



S.A.(MD).No.395 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

S.A.(MD).No.395 of 2015

Dharmalingam

... Appellant

-Vs-

Veluchamy Gounder (died)

[Cause title accepted vide order dated 09.12.2014 made in M.P.(MD).No.1 of 2014 in SA.(MD).SR.No.40885 of 2012.]

1.Periathal

2.Chellamuthu

3.Poongodi

4.Parthiban

... Respondents

PRAYER: The Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.31 of 2007 on the file of Principal District Court, Dindigul dated 21.12.2009 modifying the judgment and decree passed in O.S.No.56 of 2002 on the file of Sub Court, Palani, dated 08.12.2006.

For Appellant : Mr.D.Venkatesh

For Respondents : Mr.H.Lakshmi Shankar



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J U D G M E N T

Being aggrieved by the judgment and decree of the Principal District Court, Dindigul in A.S.No.31 of 2007, the defendant has preferred this second appeal.

2. The parties are referred to as per their litigative status and ranking made before the trial Court.

3. According to the plaintiff, on 07.10.1997, the defendant borrowed a sum of Rs.50,000/- from the plaintiff and agreed to repay the same with interest at 12% per annum to the plaintiff or to his order on demand and executed a promissory note. On 22.05.2000, the defendant paid a sum of Rs.100/- and acknowledged the debt on the reverse of the promissory note. Similarly, on 25.02.1999, the defendant borrowed another sum of Rs.25,000/- for the same interest and executed another promissory note. The defendant did not pay the said sums under the promissory notes, despite repeated demands. Hence, the suit for recovery of money based on the two promissory notes.



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4. Contending contra, the defendant claims that he cultivates groundnut crop: the plaintiff is running a Groundnut Recorder Mill and the plaintiff used to lend money to the agriculturists and procure the crop and deduct the money due with exorbitant interest at the rate of 60% in the sale proceeds. The defendant also claims that the plaintiff used to obtain signature in the blank promissory notes from the agriculturists during these transactions. During one such transaction about 5 years ago, the defendant procured of 250 kg. groundnut seeds worth Rs.7,000/- and borrowed a sum of Rs.10,000/- in cash and delivered two signed blank promissory notes. The plaintiff deducted a sum of Rs.25,000/- for the sum due in the sale proceeds of the defendant. When the defendant demanded to return the signed blank promissory notes, the plaintiff calculated interest at 6% per annum and demanded Rs.30,000/- more. Only on receipt of legal notice from the plaintiff, the defendant questioned him and the plaintiff told him that it was mis-sent. Therefore, the defendant did not reply to the plaintiff's notice.

5. Based on the rival pleadings, the following issues are framed by the trial Court:



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- (i) Whether it is true that the defendant made the borrowals and executed the suit promissory notes?
- (ii) Whether it is true that the suit promissory notes were created?
- (iii) To what other relief?

6. At trial, on the side of the plaintiff, the plaintiff has examined himself as P.W.1 and Exs.A1 to A33 were marked. On the defendant's side, the defendant has examined himself as D.W.1 and the scribe of the suit promissory note was examined as D.W.2.

7. The trial Court concluded that the plaintiff is entitled to recover the suit sum with interest at the rate of 9% per annum on the principal sum of Rs. 75,000/- from the date of suit till the date of judgment and the suit was decreed in entirety.

8. Aggrieved, the defendant preferred (first) appeal before the Principal District Court, Dindigul in A.S.No.31 of 2007. Wherein, after evaluating the evidence, the first appellate Court has observed that D.W.2, the scribe of the suit promissory note has stated that he only filled up the promissory note / Ex.A3 and on that day, in the presence of the plaintiff alone he filled up the promissory



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note/Ex.A3. It is the evidence of D.W.2 that the defendant did not sign in Ex.A3, promissory note. For his evidence, there is no acceptable evidence let in by the plaintiff and held that based on Ex.A3, promissory note, the defendant is not liable to pay any amount to the plaintiff and dismissed the suit in respect of Ex.A3, promissory note. Against the said judgment, the defendant has preferred this second appeal.

9. The learned counsel appearing for the appellant/plaintiff would vehemently contend that the signatures were obtained in the blank promissory notes. In order to rebut the presumption raised against the appellant, the scribe of the promissory note was examined as D.W.2, in the capacity of witness. But the first appellate Court was incorrect in partly decreeing the suit and prayed for dismissal of the suit.

10. Contending contra, the learned counsel appearing for the respondents would strenuously argue that both the promissory notes were executed by the defendant on receipt of Rs.50,000/- and Rs.25,000/- respectively. He has also admitted his signatures found in Exs.A1 to A3, which would go to show that the promissory notes were executed for due consideration. The first appellate Court has wrongly appreciated the evidence of



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D.W.2 and non-suited the plaintiff in respect of the second promissory note is incorrect in law.

11. The following substantial question of law arise for consideration:

Whether the First Appellate Court is right in law in upholding the claim made under Exs.A1 and A3 having rightly found the claim of payment of money under Ex.A3 cannot be sustained on the basis of the independent evidence of D.W.2 ?

12. When the promissory notes Exs.A1 and A3 and the endorsement made in Ex.A1 promissory note viz., Ex.A2 were shown to D.W.1, he has admitted all the signatures found in the same. Ex.A1, promissory note is for an amount of Rs.50,000/- and Ex.A3, promissory note is for Rs.25,000/-.

13. Once the signature of payee found in the promissory note is admitted by him presumption arise in favour of the plaintiff under Section 118 of Negotiable Instruments Act that the promissory note was made for consideration.

14. It is useful to extract the provisions of Section 118 of Negotiable Instruments Act:

"118. Presumptions as to negotiable instruments.—Until



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the contrary is proved, the following presumptions shall be made:

— (a) *of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;*

(b) *as to date:—that every negotiable instrument bearing a date was made or drawn on such date;*

(c) *as to time of acceptance:—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*

(d) *as to time of transfer:—that every transfer of a negotiable instrument was made before its maturity;*

(e) *as to order of endorsements:—that the endorsements appearing upon a negotiable instrument were made in the order in which they appear then on;*

(f) *as to stamp:— that a lost promissory note, bill of exchange or cheque was duly stamped;*

(g) *that holder is a holder in due course:—that the holder of a negotiable instrument is a holder in due course:*

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."



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15. The said presumption is a legal presumption and it is rebuttable. The evidence required to shift the burden need not necessarily be direct evidence, it may comprise of circumstantial evidence or presumption of law or fact.

16. In order to rebut the said presumption, defendant has examined DW2. It is the evidence of DW2 that when he fill up Ex.A3 promissory note, PW1 alone was present. Therefore, the presumption under Section 118(a) shifts the onus of proof on the defendant to prove that a Negotiable Instrument was not supported by consideration and that if he adduces acceptable evidence the burden cannot shift to the plaintiff and so on.

17.By examining DW2, the onus placed on the defendant was shifted to plaintiff. On the plaintiff side except PW1, no other witness was examined. Therefore, the defence raised by the defendant is probable and based on the same, the learned First Appellate Court has dismissed the claim in respect of Ex.A3 promissory note. Therefore, the substantial question of law is answered against the defendant.

18. Based on the aforesaid discussions, the Second Appeal stands



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dismissed. The judgment of the first appellate Court in A.S.No.31 of 2007 stands confirmed. There is no order as to costs.

22.12.2023

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
akv

To

- 1.The Principal District Court,
Dindigul.
- 2.The Sub Court,
Palani.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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