



AS No.68 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AS No.68 of 2017

1.Minor T.Ravi Bharathi, aged about 12 years
S/o.Late T.Thirunavukkarasu,
Represented by his Guardian P.Kanagarajan,
No.9, Karunaiammal Layout,
Perichipalayam North,
KNP Colony Post,
Tiruppur Taluk.

2.Minor T.Indhiran, aged about 8 years,
S/o.Late T.Thirunavukkarasu,
Represented by his Guardian P.Kanagarajan,
No.9, Karunaiammal Layout,
Perichipalayam North,
KNP Colony Post,
Tiruppur Taluk.

.. Appellants

VS.

1.G.Selvaraj



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2.K.Raju

3.Lakshmi

4.The Branch Manager,
Life Insurance Corporation of India,
No.5, Jammanali II Street,
Behind Old Bus Stand,
Tiruppur.

.. Respondents

PRAYER : This Appeal Suit is filed under Section 96, Order XLI, Rule 1 of the Civil Procedure Code against the judgment and decree dated 06.10.2016 passed by the learned I Additional District and Sessions Judge, Tiruppur in OS No.5 of 2012.

For Appellants : Mr.S.Bala Ganesh for
Mr.T.M.Hariharan

For Respondents-1 and 2 : Mr.G.Ethi Rajulu

For Respondent-3 : Not Ready in Notice

For Respondent-4 : Mr.S.Janarthanam

J U D G M E N T

The present Appeal Suit has been instituted against the



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judgment and decree dated 06.10.2016 passed by the learned I Additional District and Sessions Judge, Tiruppur in OS No.5 of 2012.

2.The appellants are the defendants 2 and 3, the respondents 1 and 2 are the plaintiffs 1 and 2 and the respondents 3 and 4 are defendants 4 and 5 in the suit.

3. The respondents 1 and 2 / plaintiffs 1 and 2 instituted the suit for recovery of money based on the Promissory Note.

4. The plaint averments state that the first defendant is the wife of late Thiru T.Thirunavukkarasu and the fourth defendant is his mother, second and third defendants are the sons of the deceased T.Thirunavukkarasu.

5. Late T.Thirunavukkarasu was running the business of M/s.Kavitha Screen Printers at Tirupur. He borrowed a sum of Rs.15 lakhs

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for the business and family necessities, agreed to repay the said sum with interest at the rate of 12% per annum, on demand and executed a Promissory Note to that effect on 25.08.2011.

6. On 26.08.2011, he had given letter acknowledging the borrowal and execution of Promissory Note and handed over the original Title Deeds of his properties bearing Nos.2428 of 2009 dated 20.03.2009 and 13554 of 2009 dated 04.12.2009 and original policy bond bearing No.765898138 and 765889537 as securities.

7. Late T.Thirunavukkarasu paid interest for two months and thereafter died on 29.01.2012, leaving behind him defendants 1 to 4 as legal heirs. Thus the plaintiffs demanded with the defendants to settle the amount and they failed to discharge the amount, which resulted in institution of a suit for recovery of money.



8. Defendants 2 and 3 filed written statement denying the allegations in the plaint. Defendants 2 and 3 denied the execution of Promissory Note dated 25.08.2011 by late T.Thirunavukkarasu. The suit Promissory Note is a forged one. Defendants 2 and 3 denied that their father handed over the original Sale Deeds and LIC Policy to the plaintiffs along with the suit Promissory Note. Thus the suit is to be dismissed.

9. Based on the pleadings, the Trial Court framed the following issues:-

(1) Whether the plaintiffs entitle for a decree directing the defendant to pay for Rs.15,73,972/- with subsequent interest Rs.15,00,000/- @ 12% per annum from the date of suit till realisation as prayed for ?

(2) To what relief the parties entitled for ?

10. On the side of the plaintiffs, PW-1 and PW-2 were examined and Exs.A-1 to A-11 were marked as documents. On the side of the defendants, DW-1 was examined and no document was marked.



