IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S Nos. 761 & 799 of 2018

J.Narasaiah

...Appellant in both appeals

Vs.

K.Karthikeyan

...Respondents in both appeals

PRAYER IN SA No. 799 of 2018 : This appeal filed under Order 41 Rule 1 r/w section 96 of CPC, to allow this appeal and set aside the judgment and decree in O.S No. 4594 of 2015, dated 27.02.2018 on the file of the Hon'ble XVI Additional City Civil Court, Chennai.

PRAYER IN SA No. 761 of 2018 : This appeal filed under Order 41 Rule 1 r/w section 96 of CPC, to allow this appeal and set aside the judgment and decree in O.S No. 2356 of 2014, dated 27.02.2018 on the file of the Hon'ble

XVI Additional City Civil Court, Chennai.

For Appellant : Mr.Mr.S.Bakaran
(in both appeals)
For Respondent : Mr.S.Ramesh
(in both appeals)

COMMON JUDGMENT

These appeals are filed to set aside the judgment and decree in O.S No. 4594 of 2015 and in O.S No. 2356 of 2014, dated 27.02.2018 on the file of the XVI Additional City Civil Court, Chennai.

2. The appellant herein is the plaintiff in O.S No. 2356 of 2014 and defendant in O.S No. 4594 of 2015 and respondent herein is the defendant in O.S No. 2356 of 2014 and plaintiff in O.S No. 4594 of 2015. The appellant herein filed the suit in O.S No. 2356 of 2014 for mandatory injunction directing the respondent herein/defendant to return the two blank promissory notes and two blank cheques bearing numbers 042545 and 042546, pertaining to plaintiff's account maintained with Indian Bank, Venkatapuram Branch, which is an illegal possession of the defendant, as the same was obtained by him from plaintiff under threat and coercion and

also other relief to direct the respondent herein/defendant to repay a sum of Rs.2,98,000/- to the the appellant herein/plaintiff together with the interest at the rate of 12% per annum from the date of plaint till the date of realization and for costs. On the other side, the respondent herein filed another suit in O.S No. 4594 of 2015 to direct the appellant herein to pay a sum of Rs.10,10,625/- with interest at the reate of 18% per annum from the date of plaint till date of realisation and for costs. The Court below tried the above suits jointly. After considering the submissions and materials available on record the Trial Court dismissed the suit in O.S No. 2356 of 2014 filed by appellant herein and allowed the suit in O.S No. 4594 of 2015 filed by the respondent herein. Challenging the findings of the Trial Court plaintiff in O.S No. 2356 of 2014 and defendant in O.S No. 4594 of 2015 filed these first appeals.

3. For the sake of convenience the appellant herein is referred as plaintiff and respondent herein is referred as defendant.

4. Heard the learned counsel for the appellant and the learned counsel for the respondent.

5. The brief facts of the case is as follows:

The plaintiff stated that the defendants is known to him pursuant to a reference regarding a sale of land situated at Annai Santhiya Nagar, Perungudi, Chennai, Persons claiming to be the owners of the said land have sought for referrence for selling the property. As the defendants was also searching for the land for purchasing, the plaintiff has referred the defendant to the so called owners of the the property. It ppears that the defendant has purchased the possessory rights from the occupants of the said property, the details of which are alson not known to plaintiff as he is a total stranger to the said transaction. Apart from giving reference to the defendant, the plaintiff has not taken part in any of the transaction. In fact, thereafter the plaintiff did not have any occassion to meet with the defendant. When the facts remains this, all of a sudden on 24.01.2014 defendant along with 20 rowdy elements came to the plaintiff's residence and obtained signature from him in the blank promissory notes and obtained 4 cheques leaves on the knife point and gave life threat to him. As plaintiff and family members was under threat, the plaintiff has not whispered about the illegal act committed by the defendant as it appeared to the plaintiff that defendant are highly influential and having men and money power and is capable of doing anything to suit his illegal demands. The defendant has presented two cheques bearing 042541 and 042542 which were extracted from the plaintiff under threat and coercion and had illegally withdrawn a sum of Rs.1,00,000/- each by presenting the same, totalling to Rs. 2,00,000/-. He neither availed loan from the defendant nor stood as guarantor for any transaction. As the defendants has gone to the extend to recovering money by presenting cheques which were obtained by force and extracted cash to the tune of Rs.98,000/- the plaintiff has come out of fear and has taken recourse to law. The plaintiff is not legally liable either to honour the cheques or the promissory notes which is in illegal possession of the defendant. Hence, he filed the suit for mandatory injunction for return of cheques and recovery of money.

