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SA(MD)No.529 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.529 of 2022
and
CMP(MD)No.7164 of 2022

1.R.Gandhi
2.G.Rajasekar : Appellants/Appellants/
Defendants

Vs.

V.Palaniammal : Respondent/Respondent/
Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 24/09/2020 passed in AS No.28 of 2019 on the file of the 4th Additional District Court, Madurai, confirming the judgment and decree, dated 07/07/2018 passed in Suit OS No.707 of 2016 on the file of the 2nd Additional Subordinate Court, Madurai and dismissing the suit with costs throughout.

For Appellants : Mr.J.Bharathan

For Respondent : Mr.M.Ramu



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J U D G M E N T

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This second appeal is filed seeking to set aside the judgment and decree, dated 24/09/2020 passed in AS No.28 of 2019 by the 4th Additional District Court, Madurai, confirming the judgment and decree, dated 07/07/2018 passed in OS No.797 of 2016 by the II Additional Subordinate Court, Madurai.

2.The plaint averments stated in the plaint:-

On 23/05/2015, the defendants borrowed a sum of Rs.4,00,000/- from the plaintiff to meet out their domestic expenses and promised to return the same with 24% interest. They also executed a pro-note. In spite of repeated demand, neither the principal amount nor any interest was paid. Hence, the suit.

3.The defendants filed written statement stating that they never knew the plaintiff. The pro-note, dated 23/05/2018 was a created one. There was no consideration. It is further stated that the financier Rajalakshmi and her husband Somasundaram are behind this case. They created a document as if the 1st defendant and his wife executed an agreement to use the building, which belongs to the 2nd defendant situated in Door No.4, Muthukrishna Naidu Lane, Anuppanadi, Madurai-625 009 as 'Othi' for a



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loan amount of Rs.3,00,000/- with an endorsement for Rs.2,00,000/- on 03/06/2015. They preferred a complaint to the police to enquire. It was found that it is a false case. So, no action was taken. After that, she filed Cr1.OP No.21082 of 2016 and an order was passed on 07/11/2016. The matter was referred to the Mediation. After receiving notice, they appeared before the Mediation Centre on 19/01/2017 and submitted all the records. It is nothing, but an abuse of the process of the court.

4.Before the trial court, on the side of the plaintiff, 3 witnesses were examine and one document was marked. On the side of the defendants, one witness was examined and 8 documents were marked.

5.On the basis of the pleadings, the trial court formulated the following issues:-

(1)Whether the suit pro-note is true and executed for proper consideration?

(2)Whether the plaintiff is entitled for the amount as prayed for in the plaint?



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(3) To what other reliefs, the plaintiff is entitled for?

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6. At the conclusion of the trial process, the trial court found that the document was executed for due consideration as it is a genuine one. Finding so, the suit was decreed as prayed for with costs.

7. Against which, appeal was preferred by the defendants namely the appellants herein in AS No.28 of 2019 on the file of the IV Additional District Judge, Madurai. It also concurred with the finding of facts recorded by the trial court and dismissed the appeal.

8. Against which, this second appeal is preferred by the defendants as appellants.

9. Heard both sides.

10. At the time of admission, the following substantial questions of law were framed:-

(i) Whether Section 20 of the Negotiable Instruments Act, 1881 specifically contemplates that no person other than the holder in due course is entitled to recover the



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amount filled up and when the respondent/plaintiff is not the holder in due course, whether the Courts below are right in applying the said provision of law?

(ii)When the oral and documentary evidence of the respondent/plaintiff as PW1 and the attesting witness as PW2 contradict each other and so is unbelievable, does it not rebut the presumption, under Section 118 of the Negotiable Instruments Act, 1881?

11.The learned counsel appearing for the appellants would rely upon the following judgments:-

(1)Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Payrelal (1999)3 SCC 35.

(2)Kamala S Vs. Vidhyadharan M.J and another (2009)5 SCC 264; and

(3)Mallavarapu Kasivisweswara Rao Vs. Thadikonda Ramulu Firm and others (2008)7 SCC 655.

