



S.A.No.763 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 19.02.2024	Judgment Pronounced on 22.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.763 of 2017
and C.M.P.No.18992 of 2017

Krishnamoorthy

..Appellant

Vs.

Amaresan

..Respondent

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 14.02.2017 made in A.S.No.31 of 2016 on the file of the learned Principal District Judge, Krishnagiri, reversing the judgment and decree dated 24.02.2016 passed in O.S.No.81 of 2010 on the file of the Principal Subordinate Judge, Krishnagiri.

For Appellant : Mr.V.Nicholas

For Respondent : Mr.C.Venkatesan



S.A.No.763 of 2017

JUDGMENT

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This Second Appeal has been filed against the judgment and decree dated 14.02.2017 made in A.S.No.31 of 2016 on the file of the learned Principal District Judge, Krishnagiri, reversing the judgment and decree dated 24.02.2016 passed in O.S.No.81 of 2010 on the file of the Principal Subordinate Judge, Krishnagiri.

2.The unsuccessful defendant before the First Appellate Court is the appellant herein.

3.The parties are described as per their litigating status before the Trial Court.

4.The plaintiff filed the suit seeking recovery of a sum of Rs.1,63,000/- (Rupees One Lakh and Sixty Three Thousand only) representing a principal of Rs.1,20,000/- (Rupees One Lakh and Twenty Thousand only), with interest to the tune of Rs.43,000/- (Rupees Forty Three Thousand only), alleged to have been borrowed by the defendant on execution of Promissory Notes on 04.07.2007. The defendant had issued a legal notice on 14.03.2008,



S.A.No.763 of 2017

and in reply, the plaintiff demanded repayment of the amount borrowed by the defendant and subsequently, instituted the suit.

5.The defendant denied the borrowal of Rs.1,20,000/- from the plaintiff and also denied the execution of the Promissory Notes. According to the defendant, the plaintiff was running a chit transaction and he requested the defendant to participate in the same. According to the defendant, at the time of the said chit transaction, the plaintiff obtained signatures in blank Promissory Notes from the defendant, one of which has been utilized by the plaintiff to create the suit Promissory Notes.

6.The Trial Court dismissed the suit, holding that the plaintiff had not proved passing of consideration and the plaintiff did not take steps to send the Promissory Notes for comparison. On appeal by the plaintiff, the First Appellate Court reversed the findings of the Trial Court and decreed the suit.

7.Aggrieved by the reversal findings rendered by the First Appellate Court, the defendant has come up by way of the present Second Appeal.

8.On 07.12.2017, the above Second Appeal was admitted on the



S.A.No.763 of 2017

following two substantial questions of law:

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“a) When the defendant denied the borrowal of loan amount from the plaintiff and also the execution of the suit promissory note, the burden is on the plaintiff to prove the same but having failed to discharge his burden in this regard whether the judgment and decree of the lower appellate court upholding the claim of the plaintiff is not against the principles of Indian Evidence Act.

b) When the defendant proved that the suit promissory note was created with the blank promissory notes given by him in the course of the chit transaction conducted by the plaintiff whether the judgment and decree of the lower appellate court are not perverse and contrary to the evidence on record.”

9.I have heard Mr.V.Nicholas, learned counsel for the appellant and Mr.C.Venkatesan, learned counsel who has been appointed by the legal aid to represent the respondent.

10.I have also gone through the records, including the pleadings, oral and documentary evidence adduced by the parties and the judgments of the Trial Court as well as the First Appellate Court.

11.Admittedly, the defendant has not denied the execution of the



S.A.No.763 of 2017

Promissory Notes. The defence raised by him was only that he signed blank Promissory Notes for securing chit transaction and the same has been misused. The plaintiff, besides examining himself, has also examined a witness as P.W.2. It has also come out in evidence that the defendant in and by Ex.A2, legal notice, dated 14.03.2008, called upon the plaintiff to return the blank two Promissory Notes that were available with the plaintiff. Only under Ex.A3 dated 22.03.2008, by way of reply notice, the plaintiff demanded return of the money allegedly due by the defendant. The suit has been filed only on 01.07.2010, despite notice in Ex.A2, issued by the defendant.

12.Mr.V.Nicholas, learned counsel for the appellant would contend that the delay in filing the suit, after notice having been issued by the defendant clearly establishes lack of bonafides on the part of the plaintiff and he would also state that the First Appellate court ought not to have compared the signatures even though the power was vested in it to do so. The plaintiff, according to the counsel for the appellant, has not discharged his burden in proving the due execution of the Promissory Notes as well as passing of consideration.



S.A.No.763 of 2017

13.Per contra, Mr.C.Venkatesan, learned counsel for the respondent would submit that the First Appellate Court has rightly reversed the erroneous findings rendered by the Trial Court, since merely because the demand was made after the notice was issued by the defendant would not establish that the Promissory Notes were forged or fabricated. Further, he would also contend that the evidence of P.W.2 would clearly support due execution of the Promissory Notes and therefore, no interference is warranted with the judgment and decree of the First Appellate Court.

14.I have carefully considered the rival submissions advanced by the learned counsel on either side.

15.The specific defence raised by the defendant in his written statement is that the Promissory Notes were given during the time of chit transactions between the plaintiff and the defendant. However, the plaintiff vehemently denies that there were any chit transactions between the plaintiff and the defendant. However, Ex.B2 falsifies the claim of the plaintiff that there was no chit transactions between the plaintiff and the defendant. Under Ex.B2 series, there is acknowledgment of receipts of amounts towards chit transactions. Only after the defendant called upon the plaintiff to return the



S.A.No.763 of 2017

two blank Promissory Notes, the defendant made a demand for the first time, by way of a reply notice dated 22.03.2008 in Ex.A3. Surprisingly, despite the stand of the defendant as early as on 14.03.2008 under Ex.A2 legal notice, the plaintiff did not choose to institute the suit for a period of more than two years, until 01.07.2010 when the suit came to be filed. There is absolutely no explanation on the side of the plaintiff as to why there has been such an inordinate delay in approaching the Court, which causes suspicion on the bonafides of the plaintiff's claim.

16.Though the plaintiff has examined the witness P.W.2 to prove the execution of the Promissory Notes, the burden shifted to the defendant to rebut the presumption that the Promissory Notes were duly executed and were for consideration. On an overall assessment of the oral and documentary evidence, it is clear that the defendant has successfully rebutted the presumption, by production of Ex.B2 series, coupled with the fact that it was the defendant who issued the notice on 14.03.2008, demanding return of two blank Promissory Notes and only thereafter, by way of reply notice in Ex.A3 dated 22.03.2008, the plaintiff has raised the demand for the suit claim for the first time.

17.This apart, the silence and inaction on the part of the plaintiff for



S.A.No.763 of 2017

more than two years also does not in any way help in believing the plaintiff's version. The Trial court has rightly assessed the pleadings and the evidence on record and dismissed the suit. The First Appellate Court, on erroneous considerations, reversed the well considered and well merited findings of the Trial Court and the same requires interference under Section 100 of Code of Civil Procedure. In fine, the substantial questions of law are therefore answered in favour of the appellant herein.

17.In the result, the Second Appeal is allowed. This Court places on record the appreciation for the assistance rendered by the Legal Aid counsel Mr.C.Venkatesan, who has been appointed to represent the respondent/plaintiff. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

22.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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P.B.BALAJI., J.

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To

- 1.The Principal District Judge, Krishnagiri.
- 2.The Principal Subordinate Judge, Krishnagiri.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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S.A.No.763 of 2017

Pre-delivery judgment made in

S.A.No.763 of 2017

and C.M.P.No.18992 of 2017

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