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S.A.No.447 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE **N.MALA**

S.A.No.447 of 2021  
and CMP.No.8693 of 2021

R. Balasaravanakumar  
Appellant

...

Vs.

Maruthathal (died)  
1. C.S.Chinnaswamy  
2. Dhanalakshmi  
3. Jayavel  
4. S. Padmavathy (died)  
5. J. Saranya  
6. J. Gowthamraj  
Respondents

...

R4 died, R5 & R6 (already on record) are recorded as legal heirs of the deceased R4 vide Court order dated 06.03.2024 made in S.A.No.447 of 2021 in CMP.No.8693 of 2021. Memo recorded (USR.No.8401 dt:04.03.2024)

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree passed by the V Additional District and Sessions Judge at Coimbatore dated 07.12.2019 made in A.S.No.4 of 2016 confirming the judgment and decree of the II Additional Subordinate Court, Coimbatore dated 28.06.2013 made in O.S.No.147 of 2004.

For Appellant : Mr.R.Subburaj

For Respondents : Mrs.Nirmala Parameshwari for R1



Mr.D.Shivakumaran  
for R2, R3, R5 & R6

**JUDGMENT**

The defendant in the suit is the appellant in the Second Appeal. The Second Appeal is filed against the confirming judgment of the lower appellate Court decreeing the suit for recovery of money based on the demand promissory note dated 15.07.2002.

2. The parties are referred to as per their ranking in the trial Court.

3. The gist of the facts leading to filing of the Second Appeal are that the defendants 1 & 2 who are the father and son respectively executed a pro-note in favour of the plaintiff on 15.07.2002 for borrowal of Rs.1,70,000/- and agreed to repay the same along with 12% interest. As the defendants failed to repay the amount in spite of repeated demands of the plaintiff, first plaintiff was constrained to file a suit for recovery of money. The 2<sup>nd</sup> defendant filed a written statement stating that there were some financial dealings between the 1<sup>st</sup> defendant and the plaintiff's husband. The plaintiff's husband demanded security for the financial dealings and so on the insistence of the plaintiff's husband, the 1<sup>st</sup> and 2<sup>nd</sup> defendants executed a blank promissory note. The husband of the plaintiff taking advantage of the blank promissory note filled up the promissory note with an amount of Rs.1,70,000/-. The defendant's



discharged the loan and at the time of discharge of the loan the 1<sup>st</sup> defendant demanded the plaintiff's husband to return the blank promissory note signed by him and his son, but the first plaintiff's husband represented that he had misplaced the blank promissory note and assured that he would trace it and return it to the defendants. It is also stated that the plaintiff did not have the financial capacity to advance the huge amount of Rs.1,70,000/- to the defendants. The 2<sup>nd</sup> defendant thereafter filed an additional written statement wherein he claimed that his father and himself were doing finance business jointly in the name and style of 'Balasaravana Finance' and that in the said business the plaintiff's husband used to deposit money in his family members name. The said finance company was started in the year 1994 but due to financial crisis the same had to be closed. At the time of closure of the finance company, plaintiff's husband on threat of complaint to the Economic Offence Wing got the promissory note executed for the amounts due to him. According to the defendants the suit, pro-note was not supported by any consideration. The defendants further stated that the plaintiff approached the Court with unclean hands by suppressing very many facts.

4. During the pendency of the suit, the first plaintiff died and the husband and children of the deceased first plaintiff were impleaded as legal



heirs. Before the trial Court 4<sup>th</sup> plaintiff examined himself as PW1 and one Palaniappan one of the attesting witness of the suit pro note was examined as PW2. The plaintiff marked Exs.A1 to A3 and on the side of the defendants, the 2<sup>nd</sup> defendant examined himself as DW1 and marked Exs.B1 to B26. The trial Court assessed the entire evidence and found that the suit pro note Ex.A1 was executed by the defendants for the consideration of Rs.1,70,000/- as stated in the pro note and that the defence put up by the defendants that the suit pro note was not supported by consideration was not acceptable. On the said finding, the trial Court decreed the suit in favour of the plaintiff. As the first defendant died during the pendency of the suit, the 2<sup>nd</sup> defendant filed an appeal against the judgment and decree of the trial Court. The Lower Appellate Court on consideration of the evidence, both oral and documentary on record, replicated the finding of the trial Court that the suit pro note was valid and supported by consideration and that the defendant had failed to establish the defence set up by him. The Lower Appellate Court, therefore confirmed the judgment and decree of the trial Court and dismissed the appeal. Aggrieved by the judgment of the lower Appellate Court, the 2<sup>nd</sup> defendant has filed the second appeal. At the time of admission of the second appeal the following substantial questions of law were framed.

