BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.07.2024

Pronounced on : 02.08.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)Nos.140 and 141 of 2019
and
C.M.P.(MD)Nos.3319 and 3320 of 2019 and 12591 and 12593 of 2022

1. Muthuraj

2. Parvathi ... Appellants in both the appeals

Vs.

1. A.Sannasi Chettiar

2. Senthil

3. Panchavarnam
(R3 Died Memo filed)

4. Ajithkumar

5. Jeevarani
(Minor R4 and R5 are declared as majors and guardianship of their mother (R3) is discharged vide Court order dated 16.03.2022 made in CMP(MD)Nos.2138 and 2139 of 2022 in SA(MD)No.140 of 2019)

6. Chinnan ... Respondents in SA(MD) No.140 of 2019

1. A.Sannasi Chettiar

2. Veeruchinnammal ... Respondents in SA(MD) No.141 of 2019

Common Prayer : These Second Appeals filed under Section 100 of the Code of Civil Procedure, to set aside judgment and decree dated 04.08.2018 passed in A.S.Nos.42 and 41 of 2017 on the file of Additional District Court (FTC), Theni confirming the judgment and decree dated 14.03.2017 passed in O.S.Nos.21 of 2013 and 112 of 2009 on the file of the Sub Court, Theni and allow these Second Appeals with costs.

(in S.A.(MD)No.140 of 2019)

For Appellants : Mr.Anand Chandrasekar for Mr.P.Muthu Vijaya Pandian

For R1, R2 & R6 : No appearance

For R4 & R5 : Mr.M.Senthil Kumar

(in S.A.(MD)No.141 of 2019)

For Appellants : Mr.Anand Chandrasekar for Mr.P.Muthu Vijaya Pandian

For Respondents : Mr.M.Senthil Kumar

COMMON JUDGMENT

The Second Appeal in S.A.(MD)No.140 of 2019 is directed against the judgment and decree passed in A.S.No.42 of 2017 dated 04.08.2018 on the file of the Additional District Court (FTC), Theni, confirming the judgment and decree made in O.S.No.21 of 2013 dated 14.03.2017 on the file of the Subordinate Court, Theni.

2. The Second Appeal in S.A.(MD)No.141 of 2019 is directed against the judgment and decree passed in A.S.No.41 of 2017 dated 04.08.2018 on the file of the Additional District Court (FTC), Theni, confirming the judgment and decree made in O.S.No.112 of 2009 dated 14.03.2017 on the file of the Subordinate Court, Theni.

3. Though separate judgments came to be passed by the Courts below, since the matters are connected with each other and for convenience sake this Court has decided to pass common judgment.

4. Admittedly, the plaintiffs in O.S.No.112 of 2009 are husband and wife and the first plaintiff in O.S.No.112 of 2009 along with his son

Senthil (second plaintiff) and the legal heirs of his deceased son Alaguvel (plaintiffs 3 to 5) have filed the other suit in O.S.No.21 of 2013.

5. It is not in dispute that the plaintiffs and the defendants are belonging to Unjampatti Village of Theni Taluk.

6. For the sake of convenience and brevity, the plaintiffs in O.S.No. 112 of 2009 will be referred to as Sannasi Chettiar and his wife and the plaintiffs in O.S.No.21 of 2013 will be referred to as Sannasi Chettiar and his sons.

7. The Original Suit in O.S.No.112 of 2009 is for recovery of money due on the promissory note dated 10.10.2006 alleged to have been executed by the defendants 1 and 2 in favour of Sannasi Chettiar and his wife. The Original Suit in O.S.No.21 of 2013 is for recovery of money due on the simple mortgage deed dated 02.11.2006 alleged to have been executed by the defendants 1 and 2 in favour of Sannasi Chettiar and his sons.