12.We can straightaway go to the point that was raised by the appellants in the written statement.



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13.As mentioned above, it is the specific case of the appellants that the suit was initiated by one Rajalakshmi and her husband Somasundaram in respect of some other transaction that took place between the first defendant and the above said persons. In order to substantiate the same, either direct or indirect by way of circumstantial evidence may be let, the plaintiff may be non-suited. The substantial question of law (i) is actually on that point.

14.The learned counsel appearing for the appellants would submit that the presumption that was available in favour of the appellants under section 118 of the Negotiable Instruments Act has been successfully rebutted by them by indirect evidence in the form of circumstances. CrI.OP(MD)No.21082 of 2016 was filed before this court by Rajalakshmi, who is the sister of the respondent herein. That petition copy was marked as Ex.B1. In that petition, Rajalakshmi has stated that the appellants herein namely Gandhi and Rajasekar and one Selvi borrowed a sum of Rs.4,00,000/- and Rs.5,00,000/- by two installments. When demanded back, they threatened Rajalakshmi and her sister namely the respondent herein, on 21/02/2016. Over which, a complaint was given, but no steps were taken by the police namely the Inspector of



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Police, Theppakulam Police Station, Madurai District. So, direction was sought from the Inspector of Police to enquire the complaint. Enquiry file copy was received by the appellants through RTI, dated 03/01/2017.

15.The file reads that the complaint given by the Rajalakshmi was enquired in C.No.R2/1848/58671/2016. The complaint was found to be contradictory with the facts. A suit in OS No.849 of 2016 was filed on the file of the Sub Court and the suit in OS No.420 of 2016 was filed before the District Munsif Court. The parties were directed to resolve the issue in the pending civil matters.

16.The complaint given by Rajalakshmi reads that she and her sister Palaniammal, who is the respondent herein filed a suit in OS No.707 of 2016 before the II Additional Sub Court, Madurai. This is the complaint given by Rajalakshmi against the appellants herein. Later, that was closed with the above said direction.

17.Now the question which arises for consideration is whether the information received from the Inspector of Police, Teppakulam Police Station, Madurai can be taken as proved without examining the Enquiry Officer.



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18.The next aspect is that the complainant namely Rajalakshmi was not examined on either side. Her complaint was not brought on record by examining her. In the absence of non examination of Rajalakshmi and the Enquiry Officer, it cannot be taken that these documents were properly proved. But that file can be relied upon for a limited purpose of showing that the respondent and her sister Rajalakshmi were having money transactions with the appellants herein. Similarly, this can also be relied upon for the limited purpose of showing that two suits were filed by Rajalakshmi and the respondent herein. The suit in OS No.707 of 2016 mentioned by Rajalakshmi is referring to the present suit.

19.When there is specific allegation on behalf of the appellants herein that there is no transaction with the respondent and the transaction is only with Rajalakshmi, then it is the duty of the respondent herein to explain the present transaction.

20.Now we will go the the evidence of PW1 on this aspect. She says that Rajalakshmi is not known to her. Her sister name is Jayalakshmi. But the learned counsel appearing for the respondent was also appearing for Jayalakshmi in Cr1.OP(MD)No.21082 of 2016.



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21.A question was put to the learned counsel on record for the respondent on this aspect. He would submit that these two transactions are noway connected with the subject transaction. If it is so, how the suit numbers are mentioned is not explained by the respondent herein.

22.The case of the appellants that the respondent is a benami of Jayalakshmi, cannot be ruled out completely. So, when *prima facie* the respondent has rebutted the presumption, it is the duty of the respondent herein to establish the execution, passing of consideration to the satisfaction of the court.

23.Now we will see, whether it has been established on the side of the respondent.

