



WEB COPY



A.S.No.819 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

A.S.No.819 of 2019

Balakrishnan

... Appellant

Vs.

Kalyanaraman

... Respondent

Prayer: First Appeal filed under Section 96 of the Civil Procedure Code, against the judgment and decree dated 08.02.2018 made in O.S.No.22 of 2015 on the file of the III Additional District Judge, Kallakurichi.

For Appellant : Mr.C.Munusamy

For Respondent : No appearance



WEB COPY



A.S.No.819 of 2019

JUDGMENT

The unsuccessful defendant in the suit for recovery of money based on the promissory notes is the appellant. The respondent herein filed a suit for recovery of money based on two promissory notes dated 18.12.2014 and 21.12.2014 each for value of Rs.8,50,000/-.

2. It is stated by the respondent in the plaint averment that on 18.12.2014 and 21.12.2014 the appellant received a sum of Rs.8,50,000/- each and agreed to repay the same with the interest at the rate of 12% per annum and executed the suit promissory notes A & B. In spite of several demands the appellant failed to repay the amount and hence, legal notice was issued by the respondent on 01.06.2015 calling upon the appellant to repay the amount due under the promissory notes. Though the said notice was received by the appellant, no reply was given by him and hence, the respondent was constrained to file a suit for recovery of money based on the promissory notes A & B.



A.S.No.819 of 2019

WEB COPY

3. The appellant herein filed a written statement denying the execution of promissory notice and receipt of consideration. It was his specific case that 10 months prior to filing of written statement, the respondent had abducted him and got the suit promissory notes executed by employing coercion. In this regard a police complaint was given to Kachirapalayam Police Station and it was assured by the police that promissory notes obtained from the appellant by employing coercion would be handed over to him. However, the respondent without handing over the promissory notes, has come up with the suit seeking recovery of money. On these pleadings, the appellant sought for dismissal of the suit.

4. Before the trial Court, the respondent was examined as PW1. One Pachamuthu who attested the suit promissory notes was examined as PW2. The scribe of the suit promissory notes was examined as PW3. On behalf of the respondent, five documents were marked as Ex.A1 to Ex.A5. The appellant was examined as DW1 and two documents were marked on his side as Ex.B1 & Ex.B2. The wordings found in the suit promissory notes Ex.A1 was written in a white paper by PW3 and the same was marked as Ex.C1.



A.S.No.819 of 2019

WEB COPY

5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the execution of promissory notes were proved and consequently granted decree for recovery of money as prayed for. Aggrieved by the same, unsuccessful defendant has come up with this First Appeal.

6. The learned counsel for the appellant submitted that the suit promissory notes were obtained from the appellant by putting him under coercion and therefore, the Court below ought not to have granted decree for money as prayed for.

7. The learned counsel for the appellant further submitted that the respondent/plaintiff failed to prove his financial capacity to advance loan and hence, the decree passed by the Court below is liable to be set aside. The learned counsel for the appellant further submitted that though the respondent as PW1 admitted about his money lending business, he failed to lead any documentary evidence to prove his lending business and therefore, the Court below ought to have rejected the claim of the respondent.



A.S.No.819 of 2019

WEB COPY

8. On the basis of submission of the learned counsel for the appellant and pleadings following points for consideration is framed in his appeal:

- a) Whether execution of suit promissory note is proved or not?
- b) Whether the respondent/plaintiff is entitled to suit claim?

9. Points A & B: The suit was resisted by the appellant mainly on the ground that his signature in the promissory notes were obtained by the respondent by employing coercion. Therefore, there is no dispute with regard to the signature of the appellant available in the suit promissory notes and the only question is whether he subscribed his signature voluntarily or not.

10. It is settled law, whenever coercion is pleaded, the same should be proved by the person who pleads the same. In the case on hand, the appellant/defendant pleaded coercion in the written statement, but there is no evidence available on record to prove employment of coercion by the respondent except the interested testimony of appellant as DW1. For the reasons best known to him, he has not examined any independent witnesses to



A.S.No.819 of 2019

prove alleged coercion.

WEB COPY

11. In the written statement it was pleaded by the appellant that he was abducted by the respondent and his men 10 months prior to the filing of the written statement and the suit promissory notes were obtained by putting him under duress. It was also averred that a police complaint was also given to Kachirapalayam Police Station in this regard by wife of the appellant. However, the copy of the police complaint was not at all produced before the Court below. Moreover, before filing of the suit, the respondent issued pre-suit notice on 01.06.2015 under Ex.A3 and Ex.A4. The said notice was also received by the appellant under Ex.A5 postal acknowledgment card. However, the appellant failed to give any reply refuting the allegations in the said notice. If really the suit promissory notes had been obtained by employing coercion immediately on receipt of pre-suit notice, the appellant should have replied to the respondent mentioning the employment of coercion. The appellant has not given any acceptable reason for his failure to give reply to the pre-suit notice of the respondent.

12. In such circumstances, the defence made by the appellant as if



A.S.No.819 of 2019

suit promissory notes were executed under coercion, is liable to be rejected as an after thought in the absence of any evidence to corroborate the interested testimony of appellant as DW1.

13. In order to prove due execution of suit promissory notes, the respondent had examined himself as PW1 and he deposed in favour of the averment found in the plaint. One of the attestors of the suit promissory notes namely, Pachamuthu was examined as PW2 and he clearly deposed about due execution of suit promissory notes by the appellant and receipt of consideration. Apart from that the scribe of the suit promissory notes, one Kolanchi was examined as PW3, he also deposed about due execution and receipt of consideration by the appellant. The evidence of PW2 and PW3 are complementary to each other and nothing had been culled out in the cross examine to discard their evidence.

14. In such circumstances, the trial Court based on the evidence of PW1 to PW3 rightly came to the conclusion that due execution of promissory notes have been proved by the respondent. Once the Court comes to the conclusion that due execution of suit promissory notes were proved, the



A.S.No.819 of 2019

respondent is entitled to the benefit of presumption under Section 118 of the Negotiable Instruments Act, regarding passing of consideration and the same has been accepted by the trial Court and the suit has been decreed.

15. In view of the discussions made earlier, this Court concurs with the findings of the trial Court and the respondent is entitled to the decree for recovery of money as prayed for. Both the points for determination are answered accordingly. The appellant has not made out any case to cause interference with the findings reached by the trial Court and accordingly, the First Appeal stands dismissed.

16. a) In the result, the First Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.

b) In the facts and circumstances of the case, there shall be no order as to costs.

22.11.2023

Index : Yes/No



A.S.No.819 of 2019

Internet : Yes/No
Neutral Citation Case : Yes/No
dna

To

The III Additional District Judge, Kallakurichi.



WEB COPY



A.S.No.819 of 2019

S.SOUNTHAR, J.

dna

A.S.No.819 of 2019

22.11.2023