8. The case of Sannasi Chettiar and his wife is that the defendants 1 and 2 have borrowed a loan of Rs.2,00,000/- from Sannasi Chettiar and his wife on 10.10.2006 to meet out their urgent family expenses and to clear the sundry debts and executed a promissory note therefor agreeing to repay the same with interest at 24% per annum to Sannasi Chettiar and his wife or their order on demand, that since the defendants 1 and 2 have not paid any amount either towards principal or towards interest, Sannasi Chettiar and his wife were constrained to send a legal notice dated 14.09.2009 to the defendants 1 and 2 demanding payment of the amount covered by the promissory note with interest, that the defendants 1 and 2 having received the legal notice on 19.09.2009 have neither sent any reply nor complied with the notice demand and that therefore Sannasi Chettiar and his wife were forced to file the suit in O.S.No.112 of 2009 for recovery of the promissory note debt with interest and costs.

9. The case of Sannasi Chettiar and his sons is that the defendants 1 and 2, after getting the first loan amount of Rs.2,00,000/- on 10.10.2006, have approached Sannasi Chettiar and his sons and demanded further loan of Rs.2,00,000/- for their very urgent family expenses, that Sannasi

Chettiar and his sons have informed the defendants 1 and 2 that they were not in a position to advance the loan on the basis of the promissory note and demanded security, that the defendants 1 and 2 agreeing for the same have executed a simple mortgage deed dated 02.11.2006 in favour of Sannasi Chettiar and his sons, that since the defendants 1 and 2 have not paid any amount due on the promissory note, Sannasi Chettiar and his wife have filed the suit in O.S.No.112 of 2009, that since the defendants 1 and 2 have not turned up to settle the amount even thereafter, Sannasi Chettiar and his sons have sent another legal notice dated 22.03.2010 demanding to repay the amount and that since the defendants 1 and 2 having received the same have sent a reply notice dated 03.04.2010 with false and frivolous allegation, Sannasi Chettiar and his sons were constrained to file the second suit in O.S.No.21 of 2013 seeking preliminary decree on the basis of the simple mortgage deed dated 02.11.2006.

10. The defence taken by the defendants 1 and 2 in both the suits are that Sannasi Chettiar and his wife and sons are money lenders, that the defendants 1 and 2 did not borrow any amount from Sannasi Chettiar and his wife on 10.10.2006 nor executed any promissory note on 10.10.2006,

that the first defendant has borrowed a sum of Rs.1,20,000/- from Sannasi Chettiar and at that time, Sannasi Chettiar directed the first defendant to execute two promissory notes for Rs.60,000/- each, one in favour of his wife and other in favour of his son Senthil and accordingly, the first defendant has executed two promissory notes, one dated 18.04.2001 for Rs.60,000/- in favour of Sannasi Chettiar's son Senthil and the second one dated 19.04.2001 for Rs.60,000/- in favour of Sannasi Chettiar's wife Veeruchinnammal, that Sannasi Chettiar's wife and sons and the first defendant have also entered into a mortgage varthamana letter dated 19.04.2001 agreeing to repay the principal with interest within a period of three years, that after the lapse of three years, when the amount was demanded by Sannasi Chettiar, the first defendant has paid the entire interest due and sought further time for payment of the principal amount, that Sannasi Chettiar has then directed the first defendant to execute two more promissory notes and accordingly, the first defendant has executed two promissory notes dated 17.04.2004, one in favour of Sannasi Chettiar's son Senthil and other in favour of his another son Alaguvel for Rs.60,000/- each, that Sannasi Chettiar has demanded the first defendant to pay Rs.2,00,000/- for principal with interest due and since the first defendant was not in a position to pay, he was directed to execute a mortgage deed in respect of his property and accordingly, the first defendant has executed a registered mortgage deed dated 02.11.2006 in favour of Sannasi Chettiar and his sons, that the first defendant, after receipt of the legal notice, has approached Sannasi Chettiar's family with elderly members of the locality and at that time, Sannasi Chettiar and his sons have returned the promissory notes and varthamana letter and directed the defendants 1 and 2 to discharge the mortgage loan and they would not take any action on the basis of the legal notice dated 14.09.2009, that therefore the defendants 1 and 2 have not chosen to send any reply, that the first defendant has not borrowed any other loan except Rs.1,20,000/- borrowed in 2001, that subsequent promissory notes and mortgage deed were executed by the defendants 1 and 2 without any consideration and that Sannasi Chettiar and his wife and sons have created the suit promissory note by forging the signatures of the defendants 1 and 2 and that therefore both the suits are liable to be dismissed.