6. The defendants denied the plaintiff's contention stating that the defendant's father M.Kumaresan was introduced to the plaintiff by a relative Chandrasekar in the year 2009. At that time introduced himself as an Surveyor in Tamil Nadu Slum Clearance Board and stated that as a surveyor he knows the several properties belonging to Slum Clearance Board in the hands of allottees which are ready for sale. The plaintiff informed the defendant's father that several plots of 1200 square feet were being allotted

in Annai Sathy Nagar and the allottees are name and thye are ready to sell the same to the defendant's father and his family members. The defendant's father agreed for the proposal of the plaintiff. Thereafter, the plaintiff took defendant's father and his family members to the said plots and identifiled 10 plots each of 1200 square feet in survey No. 65/1a, Perungudi Village. Neither the plaintiff nor the family members know about the location of the plots or other details pertaining to their ownership. They were totally guided by the plaintiff who was preparing the allotment letters, measuring the plots and also indentifying the four corners and boundaries as a surveyor of Tamil Nadu Slum Clearance Board. Thereafter, the plaintiff insisted the defendant's to pay a sum of Rs. 11,25,000/- as sale consideration for 10 plots by way of cash and the defendant also paid the above sale consideration by pledging the jewels and also withdrawn money from their bank account. After the payments were made, the plaintiff prepared deeds styled as sale agreement and obtained the signatures of one Perumal, Shalini, Kumar and Dhanabagyamal stating that they were the owners of the the 10 plots and those documents were handed over to the defendant's father by the plaintif. Thereafter the plaintiff produced the receipts in favour of the defendant and his family members from Annai Sathya Nagar Extension

Welfare Association and also obtained membership care from the said association and subscriptions amounts were paid by the defendant to the plaintiff. Through all activities the plaintiff gained the confidence of the defendant's father and his family members and made them believe that these properties were that of Tamil Nadu Slum Clearance Board and were being allotted to the said persons. Further, the plaintiff promised that as per the policy of the Slum Clearance Board, after the sale deeds executed in favour of the vendors, under the sale agreement they would execute the necessary sale deeds in favour of the defendant and his family members. To further develop his case, the plaintiff informed that his son Pradeep in an IAS officer and by using his clout, he would get the sale deeds. The defendant's father being aged person believed the statement of the plaintiff as true and waited for two years. Subsequently, from June 2012, the defendant's father started demanding sale deeds to the plots. The plaintiff under one pretext or other was dodging. Thereafter, the defendant along his family members started enquiring antecedent of the plaintiff and also the nature of the lands which were promised to be sold to the defendant and his family members. On enquiry with some of the officials from Tamil Nadu Slum Clearance Board, the defendant and his family members were shocked to find that the plaintiff has in similar manner cheated several persons and received huge money and that his son Pradeep was not a IAS officer. the plaintiff's son was merely an IAS aspirant. Immediately, the defendant and his father called upon the plaintiff stating that they would be preferring a complaint with the Commissioner of Police and also for taking appropriate action for cheating the defendant and his family members. At that point of time, the plaintiff pleaded with the defendant and his family members that he would repay the entire money and that his son's carrier would be spoiled. If a criminal complaint is lodged since he was attempting to enter into Civil services. The plaintiff issued the cheques toward the repayment of the amount of Rs.11,25,000/-. Cheque No. 042541 dated 27.01.2014 for Rs.1,00,000/- cheque No. 042542 dated 05.02.2014 for Rs.1,00,000/-.. Cheque No. 042543 dated 12.02.2014 for Rs.1,00,000/-. Cheque No. 042545 dated 30.03.2014 for Rs.8,00,000/- and cheque No. 042546 dated 25.05.2014 for Rs. 25,000/- drawn on Indian Bank, Venkatapuram Branch. Further, the plaintiff executed on demand promissory note promising to pay the said sum with the interest at the rate of 24% per annum. Further as per the instructions of the plaintiff, the defendant's father presented the cheques dated 27.01.2014 and 05.0.2014 each for a sum of Rs.1,00,000/-. two cheques were filled up in the name of the defendant since the same represented the share given by the defendant to his father. In so far the third cheque for Rs.1,00,000/- is concerned the plaintiff requested the defendant's father not to present the cheque and paid a sum of Rs.98,000/- by way of cash on 15.02.2014 and took back the cheque bearing No. 042543 dated 12.02.2014. When the next payment as due on 30.03.2014 which is a huge sum amounting to Rs.8,00,000/-, the plaintiff wanted to avoid payment of the said sum, the plaintiff preferred the suit. Hence he prays to dismiss the suit.

