



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.328 of 2021

Mr.Radhakrishnan

... Appellant

Vs.

Mohamed Ayub (deceased)

1.Hajakhani

2.Mohammed Shamim

3.M.Abdul Latif (Deleted)

4. Mohammed Sameer

5.Mrs.Noorul Mina

... Respondents

[R.4 and R.5 brought on record as Lrs of the deceased Respondent viz., Mohamed Ayub and R.3 name deleted vide order of Court dated 02.03.2021 made in C.M.P.No.3616 of 2021 and C.M.P.No.3620 of 2021 in SA.SR.No.44253 of 2020 in SA.SR.No.44253 of 2020



respectively (KRJ)]

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the judgement and decree in A.S.No.73 of 2018 on the file of the Additional District Judge (FTC), Villupuram dated 20.03.2019 in confirming the judgement and decree in O.S.No.14 of 2017 on the file of the Sub Court, Ulundurpet dated 28.04.2018.

[Cause title accepted vide order of Court dated 14.07.2020 made in C.M.P.No.7464 of 2020 in SA.SR.No.44253 of 2020 (RSMJ)]

For Appellant : M/s.G.Surya Narayanan

For Respondent : M/s.L.S.M.Hasan Fizal [R.1 to R.4]

JUDGEMENT

The unsuccessful plaintiff before the Courts below has preferred the above Second Appeal. The plaintiff has challenged the judgement and decree of the Additional District Judge (FTC), Villupuram in A.S.No.73 of 2018 in and by which the learned Judge has confirmed the Judgement and Decree passed by the Sub Court, Ulundurpet in



O.S.No.14 of 2017.

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2. The Second Appeal had been admitted on the following Substantial Questions of Law:-

“1) When the signature in the promissory note is admitted and P.W.2 and P.W.3 has said that the consideration was paid in their presence, the presumption under Section 118 will arise. Whether the Courts below has erred in not presuming the effect of Section 118 of the Negotiable Instruments Act?”

3. In order to appreciate the issue on hand it would be essential to briefly narrate the facts which have given rise to the Second Appeal. For ease of understanding the parties are referred to in the same array as before the Trial Court.

4. The plaintiff had filed the suit O.S.No.14 of 2017 on the file of the Sub Judge, Ulundurpet, seeking recovery of amounts due under



a promissory note dated 27.02.2015.

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5. It is the plaintiff's case that the defendant had borrowed a sum of Rs.3,00,000/- on 27.02.2015 and had executed a promissory note on the same day promising to repay the above sum together with interest at the rate of 12% p.a. from the date of borrowal till the date of payment. The defendant had however neither paid the principal amount nor the interest. Therefore, the plaintiff had come forward with the suit in question.

6. The defendant had resisted this suit by contending that he had not borrowed a sum of Rs.3,00,000/- on 27.12.2015 but he had borrowed a sum of Rs.90,000/- in January 2010 and Rs.60,000/- in June 2010 from the plaintiff's son-in-law and had executed two blank promissory notes. The defendant would submit that he had discharged the said debt. He would submit that these two blank promissory notes



have now been used by the plaintiff to create the suit promissory note and no amounts as stated in the promissory note has been received by him. He would submit that the plaintiff had instituted the above suit since the defendant had refused to sell the property belonging to him to the plaintiff's son-in-law. Therefore, he would seek to have the suit dismissed.

7. The Trial Court had framed the following issues which when translated from the vernacular would read as follows:-

1. Whether the promissory note was valid one and supported by consideration?

2. Whether the plaintiff is entitled to the amounts claimed in the suit?

3. To what other relief the plaintiff is entitled to?

8. The plaintiff had examined himself as P.W.1 and one



Sakthivel and Vijayakant as P.W.2 and P.W.3 respectively and marked Ex.A.1 to Ex.A.3. The defendant had examined himself as D.W.1 and one Sankarapandi as D.W.2 and had not marked any documents in support of his case.

9. The learned Trial Judge had proceeded to dismiss the suit contending that there were discrepancies in the evidence of P.W.1 to P.W.3. That apart, D.W.2, the scribe had deposed that he had filled up the promissory note which was already signed by the defendant. The learned Trial Judge, therefore, held that the promissory, Ex.A.1 has been filed up later and no amounts as stated therein had been paid to the defendant.

10. Challenging the said judgment and decree, the plaintiff had filed A.S.No.73 of 2018 on the file of the Additional District Judge (Fast Track Court), Villupuram. The Lower Appellate Court had also



confirmed the findings of the Trial Court and dismissed the appeal. It is challenging this judgment and decree that the appellant is before this Court.

11. The plaintiff had come to Court stating that the defendant had borrowed a sum of Rs.3,00,000/- and executed the suit promissory note. The defense to this claim is that the defendant had executed two blank promissory notes and handed them over to the plaintiff's son-in-law when he had borrowed a sum of Rs.90,000/- in January 2010 and Rs.60,000/- in June 2010. The defendant would submit that these amounts have been repaid by him. Therefore, the execution of the promissory note, Ex.A.1 is admitted by the defendant and he has projected a defense that this was a document which was signed and handed over by him in the year 2010 when he had borrowed money from the plaintiff's son-in-law in the months of January 2010 and June 2010. The defendant has not proved these two borrowals.



12. Further, the defendant who claims that the said debt has been discharged has not let in any evidence whatsoever to show as to why he had not taken return of these blank promissory notes after he has discharged the debt. That apart, the defendant has not stated the date and month on which he has discharged the debt.

13. The Courts below have selectively examined the evidence of the witnesses. Both P.W.2 and P.W.3 have categorically admitted that the amounts due under the promissory note had been handed over to the defendant by the plaintiff. The discrepancies in their evidence are only with reference to the timing when the promissory note had been executed and when the persons had come together to execute, attest and witness the documents. The evidence of D.W.2 has been given a lot of weightage. However, the Courts below have overlooked the admission of D.W.2 that he has several transactions with the defendant. Therefore, to that extent, he is an interested witness.



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14. P.W.2 had clearly deposed that the promissory note was written by the scribe, executed first by the plaintiff and thereafter by the witnesses. P.W.3 has stated that he had gone out and returned at the time of affixing his signature. However, both these witnesses having clear terms stated that the sum of Rs.3,00,000/- had been handed over to the defendant and this evidence has not been rebutted.

15. The defendant who has admitted the execution of the document has overlooked the fact that once the execution is admitted the onus under Section 118 of the Negotiable Instruments Act shifts on him to prove that no consideration has passed under the said document. However, the defendant has failed to discharge this onus. Both the Courts below have been swayed into dismissing the suit only on the basis of certain discrepancies in the evidence of P.W. 1 to P.W.3 and the evidence of D.W.2. Such an approach has vitiated the judgment and decree of the Courts below and the same is liable to be



set aside. Therefore, the Substantial Question of Law is answered in favour of the plaintiff.

16. In fine, the Second Appeal is allowed setting aside the judgement and decree of the Courts below and the suit is decreed as prayed for.

11.03.2024

Index : Yes/No
Speaking order/non-speaking order
shr

To

1. The Additional District Judge (FTC), Villupuram.
2. The Sub Court, Ulundurpet.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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