IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2024

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.1252 of 2012
and M.P.No.1 of 2012

M.Ramachandran ... Appellant / Defendant

Vs.

A.Sivalingam ... Respondent / Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 26.02.2010 in A.S.No.101 of 2007 on the file of the learned Principal Subordinate Judge, Vridhachalam reversing the judgment and decree dated 01.03.2007 in O.S.No.23 of 2005 on the file of the learned District Munsif-cum-Judicial Magistrate, Thittakudi.

For Appellant : Mrs.A.L.Ganthimathi
Senior Counsel
for Ms.Priyadarshini

For Respondent : Mr.S.Gopinath
for Mr.S.Senthilnathan

JUDGMENT

Heard Ms.Priyadarshini, the learned counsel for the appellant and Mr.S.Gopinath, the learned counsel for the respondent.

2. The defendant is the appellant against whom the plaintiff had filed a suit for recovery of money. The suit filed by the plaintiff was dismissed by the trial Court and the appeal preferred by the plaintiff was allowed and the suit was decreed. Aggrieved over that the defendant had preferred the present Second Appeal.

3. <u>The short facts as pleaded by the plaintiff in his plaint is as under</u>:

The defendant had availed loan for a sum of Rs.80,000/- from the plaintiff and executed a promissory note on 30.12.2002. The defendant agreed to pay interest at the rate of 12% p.a. and to repay the loan amount as demanded. As agreed the defendant did not repay the amount despite repeated demands by the plaintiff. So, the plaintiff had issued a legal notice on 27.12.2004 for which the defendant had sent a reply on 30.12.2004. Since the defendant failed to pay the suit amount, the plaintiff had filed the suit for recovery of money.

4. <u>The defendant resisted the suit by way of filing the written statement</u>

by stating the following:

The suit promissory note is a forged one and the plaintiff has to prove the same. The defendant did not avail any loan from the plaintiff. When the defendant was engaged by the plaintiff for constructing a house, the defendant demanded Rs.5,000/- per sq.m. and constructed a house for 4 sq.m. When the defendant demanded the sum of Rs.20,000/- payable to him for construction, the plaintiff refused to pay the same and he did not give back the discharged promissory note executed by the defendant and make use of the same for the purpose of the suit. The defendant had affixed his signature only on the promissory note dated 23.08.2001 and had not signed on any other promissory note. The defendant had also issued a reply notice by stating his points in a clear manner. As the unfilled promissory note dated 01.12.2001 got expired, the plaintiff has managed to create another promissory note dated 30.12.2002 and filed the suit by making use of the same. Hence, the suit should be dismissed.

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

"*1. வாதி கோரியவாறு, தொகை செலுத்த பிரதிவாதி*

கடமைப்பட்டவரா ?

2. பைசல் செய்யப்பட்ட தொகைக்காக மீண்டும் வழங்க தாக்கல் செய்யப்பட்டுள்ளதாக பிரதிவாதி கூறவது சரியா ?

3. வாதி கோரிய பரிகாரங்கள் கிடைக்கத்தக்கதா ? ”

6. During the course of trial, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and Exs.A1 to A4 were marked. On the side of the defendant two exhibits were examined as D.W.1 and D.W.2 and Exs.B1 to B3 were marked.

7. At the conclusion of the trial and considering the evidence available on record, the trial Court dismissed the suit and on the appeal preferred by the plaintiff the appellate court allowed the appeal and set aside the judgment of the trial Court and decreed the same as prayed. Now the defendant has preferred the second appeal by raising the following questions of law:

“ 1. Whether the lower Appellate Judge has committed an error in not considering the evidence capable of rebutting the presumption contemplated under Section 118 of the Negotiable Instruments Act ?

2. Whether there is perversity in the finding of the lower Appellate Court in holding that the liability of the defendant towards the plaintiff in respect of the suit transaction subsists, disregarding the *admission made by the plaintiff that pursuant to an earlier notice issued by him based on the alleged promissory note dated 01.12.2001, a reply was issued by the defendant pursuant to which the dispute came to be settled, especially when the plaintiff has not stated that there were two different loan transactions between the plaintiff and the defendants ?"*

8. Ms.Priyadarshini, the learned counsel for the appellant / defendant, submitted that the appellant never admitted his signature in the suit promissory note and his only defense was that the promissory note executed by him on an earlier occasion on 01.12.2001 for availing some other loan and which has been discharged on 06.10.2003, has been misused and the plaintiff has managed to file the suit; the first appellate Court did not appreciate that the plaintiff who has filed the suit has to prove his case on his own; the plaintiff's admission given in this regard has also been disregarded and the Court has wrongly given presumption under Section 118 of the Negotiable Instruments Act, in favour of the plaintiff; the plaintiff had stated in his plaint that the defendant had availed a loan of Rs.80,000/- by executing a suit promissory note but in his reply notice he had stated that the defendant had availed loan only for a sum of Rs.75,000/- and this discrepancy has also been omitted to be noticed by the first appellate court.

