IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.11.2024

Coram:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.96 of 2011

Singaravelu

...Appellant

Versus

1.Kamatchiammal
2.Nandakumar
3.Geetha
4.Varalakshmi

...Respondents

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 26.08.2010 in A.S.No.26 of 2009 on the file of the Principal District Judge Vellore, Vellore District confirming the judgment and decree dated 27.01.2009 in O.S.No.172 of 2005 on the file of Subordinate Judge, Vellore, Vellore District.

For Appellant : Mr.P.Jagadeesan

For Respondents – 1 & 2: Mr.T.Dhanyakumar

For Respondents 3 & 4 : No Appearance

JUDGMENT

The appellant is the plaintiff who had filed the suit in O.S.No.172 of 2005 against the defendants for recovery of money on the basis of the Promissory Note dated 20.09.2002. However, the trial Court had dismissed the suit. Hence, the plaintiff had preferred a First Appeal in A.S.No.26 of 2009, but, the First Appellate Court has dismissed the said First Appeal. Aggrieved over the same, the plaintiff has filed the present Second Appeal before this Court.

2. **The short facts pleaded in the plaint are as under:**

One Pichandi S/o.Krishnasamy Naidu had borrowed a sum of Rs.1,50,000/- from the plaintiff on 20.09.2002 and executed a Promissory Note in favour of the plaintiff, promising to repay the same on demand together with interest. In spite of repeated demands made by the plaintiff, the said Pichandi did not repay any amount either towards the principal or towards the interest. On 29.04.2004, the said Pichandi died intestate leaving behind the defendants to succeed his estate and liabilities as his legal heirs. The plaintiff made several demands to the defendants to repay the debt due on said promissory note, but, the defendants did not repay the same. Hence, the plaintiff had filed a suit for recovery of money.

3. **The brief averments in the written statement of the 2nd defendant are as under:**

The deceased Pichandi did not borrow any amount as loan from the plaintiff by executing a promissory note. The deceased Pichandi was not having any debts. At no point of time, Pichandi had any monetary transaction with the plaintiff. The suit promissory note is a forgery document. The defendants deny the genuineness, validity and execution of the suit promissory note. The suit promissory note has been fabricated for the purpose of extracting money from the defendants. It is false to state that the defendants had succeeded to the estate of deceased Pichandi. There is no cause of action for the suit. Hence, the suit is liable to be dismissed.

4. The written statement filed by the 2nd defendant was adopted by the defendants 1, 3 & 4.

5. On the basis of the above pleadings, the trial Court has framed the following issues:

"1. Whether suit pronote is a forged one?

2. Whether consideration passed for execution of Pronote?

3. Whether Pichandi left behind any estate inherited by defendants?

4. Whether plaintiff is entitled to a decree for Rs.2,57,970/-?

5. To what reliefs, the plaintiff is entitled?"

6. During the course of trial, in order to prove the averments made in the plaint, plaintiff had examined himself as P.W.1 and marked 3 documents viz., Exhibits A1 to A3 and on the side of the defendants, one witness was examined viz., D.W.1, but, no document has been marked as exhibit.

7. At the conclusion of the trial and considering the evidence available on record, the trial Court had dismissed the suit. The First Appellate Court has also dismissed the plaintiff's First Appeal by

confirming the judgment and decree of the trial Court. Hence, the plaintiff has filed the present Second Appeal before this Court.

8. The learned counsel for the appellant submitted that both the Courts below did not consider the evidence and material on record in a proper perspective. The fact that the plaintiff did not have any issue with the defendants to file a suit for recovery of money on the basis of the false promissory note has not been considered. The plaintiff tried to prove that the defendants succeeded the estate of deceased Pichandi, but, the same has not been proved.

9. The learned counsel appearing for the respondents 1 & 2 submitted that when the defendants denied the execution of the promissory note by Pichandi, the plaintiff ought to have proved that the suit promissory note has been executed by the Pichandi. Since the plaintiff did not prove the fundamental fact of genuineness of the suit promissory note alleged to have been executed by the deceased Pichandi, the Courts below are right in holding that the plaintiff had failed to prove the suit promissory note.

10. So far as the execution of the suit promissory note is concerned, if the defendants admit the signature in the promissory note, presumption will be in favour of the plaintiff that the promissory note has been executed for valuable consideration. In the present case, the defendants have not executed the promissory note. It is alleged by the plaintiff that the suit promissory note has been executed by the deceased Pichandi (father of the 2nd defendant). When the defendants take a specific plea that the suit promissory note is a forged one, then the primary burden would be on the plaintiff to prove that the suit promissory note has been executed by the deceased Pichandi and that, it is supported by consideration as shown therein. The plaintiff has examined himself as P.W.1 and he has marked the Promissory Note as Exhibit A1. Thereafter, the plaintiff had not chosen to examine any other witnesses to prove that the signature in the suit promissory note has been affixed by the deceased Pichandi. Hence, the legal heirs of the deceased Pichandi are not liable to pay any money to the plaintiff.

11. The trial Court and the First Appellate Court have rightly observed that the plaintiff who got the initial burden to prove the

genuineness and validity of the suit promissory note has not discharged his liability by examining at least one attesting witness. When the plaintiff has not proved that the suit promissory note has been executed by the deceased Pichandi by examining the attestor, he cannot claim that the suit promissory note has been proved.

12. If the promissory note is not proved, then there cannot not be any liability attached on the defendants either personally or upon to the property alleged to have been inherited by them. The defendants have denied the very execution of the suit promissory note and that they had inherited the property from the deceased Pichandi. Unless, it is proved that the suit promissory note is a genuine and valid document, it cannot be accepted that the defendants would repay the money by accepting the liability.

13. As the plaintiff did not establish before the Court that the suit promissory note is genuine and valid one, the trial Court had chosen to dismiss the suit and on a right appreciation, the First Appellate Court has also dismissed the First Appeal by confirming the judgment of the trial Court.

14. In my considered view, there is no question of law much less a substantial question of law arises in this Second Appeal. Hence, this Second Appeal is dismissed. However, there shall be no order as to costs.

22.11.2024

mrr

Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The Principal District Judge
Vellore, Vellore District.

2.The Subordinate Judge,
Vellore, Vellore District.

R.N.MANJULA, J.

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