7. Now the point to be decided is whether promissory notes were obtained by the defendant and D.W.2 from the plaintiff by coercion and threat or not? and **whether those instruments like cheque and pro note given by the plaintiff in favour of the defendant and others after deliberations pertaining to the false promise given by him in respect of getting house allotment in Annai Sathya Nagar through slum clearance board.**

8. The deposition of P.W.1 is as follows:

……நான் சர்வேயராக பணிபுரிந்தேன். தமிழ்நாடு குடிசை மாற்று வாரியத்தில் சர்வேயராக பணிபுாந்தேன. 2013ல் ஓய்வு பெற்றேன்.......

.......எனக்கும் பிரதிவாதிக்கும் எந்த காலகட்டத்திலும் பேச்சுவார்த்தை கிடையாது......

.........எனது கைபேசி எண் 9952919704. 2010லிருந்து பிரதிவாதியுடன் நான் மேற்கண்ட கைபேசி எண்ணின் மூலமாக பலமுறை பேசியுள்ளேன்......

9. As per the evidence of P.W.1/plaintiff it clearly reveals that he was working as a surveyor in Tamil Slum Clearance Board. Initially, the plaintiff totally denied that he was not aware of the defendant. Subsequently, he admitted that he used to talk with D.W.2 through his phones. Now credibility of the plaintiff is under question and also he is the person giving false information. Furthermore, particularly, in respect of issuance of cheques, the defendant presented the cheque for collection and amount were collected but it was not objected by the plaintiff. Subsequently, in respect of one cheque he paid the cash directly if at all any coercion and threat he has faced he should have lodged the complaint but his own evidence clearly reveals that near about two months he has not given any such complaint Therefore, the alleged threat and coercion said to be made by the defendant and his family members is false and not been proved by him and the same was rightly concluded by the Trial Court said issue needs no interference by this Court.

10. Whether the first defendant who filed suit for recovery of money from the plaintiff proved his case. On considering the evidence of P.W.1 and P.W.2 they were father and son their evidence clearly reveals that the plaintiff was introduced himself as surveyor of Tamil Nadu Slum clearance board and gave false assurance that he would get house plots from the allottees of the Tamil Nadu Slum Clearance Board, following which the defendant and others paid a sum of Rs. 11,25,000/- to the plaintiff personally thereafter slum clearance agreement Ex.B12 came into to force. Through said transaction the receipt as well as account ledger maintained by the defendants marked as Ex.B2, account book and deed of assignment was marked as Ex.B13 and Ex.B14 all those documents clearly reveals that there was a money transaction between the plaintiff father and the defendant kumarsamy and others, Phone call register list produced on the side of the defendant marked as Ex.B10 and Ex.B11 and also clearly reveals that plaintiff many times talked with the defendant and his father even during the cross examination P.W.1 admits that he talks with defendant family through phone. Furthermore, the camera footage relied by the defendants marked as Ex.B9 and also reveals that there was **trouble**

