



S.A.No.624 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.03.2024	Pronounced on: 15.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A. No.624 of 2018
and
CMP. No.19025 of 2018

M.Rajendran

...Appellant

Vs.

K.R.Senthil

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 11.04.2018 passed in A.S. No.12 of 2017 on the file of the District Court, Nagapattinam reversing the judgment and decree dated 10.02.2017 passed in O.S. No.82 of 2015 on the file of the Sub-Court, Nagapattinam.

For Appellant : Mr.S.Nagarajan

For Respondent : Mr.S.Giritharan

JUDGMENT



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The defendant in a suit for recovery of money based on a promissory note is the appellant.

2. The parties are described as per the litigative status before the trial Court.

3. The plaintiff filed a suit for recovery of a sum of Rs.1,68,000 /-, being the principal sum of Rs. 1,50,000/-, together with interest as on date of filing of suit. The defendant borrowed a sum of Rs.1,50,000/- on 20.09.2014 and executed a suit promissory note, evidencing the borrowing and undertaking to pay the same on demand with interest. As the defendant did not come forward to repay the said money, the plaintiff issued a lawyer's notice on 17.03.2015. On receipt of the said notice, the defendant sent a reply on 11.04.2015, denying liability. The suit was, therefore, filed for recovery of the dues.

4. The defendant filed a written statement stating that he neither borrowed any money in the year 2014 nor executed a promissory note as



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alleged in the plaint. It is also contended that in 2010, a sum of Rs.50,000/- was borrowed by his father to repay loans taken for celebrating the marriage of his sister and subsequently, the said loan was also discharged. At that time, the defendant's father was suffering from paralysis and therefore, the plaintiff insisted upon the defendant to sign an unfilled promissory note, which has been misused by the plaintiff, to project the suit claim. According to the defendant, apart from the borrowing made in 2010, no money was borrowed either by the defendant or by his father and consequently the suit was liable to be rejected.

5. The trial Court accepted the version projected by the defendant and dismissed the suit, holding that the plaintiff is not entitled to recover the money claimed as it was relating to a 2010 transaction and that suit promissory note was given as a security for the borrowing made by the defendant's father.

6. However, on Appeal, the First Appellate Court reversed the



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findings of the trial Court and decreed the suit.

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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. The above Second Appeal was admitted on 22.11.2018 on the following substantial questions of law, namely:

"(1) Whether the First Appellate Court is correct in setting aside the decree and judgment of the trial Court when the appellant herein satisfactorily rebutted the presumption under Section 118 of the Act that the Promissory Note Ex.A1 is not supported by consideration and the same has been executed in the circumstances stated by the defendant in the written statement?"

"(2) Whether the First Appellate Court's finding that the appellant herein did not prove the passing of consideration under Section 43 of the Negotiable Instruments Act is justified when this appellant has categorically, cogently proved the non-existence of consideration by discharging his onus of proof by showing direct and probable evidence rebutting the statutory presumption under Section 118 of the Act as correctly held by the Trial Court?"

9. On hearing the learned counsel of appellant and respondent, I



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proceed to frame an additional substantial question of law, namely:

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“ Whether the plaintiff is entitled to make a claim when he has admittedly stated that he was in a money lending business and does not possess the requisite license mandated under Section 3 of The Tamil Nadu Money-Lenders Act, 1957.”

10. I have heard Mr.S. Nagarajan, the learned counsel for the appellant and Mr.S.Giritharan, learned counsel for the respondent.

11. The learned counsel for the appellant would take me through the oral evidence adduced by the parties, especially the evidence of P.W.2 and D.W.1 and point out the contradictions and inconsistencies in the case of the plaintiff. Further, he would also rely on the decision of the Hon’ble Supreme Court in the case of *Kaloji Talusappa Gangavathi vs Khyanagouda and Ors.*, reported in *AIR 1970 SC 1420*, where the Hon’ble Supreme Court has held that if the plaintiff was not in possession of a license under the Act, then the suit for recovery of money initiated by him would be liable to be dismissed. He would also place reliance on the Bombay High Court judgment in the case of *Nanda vs Nandkishor*, reported



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in *2010 3 MhL.J.*, where a learned single Judge of the Bombay High Court has held that when the plaintiff was not having a money lending license under the Bombay Money Lending Act, 1946, the transaction would be hit by Section 23 of Indian Contract Act, 1872.