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11. Regarding issue No.1, the Trial Court has gone into the validity of the Promissory Note, Ex.A-1 document. The plaint averments reveal that late T.Thirunavukkarasu borrowed a sum of Rs.15 lakhs for his business purpose and family necessities and agreed to repay the said amount with interest at the rate of 12% per annum.

12. In lieu of the loan amount, the deceased T.Thirunavukkarasu handed over the Sale Deeds and the LIC bond as securities to the plaintiffs. The said documents were marked as Exs.A-2, A-3, A-4, A-5 and A-6 respectively.

13. The initial burden lies upon the plaintiffs to prove execution of the suit Promissory Note under Ex.A-1. The signature of the deceased T.Thirunavukkarasu in the Promissory Note was proved before the Trial Court and in this regard, the Trial Court relied on the deposition of PW-2, who in turn stood as a Guarantor.



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14. Relying on the deposition of PW-2 and in his cross-examination, the Trial Court drew an inference that the evidence of PW-2 is reliable and accordingly, held that the plaintiffs duly proved the execution of the Promissory Note. Once the execution of Promissory Note is proved and the signature of the parties in the Promissory Note has been established, then the presumption under Section 118 of the Negotiable Instruments Act is to be applied. No doubt, the presumption is rebuttable one, either by means of circumstantial evidence or by establishing preponderance of probabilities and not otherwise.

15. The Trial Court elaborately considered and made a finding that the plaintiffs able to show, prima facie, that the deceased T.Thirunavukkarasu had executed the Promissory Note, Ex.A-1 document and the letter of undertaking was issued by him in Ex.A-2 document.



16. PW-2 also categorically deposed that the deceased T.Thirunavukkarasu executed Ex.A-1 in his presence. Thus the plaintiffs duly proved the execution of Promissory Note by the deceased T.Thirunavukkarasu. Consequent to the execution of letter of undertaking under Ex.A-2 document, the deceased T.Thirunavukkarasu delivered the original Title Deeds under Ex.A-3 and Ex.A-4, LIC Bond under Exs.A-5 and A-6, which would prove the passing of consideration of Rs.15 lakhs.

17. Though DW-1 deposed that he was in possession of the Title Deeds executed by late T.Thirunavukkarasu, but he failed to produce the said Title Deeds to prove that the Promissory Note has been forged. Since the said Title Deeds were not produced by DW-1 before the Trial Court, the deposition of DW-1 was disbelieved by the Trial Court. Thus, the defendants failed to rebut the case of the plaintiffs regarding the execution of Promissory Note. Accordingly, the presumption under Section 118 of the Negotiable Instruments Act, was not rebutted by the defendants.



18. Though DW-1 deposed that he has been in possession of the Title Deeds, considering the facts and circumstances, drew an inference that the defendants failed to rebut the statement that the Promissory Note is the forged document.

19. Considering the facts and circumstances, the Trial Court answered issue No.1 in favour of the plaintiffs and regarding the grant of interest, the Trial Court has exercised its discretionary powers and reduced the rate of interest from 12% to 6% per annum, which cannot be held as infirm. The Trial Court is empowered to reduce the rate of interest, considering the nature of transaction or by adopting the principles of reasonableness.

20. In the present case, as per the Promissory Note, 12% interest per annum was agreed and the Trial Court has reduced the said interest rate from 12% to 6% per annum. Therefore, this Court is not inclined to interfere with the findings of the Trial Court in this regard.



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21. At the outset, the findings of the Trial Court, is not only based on the documents and evidences, but candid and convincing.

22. Accordingly, the judgment and decree dated 06.10.2016 passed by the learned I Additional District and Sessions Judge, Tiruppur in OS No.5 of 2012 stands confirmed and consequently, the present Appeal Suit No.68 of 2017 is dismissed. However, there shall be no order as to costs.

14-02-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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To

The I Additional District and Sessions Judge,
Tiruppur.



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S.M.SUBRAMANIAM, J.

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