



AS No.22 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AS No.22 of 2019

And

CMP No.1459 of 2019

1.M.Chandrasekaran
2.C.Rajkumar

.. Appellants

VS.

D.Ramesh

.. Respondent

PRAYER : This Appeal Suit is filed under Order XLI, Rule 1 read with Section 96 of the Civil Procedure Code against the judgment and decree dated 27.10.2017 passed by the learned I Additional District and Sessions Judge at Tiruppur in OS No.86 of 2013.

For Appellants : Mr.R.Muthukumar

1/10



WEB COPY



AS No.22 of 2019

For Respondent : Mr.S.Kanmani Annamalai for
M/s.Tamizh Law Firm

J U D G M E N T

The present Appeal Suit has been instituted against the judgment and decree dated 27.10.2017 passed by the learned I Additional District and Sessions Judge at Tiruppur in OS No.86 of 2013.

2. The appellants are the defendants and the respondent is the plaintiff in the suit.

3. The respondent/plaintiff instituted the suit for recovery of money based on the Promissory Note.

4. The suit was instituted by stating that the first defendant is the father of the second and third defendants. The defendants borrowed a sum of Rs.10 lakhs for his business and family expenses and agreed to repay the



AS No.22 of 2019

said sum with interest at the rate of 18% per annum and on demand executed Promissory Note on 15.07.2012.

5. In lieu of the loan amount, the first defendant had handed over the original Sale Deeds dated 05.01.2010 and 20.10.1998 executed by Mr.Appukannu @ Marimuthu and three others and Kamalathal in favour of the first defendant to the plaintiff. However, the defendants neither paid the principal amount nor the interest. Thus, the respondent/plaintiff instituted suit for recovery of money.

6. The defendants filed written statement denying the allegations in the plaint. The defendants have stated that they have money dealings with Mr.P.G.Vinodh and for which a Mortgage Deed was also executed by the defendants in favour of the said Mr.Vinodh.

7. At the time of the loan transaction with Mr.P.G.Vinodh, the original Sale Deed along with the signed blank Promissory Note were

3/10



AS No.22 of 2019

handed over to the plaintiff. The said Mr.Vinodh set up the plaintiff and fabricated and misused the said blank Promissory Note and subsequently instituted the suit for recovery of money.

8. The Attestor Mr.Sathiyaraj is a close associate of Mr.P.G.Vinodh and another Attestor Mr.Chidambaram is a stranger and the one another Attestor Kesavan is a friend of Mr.P.G.Vinodh. The Attestors in the Promissory Note, the said Mr.P.G.Vinodh and the plaintiff have conspired and committed the offence of fabricating the blank Promissory Note, misused the same and instituted the suit. Thus the suit is to be dismissed.

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

(1) Whether the plaintiff is entitled for the suit claim as prayed for ?



WEB COPY

(2) What are the other relief ?

10. On the side the plaintiff, PWs-1 to 3 were examined and Exs.A-1 to A-5 were marked as documents. On the side of the defendants, DWs-1 and 2 were examined and no document was marked.

11. With reference to Issue No.1, whether the plaintiff is entitled for the suit claim as prayed for ?, the Trial Court considered Ex.A-1 Promissory Note and the deposition of PW-2. PW-2 states that the plaintiff had given Rs.10 lakhs to the defendants in his house and the defendants signed and affixed their thumb impression on the Promissory Note in his presence. PW-2 during cross-examination stated that he Promissory Note was executed in the house of plaintiff at Kannan Kovil Street, Anupparpalayam.

12. The Promissory Note had been written in the Hall when PW-3 came to the house at 10.30 A.M, and the Promissory Note was purchased



by PW-3. The defendants handed over the documents in his presence and the transaction was complete by 11.30 A.M.

13. The cogent deposition of PW-2 regarding the execution of promissory Note in favour of the plaintiff inspires confidence and therefore, the Trial Court relied on the deposition of the said witness PW-3 scribe of the Promissory Note and also stated that the plaintiff had given Rs.10 lakhs in his presence and the defendants had affixed their signature and laid thumb impression in his presence and after attestation by the witnesses he signed as witness and scribe. PW-3 in his cross-examination had stated that he purchased the Promissory Note at about 10.00 A.M., the Promissory Note was written in the plaintiff's house at Kannan Koil Stret, Anuparpalayam, he went to the house in between 10.30 to 10.45 A.M.

14. The defendants handed over the original and xerox copy of the Deeds in his presence. Promissory Note was written in the Hall and the transaction was completed by 12.00 A.M. The version of PW-2 was



corroborated by PW-3. Therefore the Trial Court infers that the plaintiff duly proved the execution of Promissory Note dated 15.07.2012 under Ex.A-1 document.

15. Based on the documents and evidences, the Trial Court found that the plaintiff had financial capacity. The plaintiff also purchased 5-1/2 cents land in Dharapuram to Palladam Road for Rs.50,000/-. The plaintiff stated that he had given Rs.10 lakhs by cash in Rs.500/- notes denomination. PW-2 also reiterated the same.

16. Regarding the payment, the Trial Court found that he plaintiff is an Income Tax Assessee and has stated that his father sold the property for Rs.15 lakhs and gave Rs.10 lakhs to him. He had not disclosed the said amount in his Income Tax Return. The plaintiff further produced the bank statement of his father under Ex.A-5 document. The plaintiff's father had Rs.8 lakhs as on 19.04.2011 and drawn Rs.5 lakhs on 21.04.2011 and Rs.1 lakh on 23.04.2011 and Rs.50 lakhs on 27.04.2011.



WEB COPY

17. Accordingly, the Trial Court held that the plaintiff is entitled for the benefit of presumption under Section 118 of the Negotiable Instruments Act. PWs-2 and 3 deposed that the payment was made in their presence. Even during the cross-examination, there is no contradiction, so as to disbelieve the evidence of PWs 2 and 3. The onus was shifted on the defendants to rebut the presumption under Section 118 of the Negotiable Instruments Act and the defendants failed to rebut the presumption and thus, the Trial Court decreed the suit in favour of the plaintiff.

18. The cogent evidences of PWs 2 and 3 were relied on by the Trial Court for the purpose of arriving a conclusion that the Promissory Note was duly executed and the loan amount was passed on to the defendants in the residence of the plaintiff. The signature of the defendants in the Promissory Note was not disputed by him and even the cogent deposition of PWs-2 and 3 was not rebutted. Thus the findings in this regard by the Trial Court cannot be construed as infirm or perverse.



AS No.22 of 2019

19. Accordingly, the the judgment and decree dated 27.10.2017

passed by the learned I Additional District and Sessions Judge at Tiruppur in OS No.86 of 2013 stands confirmed. Consequently, the present Appeal Suit is dismissed. However, there shall be no order as to costs. Consequently the connected miscellaneous petition is also dismissed.

21-02-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

Svn

To

The I Additional District and Sessions Judge,
Tiruppur.



WEB COPY



AS No.22 of 2019

S.M.SUBRAMANIAM, J.

Svn

AS No.22 of 2019

21-02-2023

10/10