11. The trial Court, upon perusing the pleadings of both the parties, has framed the necessary issues.

12. During trial in O.S.No.112 of 2009, Sannasi Chettiar and his wife have examined Sannasi Chettiar as P.W.1 and examined one Ramasamy as P.W.2 and exhibited 5 documents as Ex.A.1 to Ex.A.5. The defendants 1 and 2 have examined the first defendant as D.W.1 and one Raja as D.W.2 and exhibited 7 documents as Ex.B.1 to Ex.B.7. It is seen from the records that since P.W.2 Ramasamy has not turned up for cross-examination, his evidence was ordered to be eschewed from the records. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has decreed the suit directing the defendants 1 and 2 to pay sum of Rs.2,17,867/- with interest at 12% per annum on the principal amount of Rs.2,00,000/- from the date of suit till the date of decree and thereafter at 6% per annum till the payment and costs.

13. During trial in O.S.No.21 of 2013, Sannasi Chettiar and his sons have examined Sannasi Chettiar as P.W.1 and examined one Babu as P.W.2 and exhibited 4 documents as Ex.A.1 to Ex.A.4. The defendants 1 and 2 have examined the first defendant as D.W.1 and one Raja as D.W.2 and exhibited 7 documents as Ex.B.1 to Ex.B.7. The learned trial Judge, upon

considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the preliminary decree directing the defendants 1 and 2 to pay sum of Rs.4,93,199/- with interest at 12% per annum on the principal amount of Rs.2,00,000/- from the date of suit till the date of decree and thereafter at 6% per annum till the payment and costs.

14. Aggrieved by the judgments and decrees passed in the above two suits, the defendants 1 and 2 have preferred two appeals in A.S.Nos.42 of 2017 and 41 of 2017 and the learned Additional District Judge (FTC), Theni, after considering the materials available on record and on hearing the arguments of both the sides, has passed separate judgments and decrees dated 04.08.2018 dismissing the appeals and thereby confirming the judgments passed by the trial Court. Aggrieved by the dismissal of the appeals, the defendants 1 and 2 have preferred the present two second appeals.

15. Though the above two appeals are pending from 2019 onwards, the appeals are not yet admitted and hence, substantial questions of law were not formulated.

16. The learned counsel appearing for the defendants 1 and 2 would submit that since the execution of the promissory note was specifically denied by the defendants 1 and 2, the initial burden is on the plaintiffs to prove the due execution of the promissory notes, but the said burden was not at all discharged by the plaintiffs in a manner known to law, that the first appellate Court erred in holding that D.W.1 purposefully denied his signature in the suit promissory note only to defraud the plaintiffs but the said finding is not at all supported by any evidence and is without any legal basis, that since the plaintiffs have not discharged their initial burden of proof, the question of drawing adverse inference against the defendants 1 and 2 for not taking steps to take Ex.A.1-suit promissory note to handwriting expert to prove that the signatures found in Ex.A.1 were forged, does not arise, that the two loan transactions alleged against the defendants 1 and 2 were within a short span of one month for a similar amount and there is a least likelihood of earlier loan transaction under promissory note in existence on account of subsequent loan transaction in lieu of registered instrument and that the first defendant has borrowed money from Sannasi Chettiar and his sons earlier and executed Ex.B.1 to Ex.B.3 and only with respect to balance payable, the defendants 1 and 2

were forced to execute the mortgage deed and as such, there was no necessity for the defendants 1 and 2 to execute the suit promissory note.

17. The learned counsel appearing for the plaintiffs would submit that since the defendants 1 and 2 have approached the plaintiffs again on 01.11.2006 demanding further loan of Rs.2,00,000/-, after getting loan of Rs.2,00,000/- on 10.10.2006, the plaintiffs have informed the defendants 1 and 2 that they are not ready and willing to give further loan of Rs.2,00,000/- on the basis of the promissory note and demanded security and accepting the same, the defendants 1 and 2 have executed the suit mortgage deed dated 02.11.2006.