12. The learned counsel for the appellant would place reliance on the decision of this Court in *Thangarasu vs Arumugam* reported in *2012 (3) MLJ 658*, where this Court has held that the presumption regarding passing of consideration was rebuttable either by direct evidence or by bringing on record preponderance of probabilities.

13. Placing reliance on the ratio laid down in the above cases, the learned counsel for the appellant would submit that the suit was not maintainable in view of Section 3 of the Tamil Nadu Money-Lenders Act, 1957. That apart, in view of the contradictions in the evidence adduced and suicidal suggestions put to D.W.1, the defendant had successfully rebutted the presumption in favour of the plaintiff and thereby, established that there



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was no passing of consideration.

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14. Per contra, the learned counsel for respondent would submit that the First Appellate Court has rightly decreed the suit finding that the defendant had admitted the signature in the suit promissory note and also in view of the evidence adduced by the defendant, being contradictory to the stand taken by the defendant in the pre-suit notice. He would therefore, pray for dismissal of the Second Appeal.

15. If the 3rd substantial question of law is addressed first, then there may not be a necessity to labour on the other two substantial questions of law.

16. In this regard, I find from the evidence of P.W.1, that the plaintiff has categorically admitted to carrying on the business of money lending. He also admitted that he did not possess the requisite license to do the said business.



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WEB COPY 17. The Hon'ble Supreme Court in *Kaloji Talusappa Gangavathi's* case, referred herein supra, was dealing with the Hyderabad Money Lenders Act 5 of 1349. The Bombay High Court in *Nanda's* case, referred herein supra, was dealing with the Bombay Money Lenders Act, (31 of 1947). In Tamil Nadu also, there is a similar enactment called the Tamil Nadu Money-Lenders Act, 1957. The provisions of the said Act have been given effect to, in and by G.O MS No. 3485 dated 08.09.1959, fixing 16.10.1959 as the date on which the Act should come into force in various areas of the State of Tamil Nadu. The suit promisory note has been executed in Nagapattinam and G.O MS No. 3485 made the Act applicable to Nagapattinam as well, on and from 16.10.1959.

18. Section 3 of the Tamil Nadu Money-Lenders Act, 1957 prohibits any person to carry on or continue to carry on the business of money lending in areas where the Act has been brought into force, except after obtaining the requisite license. Thus, in light of the specific admission of the plaintiff that



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he doesn't possess any valid license to carry on the money lending business,

I have no difficulty in applying the ratio laid down by the Hon'ble Supreme Court and the Bombay High Court, though they are related to Hyderabad and Bombay enactments respectively.

19. In view of the admitted fact that the plaintiff was carrying on money lending business without the requisite license, he cannot be clothed with a right to recovery of money lent by him. His contract being forbidden by law, is also hit by Section 23 of Indian Contract Act, 1872 and consequently becomes void. Thus, the plaintiff cannot maintain the suit for recovery of money from the defendant.

20. In view of the above finding regarding the very maintainability of suit itself, I do not deem it necessary to venture into the other two substantial questions of law, such exercise being unnecessary.

21. In fine, the Second Appeal is allowed and the judgment and decree



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of the First Appellate Court in A.S No. 12 of 2017 on the file of the District Judge, District and Sessions Court, Nagapattinam, is set aside and the judgment and decree of the trial Court in O.S No. 82 of 2015 on the file of Subordinate Judge, Subordinate Court, Nagapattinam is restored on file. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

15.03.2024

Index :Yes/No
Internet : Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
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To
1.The District Judge, Nagapattinam.
2.The Subordinate Judge, Nagapattinam.



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P.B.BALAJI, J.

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