24.It is the case of the respondent that on 23/05/2015, the defendants for meeting out the family expenses borrowed a sum of Rs.4,00,000/- and executed a suit pro-note on that date itself. In the cross examination, she has stated that pro-note was written by her. But in the next line, she changed her version that it was filled up and written by the defendants and at that time, one Dhanalakshmi and Nagaraj were present. No pre-suit notice was issued and no payment was also made



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by her after that. She does not know the address of Gandhi namely the first appellant herein. She knows that she is the resident of Anuppanadi, even disowned the filing of IA No.539 of 2016 seeking attachment before judgment. She has also disowned the knowledge for filing CRP No.2261 of 2016. Further course of cross examination, she has stated that her brother namely Jeyapaul wrote the contents of the document.

25. Reading of the evidence of PW1 does not inspire any confidence at all. A sum of Rs.4,00,000/- was given as hand loan to a person whose address was not known to her itself makes the version of the plaintiff unbelievable. She has also not clear with regard to the consideration. She has stated that a sum of Rs.3,00,000/- was received by her towards the death benefit of her husband that was kept as cash in hand. She was having about Rs.4,00,000/- in her hand and that money was given to the appellants herein.

26. Now let us go to the evidence of the witness to the transaction namely PW2. She has stated that on 25/06/2015, the appellants received a sum of Rs.4,00,000/- from the respondent. She has read over to the plaintiff.



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27.PW3 has stated that in her presence, money was given as loan to the appellants.

28.By relying upon these two witnesses, the trial court as well as the appellate court rendered a finding that transaction was validly entered between the appellants and the respondent herein. PW2 and PW3 are the witnesses to the pro-note. But when the plaintiff herself has not given any proper particulars with regard to passing of the consideration, filling of the pro-note and the address of one of the appellants, their evidence will not overcome the deficiency of the respondent evidence.

29.With this in mind, we can go to the evidence of DW1. He has stated that the issue arose between them and one Rajalakshmi who was running a Chit Company called 'Pagampiriyal'. Rajalakshmi created a document in favour of the respondents and filed the suit. Rajalakshmi also created a pro-note on 23/05/2015. On that basis, she gave a false complaint before the police station, that was closed.

30.A suggestion was put to PW1 that the complaint given by Rajalakshmi against her is a separate transaction, but noway connected with the present subject



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matter. A suggestion that was made to PW1 assumes importance in the background of the above said circumstances. So, it is seen that the plaintiff has not approached this court with clean hand. But no steps were taken by the defendants herein to summon Jayalakshmi as mentioned above. But when the plaintiff denied the relationship between herself and Jayalakshmi, no purpose would be served in summoning her, but of course for limited extent.

31.So, the second substantial question of law is answered that the appellants have successfully rebutted the presumption under section 118 of the Negotiable Instruments Act.

32.The substantial question of law No.1 does not arise, since it is the specific case of the plaintiff that the document was written in the presence of the defendants. So, section 20 of the Negotiable Instruments Act has no application here.

33.It is the case of the defendants that during the course of the transactions between themselves and Rajalakshi, Rajalakshmi obtained blank pro-note and stamp papers etc. Those documents were utilized for foisting



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this case. But even though, the appellants case was probablised in view of the circumstances that are available, section 20 of the Negotiable Instruments Act has no application, since it is not the case of the plaintiff that Ex.A1 was endorsed in blank in her favour for valid consideration. So, the first substantial question of law does not arise.

34.But in view of the discussion made above, I am of the considered view that passing of consideration and execution of the pro-note were not established by the respondent herein to the satisfaction of the court. On that account, the judgment and decree passed by the trial court as confirmed by the appellant court are interfered and accordingly, interfered.

35.In the result, this second appeal is **allowed**. The judgment and decree of the trial court as well the first appellate court are set aside. The suit filed by the plaintiff is dismissed without any costs in view of the circumstances of the case. Consequently, connected Miscellaneous Petition is closed.

30/07/2024

Index:Yes/No
Internet:Yes/No
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To,

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1.The IV Additional District Judge,
Madurai.

2.The I Additional Sub Court,
Madurai.

3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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