1. Whether the lower Appellate Court is justified in law in not draw



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adverse inference under Section 114 (g) of Indian Evidence Act against the 2<sup>nd</sup> plaintiff, who failed to examine himself as a witness, when he is a party?

2. Whether the first Appellate Court is correct in law in dealing the suit in the absence of proof for passing of consideration under Ex.A1 pro-note on denial by the defendant?
3. Whether the first Appellate Court is correct in law in failing to appreciate by interesting testimony of PW2 without considering the other circumstances? “

5. The learned counsel submitted that the Courts below ought to have invoked Section 114 (g) of Indian Evidence Act against the 2<sup>nd</sup> plaintiff for not entering the witness box and giving evidence when he was very well aware of the entire dealings. The learned counsel further submitted that the Courts below erred in finding that the suit pro note was supported by consideration and was valid. The learned counsel for the respondent on the other hand submitted that the Courts below concurrently found on facts that the execution of pro note was admitted and that the defence put up on non passing of consideration was not acceptable and hence this Court under Section 100 CPC should not interfere with the concurrent findings of the Courts below.



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6. Heard both sides and perused the materials available on record.

7. As the substantial questions of law framed are interrelated the same are taken up together. The defendants 1 & 2 executed the suit pro note Ex.A1 in favour of the deceased plaintiff on 15.07.2002 for borrowal of a sum of Rs.1,70,000/- agreeing to repay the same along with interest @ 12%. As the defendant failed to repay the amount, the deceased plaintiff filed the suit for recovery of money. The defendants contested the suit by filing written statement and additional written statement. The 1<sup>st</sup> defendant, the father of the 2<sup>nd</sup> defendant died pending suit. The defence put up by the defendants was that the suit pro-note was not valid as it was not supported by consideration.

8. It is the trite that once the execution of the pro-note is admitted there is a presumption of passing of consideration. As the defendants have taken a plea that the suit pro-note was not supported by consideration, the burden to prove the same is on the defendants. In this case in the original written statement it was stated that there were some financial dealings with the plaintiff's husband and that the loan was discharged but as the plaintiff's husband misplaced the pro-note, the same was not returned on discharge. Contrary to the aforesaid in



the additional written statement it was stated that the suit pro-note was taken on threat of complaint to the Economic Offence Wing as the defendants failed to repay the deposits made by the plaintiff's husband in their finance business namely 'Balasaravana Finance'.

9. In so far as discharge of the loan is concerned there is absolutely no evidence in proof of the same. On the execution of the pro-note on threat of EOW complaint it is seen that even according to the defendants the finance company was closed and all the documents relied on by the defendant under Exs.B1 to B22, B22A and Ex.B25 and Ex.B26 were deposits made between the period 1994 and 1996. The lower Appellate Court considering the aforesaid fact rightly found that by the time the suit pro note was executed in the year 2002, the pro-notes referred to in Ex.B1 to Ex.B22, B.22A and Ex.B25 to Ex.B26 lapsed by efflux of time. The lower Appellate Court found that there was no reason why the plaintiff would wait till 2002 to recover the amount under Ex.B1 to Ex.B22 and Ex.B25 to Ex.B26. Considering the long gap between the aforesaid documents and the suit pro-note the Court held that the plaintiffs would probably have recovered the money under pro notes issued by the finance company within the limitation period. The defendants have not correlated the suit pro-note to the deposits made in their finance company. In



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the absence of proof of linkage between the suit pro-note to the deposits in the finance company the said plea of the defendant's cannot be countenanced. It is trite that pleading without proof is of no avail.

10. I am therefore of the view that the Courts below were justified in their finding that the suit pro note did not relate to the dealings of the finance company and as the defendants failed to lead any other evidence to establish that the suit pro note was not supported by consideration or that the same was discharged, the defence of the defendants has to be necessarily rejected. I find absolutely no infirmity in the concurrent judgments of Courts below and even the appellant has not made out any ground for interfering with the same. The substantial questions of law are answered against the appellant. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

26.07.2024

Index : Yes/No  
Speaking order/Non-speaking order  
dpq



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**N. MALA, J.**

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To

1. The V Additional District and Sessions Court, Coimbatore
2. The II Additional Subordinate Court, Coimbatore

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