torn by them, which is in totally contradictory to his second stand.

14. Similarly, it appears that the defendant, in his evidence, contends that it was the first time, he saw the suit promissory note in the court whereas the notices exchanged between the plaintiff and the defendant reveals that he had already seen the suit promissory note. Considering the above contradictions, the Trial



Court has rightly observed that the only motive of the defendant is to somehow escape from the clutches of liability and thereby, he goes on denying his signature in every document.

15. It is also relevant to note that if at all the contention of the defendant is true, he ought to have produced some proof for having availed the financial assistance from Guhan Enterprises, payment of interest to the firm and the repayment of the loan amount. The defendant has not chosen to do so. In fact, the defendant has not even whispered in his written statement as to how much he had borrowed from the said Firm and on what date he had borrowed and when he had repaid.

16. All the above aspects have been reconsidered by the first appellate court to arrive at a conclusion that the plaintiff has proved his case of lending money to the defendant on execution of the suit promissory note and non repayment of the same by the defendant whereas, the defendant was not able to prove any of his contentions taken to avoid his liability.

17. Except producing copies of reply notice, acknowledgment thereon, the reply notice issued by the plaintiff and a copy of the complaint submitted to CM cell, the defendant has not



chosen to produce even a scrap of paper to prove his peculiar defence that he had availed loan from a financier and the documents handed over to such financier had been misused by the plaintiff to fabricate the suit promissory note rather, he has intended to make a distraction as if the plaintiff has not proved the execution of the suit promissory note by denying the signature found therein is not one made by him.

18. As rightly observed by the courts below, the plaintiff has proved the execution of the suit promissory note by examining PW2 the second witness to the document, whereas the defendant denies his signature in the suit promissory note at one stretch and subsequently, he comes out with another story of availing financial assistance from a financier and misuse of the promissory note given in lieu of that loan by a broker of that firm. Later, he comes out with a third version that such a promissory note was torn by them. However, the defendant, who has muddled himself, has not proved any of his above contentions.

19. Therefore, it is clear that on re-appreciating the entire oral and documentary evidence, the first appellate court had concurred with the findings of the Trial Court both on facts and in law and rightly confirmed the judgment and decree of the Trial



Court granting the relief of recovery of money.

WEB COPY

20. Having carefully analysed the materials available on record including the judgments of both the courts, this court is of the view that no substantial question of law is involved in the appeal requiring admission.

21. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under:-

"23. Sub-section (1) of [Section 100](#) of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of [Section 100](#)



of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re- formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

22. In view of the above, in the absence of any substantial question of law, the Second Appeal fails and is, accordingly, dismissed without being admitted. No costs. The connected Miscellaneous Petition is closed.

20.7.2023

ssk



WEB COPY



12

A.D.JAGADISH CHANDIRA,J.

ssk

To

1. I Additional District Judge,
Coimbatore.
2. Subordinate Judge, Pollachi.
3. The Section Officer,
V.R. Section, High Court, Madras.

P.D. JUDGMENT IN
S.A.No.472 of 2023

Delivered on
20.7.2023