18. The learned counsel appearing for the plaintiffs would further submit that since the Attestor as well as Scribe-cum-Attestor were not alive at the time of trial, the plaintiffs have produced their death certificates, that though the plaintiffs have discharged their initial burden of due execution of promissory notes, the defendants 1 and 2 have not discharged their burden that the suit promissory note was not supported by consideration and was not executed on 10.10.2006 as alleged by the

plaintiffs and that the Courts below, by considering the evidence in proper perspective, have rightly decided the case against the defendants 1 and 2.

19. No doubt, the defendants 1 and 2 have produced two promissory notes dated 17.04.2004 and varthamana letter dated 19.04.2001 and exhibited the same as Ex.B.1 to Ex.B.3. In the written statement, the defendants 1 and 2 have taken a stand that after receiving the legal notice dated 14.09.2009 from the plaintiffs, they have approached them with elderly members of their locality and enquired about sending of notice even after the execution of the mortgage deed as directed by the plaintiffs as there was no other loan amount due by them at that time and that the plaintiffs have returned the promissory notes and varthamana letter and informed that they will not take any action on the basis of the legal notice dated 14.09.2009 and directed the defendants 1 and 2 to discharge the mortgage loan.

20. Even according to the defendants 1 and 2, the first defendant has executed two promissory notes on 18.04.2001 and 19.04.2001 for Rs.60,000/- each and subsequently executed two promissory notes dated

17.04.2004 and warthamana letter dated 19.04.2001 but admittedly the defendants 1 and 2 have exhibited two promissory notes dated 17.04.2004 and varthamana letter dated 19.04.2001 and they have not produced the other two promissory notes dated 18.04.2001 and 19.04.2001 and they have also not offered any reason or explanation for non-production of the same.

21. Admittedly, the defendants 1 and 2 having received the pre-suit notice dated 14.09.2009, have not chosen to send any reply. As rightly observed by the Courts below, explanation given by the defendants 1 and 2 for not sending of reply notice is hard to believe.

22. According to the plaintiffs, one Ayyavu Chettiar has signed as witness and one Annanthakumar has scribed his signature as scribe-cum-witness to the suit promissory note. The plaintiffs, by alleging that both of them have died, have produced the death certificates under Ex.A.4 and Ex.A.5 respectively. Admittedly, the defendants 1 and 2 have not specifically disputed the above factum of death of the Attestor and Scribe-cum-Attestor.

23. It is evident from the records that Sannasi Chettiar as P.W.1 would reiterate the contentions raised in their plaint with regard to the execution of the suit promissory note. The evidence of P.W.1 regarding the execution of the suit promissory note was not at all shaken and nothing has been culled out during his cross-examination to discredit his evidence.

24. It is settled law that in a suit based on a promissory note, the defendant denies the execution of the promissory note then the initial burden is on the plaintiff to prove the due execution of the promissory note and in case, if the plaintiff discharges his onus of proof and proves the execution, arising of presumption under Section 118 of Negotiable Instruments Act is automatic as to the passing of consideration, date, name, time etc., and in that situation, the burden of proof gets shifted to the defendant and it is for the defendant to disprove the legal presumption by setting up a probable defence and it is necessary for the defendant to adduce direct evidence and they can very well prove their defence i.e., non passing of consideration through the facts and circumstances that are elicited from the plaintiff's side witnesses during their cross-examination. When the defendant proves his case through tangible evidence, then the

liability once again gets shifted to the plaintiff to prove that the promissory note was executed by the defendant. In the case on hand, as already pointed out, the first plaintiff Sannasi Chettiar through his evidence has discharged his initial burden of proving the execution of the promissory note.

25. Though the defendants 1 and 2 have examined the first defendant as D.W.1 and another witness as D.W.2 and despite cross-examining P.W.1, as rightly observed by the Courts below, failed to rebut the presumption drawn under Section 118 of Negotiable Instruments Act.

