



S.A.No.169 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.169 of 2017
& C.M.P.No.3378 of 2017

Elumalai.

... Appellant/Defendant

/versus/

Ramu

...Respondent/Plaintiff

Prayer: Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 29.01.2016 made in A.S.No.37 of 2014 passed by the Principal Sub Court, Tiruvannamalai, confirming the judgment and decree dated 09.12.2013 made in O.S.No.51 of 2012 passed by Additional District Munsif Court, Chengam.

For Appellant : Mr.B.Jawahar

For Respondent : Mr.C.Munusamy



S.A.No.169 of 2017

J U D G M E N T

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The suit has been filed by the respondent herein for recovery of money based on a pro-note executed by the appellant for a sum of Rs.75,000/- as a loan to meet his expenses.

2. The case of the plaintiff is that the defendant borrowed the said sum of Rs.75,000/-, on 15.03.2010 undertaking to repay the said sum, on demand, together with interest at 12% p.a. The suit promissory notice has also been witnessed by P.W.2 who has been examined on the side of the plaintiff.

3. The case of the appellant is that they were earlier chit transactions and the plaintiff already issued a legal notice Ex.B.1 and the appellant/defendant has also sent a reply stating that he was not liable to pay the said amount of Rs.50,000/- claimed in Ex.B.1 notice and that it was only the plaintiff who had to pay the defendant the chit amount.

4. Before the trial Court, the plaintiff examined himself as P.W.1 and the witness to the pro-note as P.W.2.

Page No.2/7



S.A.No.169 of 2017

WEB COPY

5. On 19.01.2022, this Court has admitted the above Second Appeal and framed the following substantial questions of law:-

(a) Whether the Courts below are right in shifting the burden of proof of passing of consideration, on the defendant, when the defendant has proved that prior to the date of alleged promissory note the plaintiff and defendants were not in good terms by virtue of Ex.B1 and Ex.B2?

(b) Whether the Courts below are right in holding that the plaintiff has proved passing of consideration by merely proving the signature of the defendant?

(c) Whether the Courts below are right in holding that by virtue of proving of signature of the defendant, it will be deemed that passing of consideration has also been proved? and

(d) Whether the Courts below are right in giving the benefits of Section 20 of N.I.Act, in favour of the plaintiff, when the defendant has categorically disproved the prima facie case of the plaintiff, by proving the strained relationships between the plaintiff and the defendants has been in existence prior to the date of alleged promissory note, by marking Ex.B1 and Ex.B2?



S.A.No.169 of 2017

6. Heard Mr.B.Jawahar, Learned Counsel for the appellant and the

Mr.C.Munusamy, Learned Counsel for the respondent.

7. The Courts below have found that by examining P.W.2, the plaintiff has discharged the initial burden upon him to prove, in order to establish its due execution of the pro-note, thereby raising a rebuttable presumption that the said pro-note was for lawful consideration.

8. The Courts have also relied on the decision of this Court in *P.Talamalai Chetty -vs- Rathinasamy* reported in *1997 (1) LW 843*, regarding the shifting of burden upon proof of execution of the pro-note.

9. Admittedly, in the instant case, the defendant has not denied the signature in Ex.A.1 promissory note. It is his case that the promissory note was signed by him in respect of earlier chit transaction and same has been misused for claiming the suit amount from him. Unfortunately, even though, the defendant has sent a reply Ex.B.2 dated 16.02.2008, on perusal of the same, I find that even as early as 16.02.2008, the defendant has claimed that it was only the plaintiff who



S.A.No.169 of 2017

was due and payable the chit prize amount to the defendant and that the defendant was not liable to pay any amount to the plaintiff. However, it is seen that in furtherance of the said reply notice, the defendant had not taken any legal steps to recover the alleged amount due and payable to him. Therefore, the Courts below has rightly drawn adverse inference against the defendant to hold that the version projected by the defendant was not true and acceptable.

10. Further, the Courts have also concurrently found that the plaintiff has established due execution of the pro-note and was entitled to a presumption under Section 118 of Negotiable Instruments Act, in his favour.

11. On the contrary, the appellant/defendant has not able to substantiate his claim that he sent a reply to Ex.A.2 legal notice and further, he is not able to discredit the evidence of P.W.2, attesting witness to the promissory note.



S.A.No.169 of 2017

WEB COPY

12. Hence, I do not find any substantial questions of law arising for consideration in the Second Appeal, much less the questions of law that have been framed by this Court on 19.01.2022, required to be answered in favour of the appellant.

13. In fine, this *Second Appeal is dismissed*. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

27.02.2024

Index :Yes/No.
Speaking Order/Non-Speaking order
bsm

Copy to:-
1. The Principal Sub Court, Tiruvannamalai.
2. The Additional District Munsif Court, Chengam.



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S.A.No.169 of 2017

P.B.BALAJI, J.

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S.A.No.169 of 2017
& C.M.P.No.3378 of 2017

27.02.2024