between the plaintiff and the defendant in the defendant's residence but there was no coercion activities happened at that time, based on the false assurance the defendant of paid amount for subscription of membership to that effect receipts are issued and named as Annai Sathya Nagar residences association which was marked as Ex.B2 it reveals those transactions. Therefore, by giving false information the attempted to grab the money from the innocent person and the money was settled by the defendant's father for residence. Thereafter the defendant came to know that he was cheated by the plaintiff thereafter deliberations was made in the defendant's house and the plaintiff agreed to settle the issue and issued cheque promissory notes when it was presented for collection the plaintiff claim made by the defendants is proved in suit O.S No. 4567 of 2015 with oral and documentary evidence same was rightly appreciated by the Trial judge which needs no interference of this court. But the plaintiff himself admits that he paid 95,000/- as share in person and also get back the cheque to that effect those facts also admitted by the P.W.1 during the cross examination. The objection of the plaintiff is that the defendants is entitle to fill up pro note for unlawful gains but by relying the Judgement of the supreme Court reported in relying the Judgment of the supreme Court in the case of ***Bharat***

Barrel & Drum Manufacturing company Vs. Amin Chand Payrelal 1999 3 Scc 35:

139) while dealing with the words "until the contrary is proved" held that it was permissible for the Court to look into the preponderance of the probabilities and the entire circumstances of the particular case. After referring to Sections 3,4 and 101 to 104 of the Evidence Act, the Court held that while dealing with the absence of consideration, the Court shall have to consider not only whether it believed that consideration did not exist but also whether it considered the non-existence of the consideration so probable that a reasonable man would, under the circumstance of a particular case, could act upon the supposition that the consideration did not exist. Once the defendant showed either by direct evidence or circumstantial evidence or by use of the other presumptions of law or fact that the promissory note was not supported by consideration in the manner stated therein, the evidentiary burden would shift to the plaintiff and the legal burden reviving his legal burden to Bharat Barrel And Drum ... vs Amin Chand Payrelal on 18 February, 1999 Indian Kanoon - http://indiankanoon.org/doc/1891718/ 5 prove that the promissory note was supported by consideration and at that stage, the presumption of law covered by Section 118 of the Act would disappear, Merely because the plaintiff came forward with a case different from the one mentioned in the promissory note it would not be correct to say that the presumption under Section 118 did not apply at all. Such a presumption applies once the execution of the promissory note is accepted by the defendant. The circumstances that the plaintiff's case was at a variance with the once contained in the promissory note could be relied by the defendant for the purpose of rebutting the presumption of shifting the evidential burden to the plaintiff.

11. By relying the above judgment the learned counsel for the respondent argues that presumption attached with regard to the Annai Sathya Nagar under section 118(a) is rebutable. But the appellant herein not adduced any evidence to disprove the same. As observed above, Ex.P1 there is no independent evidence to prove the alleged threat coercion made by the

defendant and his family members moreover, during the Trial he admits that he get back the cheque by giving amount. Besides, he has not given complaint immediately against the defendants and others about the threat and coercion which itself falsify the claim of the plaintiff. Therefore, the plaintiff not adduced any rebuttal evidence. The proposition clearly applicable to the facts of the case trial judge rightly analysed the facts and evidence dismissed the suit filed by the appellant herein. Accordingly, Issues are answered. However, the trial court awarded the interest from the date of the suit which is not acceptable for the reason that the plaintiff obtained amount by giving false information from the defendant and others so the respondent is entitled for interest for the default committed by him. Accordingly, the suit filed by the responden in O.S No. 4594 of 2015 is decreed with interest at the rate of 12% from the date of borrowal till the date of suit thereafter 6 % till realisation.

12. In the result, these appeals are dismissed. No cost.

23.02.2024

pbl

T.V.THAMILSELVI,J.

Pbl

To

1. The XVI Additional City Civil Court, Chennai.
2. The Section Officer,
   V.R Section.

A.S Nos. 761 & 799 of 2018

AS. No. 799 of 2018

23.02.2024