26. As already pointed out, the defendants 1 and 2 have taken a stand that the signature in the suit promissory note are not that of their signatures and that their signatures were forged and the suit promissory note was created for the purpose of the suit. The defendants 1 and 2 have not taken any steps to prove that the signatures found in the suit promissory note are not that of their signatures. As rightly observed by the learned first appellate Judge, the first defendant during his cross-examination has denied the signature found in his vakalat but admitted his signature found in the written statement.

27. It is also not the case of the defendants 1 and 2 that they have discharged the loan of Rs.2,00,000/- as claimed by the plaintiffs or Rs.1,20,000/- as claimed by the defendants 1 and 2.

28. Considering the evidence available on records, the Courts below have rightly come to the decision that the defendants 1 and 2, in order to escape from the repayment of the loan amount, have taken false and frivolous defence as if they have not signed the suit promissory note and they have not borrowed any amount from the plaintiffs on 10.10.2006 and that the plaintiffs have proved their case through sufficient evidence that the defendants 1 and 2 have borrowed a sum of Rs.2,00,000/- from Sannasi Chettiar and his wife on 10.10.2006 and executed the suit promissory note therefor.

29. Regarding the suit on mortgage, as already pointed out, the defendants 1 and 2 have specifically admitted the execution of the suit mortgage deed dated 02.11.2006. But their defence is that the mortgage deed came to be executed without any consideration, at the compulsion of the plaintiffs. It is the specific contention of the defendants 1 and 2 that

they have borrowed only Rs.1,20,000/- in 2001 and only at the compulsion of the plaintiffs, they have executed several promissory notes and varthamana letter and subsequently the mortgage deed, but the Courts below have come to a different conclusion that the defendants 1 and 2 have miserably failed to substantiate their defence.

30. It is not the case of the defendants 1 and 2 that they have discharged the mortgage loan. It is also not the case of the defendants 1 and 2 that they have discharged loan of Rs.1,20,000/- as claimed by them. More importantly, the first defendant himself in his cross-examination has admitted that he had executed the suit mortgage deed with intention to repay the amount shown in the document, that he has not paid any interest for the mortgage loan and that he is ready to repay the principal and interest due on the mortgage. Considering the evidence available on record, the Courts below have rightly granted the preliminary decree as claimed by Sannasi Chettiar and his sons.

31. It is not the case of the defendants 1 and 2 that any material evidence that had been ignored by the first appellate Court nor there was

evidence at all and they have also not shown that any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously. As already pointed out, the Courts below have rightly casted the burden of proof and came to the decision that the defendants 1 and 2 have failed to prove their claim.

32. The trial Court as well as the first appellate Court, on appreciating and re-appreciating the entire evidence available on record, have come to a definite decision that the plaintiffs are entitled to get the reliefs claimed. On perusal of the judgments of the Courts below, as rightly contended by the learned counsel appearing for the plaintiffs, no question of law much less substantial questions of law are made out. It is pertinent to note that right of appeal is not automatic and the same is conferred by statute, which confers a limited right of appeal restricted only to cases which involved substantial question of law. Considering the above, it is not open to this Court to sit in appeal over the factual findings arrived at by the first appellate Court confirming the findings of the trial Court. Hence, this Court concludes that since no substantial questions of law are made out in the present Second Appeals, the same are liable to be dismissed.

33. In the result, the Second Appeals in S.A.(MD)Nos.140 and 141 of 2019 are dismissed, confirming the concurrent judgments made in O.S.Nos.21 of 2013 and 112 of 2009, dated 14.03.2017, on the file of the Subordinate Court, Theni, and made in A.S.Nos.42 of 2017 and 41 of 2017, dated 04.08.2018, on the file of the Additional District Court (FTC), Theni. Consequently, connected Miscellaneous Petitions are closed. The parties are directed to bear their own costs.

02.08.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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To

1. The Additional District Judge (FTC),
   Theni.

2. The Subordinate Judge,
   Theni.

3. The Record Keeper,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
S.A.(MD)Nos.140 and 141 of 2019
and
C.M.P.(MD)Nos.3319 and 3320 of 2019 and 12591 and 12593 of 2022

Dated : 02.08.2024