



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1015 of 2012 and
M.P.No.1 of 2012

1.R.Padmanabhan (died)
2.Vimala
3.P.Srinivasa Prabhu
4.P.Sudharsana Prabhu
5.P.Vishnu Prabhu

(A2 to A5 are brought on record as legal heirs of the deceased sole appellant vide order of Court dated 05.03.2024 made in CMP.Nos.4168, 4171 and 4173 of 2024)

... Appellants / Defendants

Vs.

1.Mayilathal
2.P.Velusamy

... Respondents / Plaintiffs 3 & 4

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 22.11.2011 rendered in A.S.No.84 of 2008 on the file of the Principal District Judge, Coimbatore, confirming the decree and the judgment dated 26.06.2007 rendered in O.S.No.2537 of 2004 on the file of the Second Additional District Munsif, Coimbatore.



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For Appellants : Mr.S.Subbiah, Senior Counsel for
Mr.P.Raja

For Respondents : Mr.K.S.Karthik Raja for R2
No appearance for R1

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 22.11.2011 rendered in A.S.No.84 of 2008 on the file of the Principal District Judge, Coimbatore, confirming the decree and the judgment dated 26.06.2007 rendered in O.S.No.2537 of 2004 on the file of the Second Additional District Munsif, Coimbatore.

2. Heard Mr.S.Subbiah, learned Senior Counsel for the appellants and Mr.K.S.Karthik Raja, learned counsel for R2 and perused the materials available on record.

3. The deceased sole defendant is the first appellant. The legal heirs of the first appellant are the appellants 2 to 5. The deceased plaintiffs 1 and 2 along with the plaintiffs 3 and 4 / respondents had filed a suit against the defendant for seeking the relief of recovery of money and the same was decreed by the Trial Court. The First Appeal preferred by the defendant in A.S.No.84 of 2008, has also been dismissed by confirming the judgment and



decree of the Trial Court. Aggrieved over that, the defendant has preferred this Second Appeal against the plaintiffs 3 and 4 who alone are now in existence.

4. The brief facts stated in the plaint are as follows:

The defendant has executed a promissory note for Rs.50,000/- on 29.07.1989 by obtaining the said amount as a loan from the deceased first plaintiff. Despite the deceased first plaintiff demanded the said amount, the defendant failed to repay the same and hence, she filed a suit for recovery of money.

5. The facts stated in the written statement filed by the defendant are as follows:

The first plaintiff has got no wherewithal to lend the huge amount of Rs.50,000/- to the defendant. The defendant had settled the sale price for the property purchased from the first plaintiff. The first plaintiff had entered into a false sale agreement with one Kandasamy by concealing the sale effected in favour of the defendant. On 29.07.1989, the first plaintiff has executed a sale deed in favour of the defendant and thereafter, a suit has been filed in



O.S.No.830 of 1990. Pending the said suit, the first plaintiff died. In the said suit, the second plaintiff joined hands with Kandasamy and gave evidence and the suit was decreed in favour of Kandasamy. The amount of Rs.50,000/- claimed by the plaintiffs was the amount exchanged by the defendant to the first plaintiff. Hence, there is no amount payable to the plaintiffs and hence, the suit should be dismissed.

6. During the Course of the trial, on the side of the plaintiffs, P.W.1 was examined and Exs.A1 to A4 were marked and on the side of the defendant, D.W.1 was examined and Exs.B1 to B4 were marked.

7. At the conclusion of the trial and on considering the evidence on record, the suit was decreed as prayed. The first appeal preferred by the defendant was also dismissed by confirming the judgment and decree of the Trial Court. Now, the defendant has preferred this Second Appeal by raising the following substantial questions of law:

"1. When the presumption under Section 118 of the Negotiable Instruments Act is a rebuttable one, and when, the parties have adduced evidence, is it not the



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duty of the Court to specify where exactly, the burden has shifted?

2. When both the parties have adduced evidence on the suit promissory note, whether the failure on the part of the Court to discuss as to whether the alleged borrower had discharged his onus of proving that there was no possibility for him to borrow any amount from the alleged lender?

3. When the alleged borrower had purchased the property belonging to the alleged lender, whether, any presumption to be drawn on the very same day of the execution of the sale deed, she herself had executed the sale deed, was there any need or possibility for the purchaser to borrow any amount from the vendor?"

8. The learned Senior Counsel for the appellants submitted that in the other suit filed by the first plaintiff in O.S.No.830 of 1990, it has been stated that the deceased defendant had executed the promissory note in order to pay the balance sale consideration. In the plaint filed in this case, the plaintiffs have stated a contradictory statement as though it was the loan availed by the defendant from the deceased first plaintiff. So, the



presumption under Section 118 of the Negotiable Instruments Act would get rebutted and that was not properly considered by the Courts below.

9. The learned counsel for the second respondent submitted that as the suit is based on the promissory note, the Courts below have rightly employed the presumption under Section 118 of the Negotiable Instruments Act, especially because the defendant had admitted his signature on the promissory note and rightly decreed the suit.

10. The fact that the defendant had subscribed his signature on the Ex.A1 promissory note is not denied. The defendant was examined as D.W.1 and he has stated that on the very same day, the suit promissory note was executed. The deceased first plaintiff has executed the sale deed in his favour in respect of the same property which is the subject matter in O.S.No.830 of 1990.

11. The learned Senior Counsel for the appellants submitted that the promissory note is not supported by consideration. If the defendant claims that he has already paid the sale consideration for the property involved in



the sale deed executed by the first plaintiff on 29.07.1989 and the promissory note was with regard to the above sale transaction, after the conclusion of the said transaction, the defendant could have got back the promissory note. It might be true that in the other suit in O.S.No.830 of 1990, the plaintiffs have stated that the promissory note has been executed for the balance sale consideration and in the present suit, the plaintiffs have stated that the loan has been obtained by the defendant. But the fact remains that the promissory note has been supported by some sort of consideration either in the form of balance sale consideration or in the form of loan obtained by the defendant.

12. Only if the evidence on record show that the defendant had no occasion to indulge in any monetary transaction with the first plaintiff and no promissory note executed by him, it could be safely concluded that the promissory note is not supported by consideration. When the defendant had admitted the signature in the promissory note, the initial presumption goes in favour of the plaintiffs.



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13. In the instant case, though the plaintiffs might have stated several reasons for getting the promissory note executed by the defendant during the relevant point of time, there were some transaction between the plaintiffs and the defendant and in view of that the promissory note came into existence. These factual aspects would only probabalise the fact that the promissory note is supported by consideration. In fact, executing promissory note in one and the same day when the sale deed was registered would also probabalise the plaintiff's claim for money from the defendant. To put it otherwise, it would have been possible for the first plaintiff to obtain a promissory note after the execution of the sale deed in view of any pending sale consideration.

14. As the rebuttal evidence claimed by the defendant is not strong enough to disbelieve the promissory note and conclude that it is not supported by any consideration, the Trial Court and the First Appellate Court are right in appreciating the same as a valid one. In view of the same, I do not find the substantial questions of law arising in this Second Appeal.



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15. In the result, this Second Appeal is dismissed and the judgment and decree dated 22.11.2011 rendered in A.S.No.84 of 2008 on the file of the Principal District Judge, Coimbatore is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

- 1.The Principal District Judge,
Coimbatore,
- 2.The Second Additional District Munsif,
Coimbatore.



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R.N.MANJULA, J.

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