

**Devadhas Vs. Manoharan**

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**Court :** Chennai

**Decided On :** Aug-07-2014

**Judge :** A.Selvam

**Appellant :** Devadhas

**Respondent :** Manoharan

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 07.08.2014 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM SECOND APPEAL(MD)No.1066 of 2009 and MISCELLANEOUS PETITION(MD)No.3 of 2009 Devadhas .Appellant/ Defendant versus Manoharan .Respondent/ Plaintiff Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 against the Judgment and decree dated 29.03.2007 passed in Appeal Suit No.66 of 2005 by the District Court, Kanyakumari at Nagercoil reversing the Judgment and decree dated 10.12.2004 passed in Original Suit No.55 of 2004 by the Sub Court, Padmanabhapuram.

!For Appellant : Mr.T.Arul ^For Respondent : Mr.C.Godwin :

**JUDGMENT**

Challenge in this second appeal is to the Judgment and decree dated 29.03.2007 passed in Appeal Suit No.66 of 2005 by the District Court, Kanyakumari at Nagercoil, wherein the Judgment and decree dated 10.12.2004 passed in Original

Suit No.55 of 2004 by the Sub Court, Padmanabhapuram are reversed.

2.The respondent herein as plaintiff has instituted Original Suit No.55 of 2004 on the file of the trial Court praying to pass a money decree, wherein the present appellant has been shown as sole defendant.

3.In the plaint it is averred that on 20.04.2001, the defendant has received a sum of Rs.1,25,000/- from the plaintiff and to that extent he executed the suit pronote in favour of the plaintiff.

The defendant has also agreed to pay interest as stated in the suit pronote.

Since the defendant has failed to discharge his liability, legal notices have been issued and even after receipt of the same, the defendant has failed to pay the amount to the plaintiff and therefore the present suit has been instituted for the relief sought for in the plaint.

4.In the written statement filed on the side of the defendant, it is averred that the defendant has not received Rs.1,25,000/- on 20.04.2001 from the plaintiff and executed the suit pronote.

In fact on 18.04.2001, the defendant has received a sum of Rs.10,000/- from the plaintiff by way of putting his signature on a blank pronote and subsequently he has paid Rs.16,200/- towards principal and interest amount to the plaintiff.

The defendant has given suitable reply notice to the notice issued by the plaintiff.

Since the suit pronote is not supported by consideration, the plaintiff is not entitled to get the relief sought for in the plaint and therefore the present suit deserves to be dismissed.

5.On the basis of the rival pleadings raised on either side, the trial Court has framed necessary issues and after analysing both the oral and documentary evidence has dismissed the suit.

Against the Judgment and decree passed by the trial Court, the plaintiff as appellant has preferred Appeal Suit No.66 of 2005 on the file of the fiRs.appellate

Court.

6.The fiRs.appellate Court after hearing both sides and upon reappraising the evidence available on record has allowed the appeal and thereby set aside the Judgment and decree passed by the trial Court and ultimately decreed the suit as prayed for.

Against the Judgment and decree passed by the fiRs.appellate Court, the present second appeal has been preferred at the instance of the defendant as appellant.

7.As agreed by the learned counsel appearing for both sides, the present second appeal is disposed of on merits at the stage of admission.

8.On the side of the appellant/defendant, the following substantial questions of law have been raised for consideration: a)Whether the lower appellate Court is right in holding that the respondent is entitled to presumption under Section 118 of the Negotiable Instruments Act, especially when the appellant has rebutted the same by establishing the financial capacity of the respondent to lend a sum of Rs.1,25,000/-?.

b)Whether the form and nomenclature of a document which is termed as promissory note qualifies to be the same under law when the recitals indicate otherwise?.

c)Whether the Judgment of the appellate Court based on the interested testimony of P.W.2 who is of perverted character and bad criminal antecedents and P.W.3 who is a henchmen of the respondent is tenable under the Indian Evidence Act?.

d)Whether the respondent is entitled to costs of the litigation especially when he had not registered himself as a licenced money lender under the Tamil Nadu Money Lenders Act, 1957 and more so when the finding of the trial Court is that he is a habitual money lender?.

9.The definite case putforth on the side of the plaintiff is that on 20.04.2001, the defendant has received a sum of Rs.1,25,000/- from the plaintiff and to that extent he executed the suit pronote and since he failed to discharge his liability, the

present suit has been instituted for the relief sought for therein.

