IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.130 of 2024
and
C.M.P.No.4057 of 2024

Murugesh ... Appellant

Vs.

Shanmugam ... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 05.09.2023 in A.S.No.10 of 2022 on the file of the Principal District Court, Tiruppur, reversing the judgment and decree dated 24.03.2021 in O.S.No.507 of 2014 on the file of the Principal Subordinate Court, Salem.

For appellant : Mr.C.Prabakaran

JUDGMENT

The defendant in the suit for recovery of money who has lost before both the Courts below is the appellant before this Court.

2. The facts which have given rise to this second appeal are set out hereinbelow and for the ease of understanding, the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed a suit in O.S.No.507 of 2014 on the file of the Principal Sub Court, Tiruppur, for recovery of a sum of Rs.7,15,000/- with subsequent interest at the rate of 18% per annum on the principal sum of Rs.5,50,000/- from the date of the suit till the date of realisation.

2.2. It is the case of the plaintiff that the defendant had approached him for getting financial assistance in the year 2012. The defendant had requested a loan of Rs.6,00,000/-. However, the plaintiff had given only a sum of Rs.5,50,000/- to the defendant on 16.04.2012 and the defendant had agreed to repay it with interest. The defendant had executed a promissory note in favour of the plaintiff and handed over the original sale deed and copy of the parent deed, house tax receipts, *etc.*, as a security to the plaintiff.

2.3. The defendant had also executed a registered power of attorney dated 16.04.2012 enabling the plaintiff to sell the property so as to repay the loan to the plaintiff. The plaintiff had entered into an agreement of sale in respect of the defendant's property in favour of one Santhamani on 19.04.2012 and the said Santhamani had paid a sum of Rs.50,000/- as advance to the defendant. The defendant had neither repaid the loan nor interest to the plaintiff. The defendant insisted upon the plaintiff to sell the property at a higher rate. Therefore, the plaintiff had extended time for the performance of the agreement with Santhamani and extension deed was entered into between the said Santhamani and the plaintiff.

2.4. On 04.11.2014, the defendant had issued a legal notice to the plaintiff stating that he had borrowed a sum of Rs.5,50,000/- from the plaintiff agreeing to repay it with interest at Rs.2.50/- per month for every Rs.100/- and had repaid the principal and interest to the plaintiff. However, since no payment had been received by the plaintiff, he would contend that he had retained the documents.

2.5. The defendant had issued another legal notice dated 11.11.2014 informing that the said power of attorney had been cancelled on 10.10.2014. On 27.11.2014, the plaintiff had issued a legal notice to the defendant demanding repayment. Though the defendant had received the notice, he had neither repaid the money nor replied to the notice. Therefore, the plaintiff has come forward with the suit in question.

2.6. The defendant had filed a written statement, in which, he had admitted the borrowal of a sum of Rs.5,50,000/- from the plaintiff and had also admitted that for security purpose, he had executed the power of attorney in favour of the plaintiff and at the time of borrowing the money from the plaintiff, he had obtained blank promissory note and signatures in the blank papers. He would contend that he had repaid the entire amount together with interest and has been demanding the return of the documents.

2.7. The defendant had denied the agreement of sale entered into with the said Shanthamani as the same had been entered into without his knowledge. On coming to know about the same, the defendant had cancelled the power of attorney and had issued a legal notice dated 04.11.2014, calling upon the plaintiff to return the documents and come to the Registrar Office to cancel the power of attorney executed in favour of the plaintiff. The defendant would submit that the plaintiff had misused the cheques, blank sheets, *etc.*, to file the present suit. The suit is bereft of cause of action and hence, the defendant prayed for the dismissal of the suit.

TRIAL COURT:

3. The Trial Court had framed the following issues.

"*1)Whether it is true that the defendant had borrowed a sum of Rs.5,50,000/- and executed the suit promissory note on 16.04.2012?*

2)Whether the plaintiff is entitled to the suit claim?

3)To what other relief the plaintiff is entitled to?"

4. The plaintiff had examined 3 witnesses on his side and marked Exs.A1 to A11 and the defendant had examined 2 witnesses and marked Exs.B1 to B5.

5. Ultimately, the Trial Judge, taking note of the evidence of D.W.1 - the defendant and D.W.2 – the defendant's wife, regarding the repayment of the amounts and the glaring discrepancies in the evidence, has held that the execution of the promissory note had not been denied by the defendant and it was only the repayment that had not been proved. Consequently, the suit was decreed as prayed for.

LOWER APPELLATE COURT:

6. Challenging the same, the defendant had filed an appeal in A.S.No.10 of 2022 on the file of the Principal District Judge, Tiruppur. The learned Judge had also confirmed the judgment and decree of the Trial Court and dismissed the appeal.

7. Challenging the same, the defendant is before this Court.

8. Heard the learned counsel for the appellant and perused the materials available on record.

DISCUSSION:

9. The defendant had admitted the borrowal of a sum of Rs.5,50,000/- from the plaintiff and the execution of the promissory note. The only defense that has been put forward by the defendant is that the amounts had been repaid by him to the plaintiff. In fact, in the written statement filed by the defendant, he had stated as follows.

> "பிரதிவாதி வாதிக்கு அசலும் வட்டியுமாக தாம் பெற்ற கடனை ரொக்கமாக கொடுத்து தீர்த்தப் பிறகு தமது அசல் கிரைய ஆவணங்கள் மற்றும் கடனுறுதிச்சீட்டுகள் மற்றும் பச்சைத்தாள்கள், காசோலைக்கள் ஆகியவற்றை திருப்பிக் கேட்டு வந்துள்ளார்."

10. However, in the evidence, the defendant as D.W.1 and his wife as D.W.2, would submit that they have paid the interest of Rs.13,750/- per month (as per evidence of D.W.1) and Rs.23,750/- per

month (as per evidence of D.W.2). Therefore, from this oral evidence, it is clear that the amounts have not been paid. There is no proof to show that the interest amount had been paid. In the light of the above evidence, the findings of the Courts below are very much in order and they do not require any reconsideration.

Accordingly, this second appeal stands dismissed as it does not make out any substantial question of law. Consequently, connected C.M.P. stands closed. No costs.

23.02.2024

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

To

1. The Principal District Judge, Tiruppur.

2.The Principal Sub Judge, Tiruppur.

3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

ssa

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