9. Mr.S.Gopinath, the learned counsel for the respondent / plaintiff, submitted that the first appellate Court has rightly appreciated the oral and documentary evidence available on record and had allowed the appeal; as the trial Court has omitted to appreciate the merits of the evidence of the witnesses, the first appellate has rightly appreciated the same.

10. On perusal of the records it is seen that though the appellant / defendant denied the execution of the promissory note dated 30.12.2002, he had executed an earlier promissory note on 01.12.2001 and discharged the said loan on 06.10.2003. The contention of the appellant / defendant is that even after the loan was discharged, the plaintiff had refused to give back the promissory note but by making use of the same, he had created another promissory note dated 30.12.2002 and filed the suit.

11. The above contention of the defendant would show that the signature in the promissory note dated 30.12.2002 is the signature of the defendant but the dates have been altered to the convenience of the plaintiff. So in all probabilities the above defense of the defendant would only probabilize the fact that the signature on the promissory note is the signature

of the defendant but his main defense is that no consideration is passed. Only under such circumstances, the learned first appellate Court had thought it fit to give the initial presumption in favour of the plaintiff by invoking Section 118 of the NI Act. However, the learned trial Judge has omitted to appreciate the evidence in a proper prospective by denying initial presumption in favour of the plaintiff.

12. It is true that there are certain discrepancies in the pleadings made by the plaintiff on the basis of the promissory note and the advocate notice dated 27.12.2004 issued vide Ex.A2. Though the plaintiff had stated that the defendant had availed the loan for a sum of Rs.80,000/- and executed a promissory note, in the legal notice it appears that the plaintiff has stated that the defendant had availed Rs.75,000/- as loan. But the plaintiff's witnesses who have been examined as D.W.1 and D.W.2 have deposed clearly about what had happened between the plaintiff and the defendant on the alleged day of 30.12.2002. Both the witnesses who have attested the pronote and have come forward and given evidence about the fact that the defendant had availed a loan for a sum of Rs.80,000/- and executed a promissory note on 30.12.2002, by affixing his signature in their presence.

13. The trial Court has recorded the evidence of the witnesses in a detailed manner and failed to appreciate the evidence and the deficiency was set right by the first appellate Court. When the defendant denied passing of sale consideration, the burden would be on the plaintiff to prove the fact that the suit promissory note was only in support of valid consideration. The best evidence in this regard can be the evidence of the attesting witnesses who have been examined as P.W.2 and P.W.3. The evidence of P.W.2 and P.W.3 before the Court are consistent and complete with regard to the transaction revolving around Ex.A1 dated 30.12.2002. With the examination of the above witnesses, the plaintiff has discharged that the suit promissory note was supported by consideration and it has been executed only after receiving a sum of Rs.80,000/- from him. Just because in Ex.A2 - promissory note the amount has been wrongly mentioned, the appellant / defendant cannot take advantage of the same and claim that he is not at all liable to pay any amount to the plaintiff. The plaintiff's evidence ought to have been read in a holistic fashion and a piece meal interpretation cannot be given by claiming that the plaintiff had given admission in favour of the defendant.

14. So far as presumption under Section 118 of Negotiable Instruments Act is concerned, as stated already, there are enough materials available on

record to show that the transaction was true and that it has been supported by consideration and the plaintiff has affixed his signature only after ascertaining all these facts. Hence, the substantial questions of law are answered in favour of the respondent.

15. The first appellate Court has rightly appreciated the evidence and had arrived at a conclusion that the plaintiff has advanced a sum of Rs.80,000/- to the defendant and he had executed the promissory note dated 30.12.2002. The defendant did not rebut the presumption that was given in favour of the plaintiff but on the other hand the plaintiff had examined the eye witnesses and had converted the initial presumption into conclusive proof. Thus the substantial questions of law are answered in favour of the respondent.

16. As the first appellate Court has rightly appreciated the evidence available on record and found it suitable to set aside the judgment of the trial court, I find no reason for interference. Hence, the Second Appeal is liable to be dismissed.

17. In the result, the Second Appeal is dismissed and the judgment and

decree dated 26.02.2010 made in A.S.No.101 of 2007 on the file of the learned Principal Subordinate Judge, Vridhachalam, is hereby confirmed and the suit in O.S.No.23 of 2005 on the file of the learned District Munsif-cum-Judicial Magistrate, Thittakudi, is decreed. No costs. Connected miscellaneous petition is closed.

28.11.2024

Index:Yes/No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No
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To:

1. The Principal Subordinate Judge, Vridhachalam.

2. The District Munsif-cum-Judicial Magistrate, Thittakudi.

R.N.MANJULA, J.

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