10.The contentions urged on the side of the defendant are that he has not received Rs.1,25,000/- from the plaintiff and executed the suit pronote and on 18.04.2001 he received a sum of Rs.10,000/- by way of putting his signature on a blank pronote and subsequently he paid Rs.16,200/- towards principal and interest and therefore the suit pronote is not supported by consideration and under the said circumstances the present suit deserves to be dismissed.

11.The trial Court has rejected the case putforth on the side of the plaintiff.

But the fiRs.appellate Court after reappraising the available evidence on record has decreed the suit as prayed for.

12.The learned counsel appearing for the appellant/defendant has raised the following points so as to set aside the Judgment and decree passed by the fiRs.appellate Court: (a)The appellant/defendant has received a sum of Rs.10,000/- on 18.04.2001 from the plaintiff by way of putting his signature on a blank pronote and subsequently he paid Rs.16,200/- towards principal and interest.

(b)The suit pronote has been marked as Ex.A.1 and at page No.2 of Ex.A.1 on the top sufficient space is available, but schemingly for the purpose of obtaining signatures of witnesses, page No.2 has been introduced and therefore execution of Ex.A.1 is doubtful.

(c)On the side of the plaintiff, two witnesses have been examined as P.Ws.2 and 3 and both of them have adduced only ricketive type of evidence and on the basis of their evidence, the Court cannot come to a conclusion that Ex.A.1 has been executed by the defendant and the same is also supported by consideration.

13.The learned counsel appearing for the respondent/plaintiff has contended that with regard to wherewithal of the plaintiff to advance Rs.1,25,000/- no specific plea has been raised in the written statement and even in the fiRs.appellate Court sufficient documents have been filed on the side of the plaintiff for the purpose of proving the capability of the plaintiff to advance money and further no

documentary evidence has been put in on the side of the defendant for the purpose of showing that he has paid Rs.16,200/- and the fiRs.appellate Court after considering the overall evidence available on record has rightly decreed the suit and therefore the concurrent Judgments and decrees passed by the Courts below are not liable to be interfered with.

14.On the basis of the rival contentions raised on either side, the Court can easily discern that the signature found in Ex.A.1 has not been clearly denied on the side of the appellant/defendant.

15.The only defence putforth on the side of the appellant/defendant is that on 18.04.2001, he received a sum of Rs.10,000/- from the plaintiff by way of putting his signature on a blank pronote and subsequently he has paid Rs.16,200/- towards principal and interest.

If really the appellant/defendant has paid Rs.16,200/- to the plaintiff, definitely some document would have emerged.

But in the instant case, no document has been filed on the side of the appellant/defendant for the purpose of showing the so-called discharge.

16.The suit pronote has been marked as Ex.A.1 and the same contains two pages.

In the second page, the details of witnesses have been typed.

Simply because in the second page on the top some space is available, the Court cannot come to a conclusion that the second page of Ex.A.1 has been subsequently annexed.

17.Apart from the evidence given by the plaintiff as P.W.1, for the purpose of proving due execution and also passing of consideration of Ex.A.1 two witnesses have been examined on the side of the plaintiff as P.Ws.2 and 3 and both of them have consistently stated about the passing of consideration and also execution of Ex.A.1.

18.The learned counsel appearing for the appellant/defendant has contended that P.W.2 viz., Pushpam is none other than the sister of the defendant and she is not in concordial terms with him and under the said circumstances her evidence can easily be discarded.

19.Even eschewing the evidence given by P.W.2, the other witness viz., P.W.3 has given clear evidence to the effect that the defendant has received a sum of Rs.1,25,000/- from the plaintiff and executed Ex.A.1.

Of course it is true that there is a slight variation between the evidence of P.Ws.1 and 3 with regard to the purpose for which the defendant has received the amount and that itself would not pave the way for disbelieving the case of the plaintiff.

Therefore viewing from any angle, the contentions put forth on the side of the appellant/defendant are of no use.

20.The first appellate Court after considering the overwhelming evidence available on record on the side of the plaintiff has rightly decreed the suit and in view of the discussion made earlier, this Court has not found any force in the contentions urged on the side of the appellant/defendant and all the substantial questions of law raised on the side of the appellant/defendant are not having substance at all and altogether the present second appeal deserves to be dismissed.

21.In fine, this second appeal deserves dismissal and accordingly is dismissed without costs at the stage of admission and the Judgment and decree passed in A.S.No.66 of 2005 by the District Court, Kanyakumar at Nagercoil are confirmed.

Consequently, connected Miscellaneous Petition is dismissed.

To 1.The District Court, Kanyakumar at Nagercoil.

2.The Sub Court, Padmanabhapuram.

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