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Annadurai Vs. Rajendran

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Court : Chennai

Decided On : Nov-14-2016

Judge : K. Ravichandrabaabu

Appeal No. : Second Appeal No. 267 of 2015

Appellant : Annadurai

Respondent : Rajendran

Judgement :

(Prayer: Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 17.07.2013 made in A.S.No.73 of 2012 by the Principal Sub-Court, Mayiladuthurai, reversing the judgment and decree dated 09.04.2011 in O.S.No.194 of 2007 by the District Munsif Court, Sirkali.)

The appellant is the plaintiff. He filed the suit for recovery of a sum of Rs.48,250/- with subsequent interest based on a promissory note dated 03.09.2004 said to have been executed by the defendant.

2. The defendant contested the suit. His specific case is that he borrowed a sum of Rs.22,000/- from the plaintiff on 03.09.1999 and repaid the same with interest in the year 2000. His further case is that at the time of such borrowal, the plaintiff obtained a promissory note which he failed to handover after such discharge. It is the further case of the defendant that again on 03.09.2001, he borrowed a sum of Rs.38,000/- from the plaintiff and executed another promissory note. According to

the defendant, he repaid the said sum after 1 years and however, the plaintiff did not return the promissory note to the defendant. Thus it is specifically denied by the defendant that he borrowed any further sum on 03.09.2004 as alleged by the plaintiff and executed the suit promissory note on the same day. In his written statement, the defendant also raised an objection with regard to a material alteration, ie., alteration of the year of promissory note. In other words, it is the case of the defendant that a promissory note executed by him on 03.09.2001 in favour of the plaintiff is sought to be enforced by filing the present suit after the period of limitation by altering the date as 03.09.2004 as against the original date, viz. 03.09.2001.

3. The plaintiff examined himself as P.W.1 and examined the attesting witnesses of the promissory note as P.Ws.2, 3 and 4. He marked Exs.A1 to A5. On the side of the defendant, apart from examining himself as D.W.1, he marked Exs.B1 to B3.

4. The Trial Court, on considering the rival pleadings of the parties and the evidence let in by them, decreed the suit. On appeal, the appellate Court reversed the finding by taking note of the alteration made in the date, more particularly with regard to the year of execution. Therefore, the appellate Court rejected the suit on the ground that the suit is barred by limitation and also on the ground that there is a material alteration. As against such reversal of findings, the present second appeal is filed before this Court.

5. This Court, while admitting the appeal, framed the following substantial questions of law:

(a) Whether the judgment and decree of the Lower Appellate Court reversing the decree of the Trial Court, ignoring the date in Ex.A1 given in Tamil for holding the year to be 2001 as given in Ex.A1 is contrary to law?

(b) Whether the Lower Appellate Court contrary to the pleadings of the respondent in his written statement and without any material evidence to corroborate his plea of discharge of the loan for rejecting the claim of the appellant was sustainable in law?

(c) Whether the judgment of the Lower Appellate Court is without any evidence that the promissory note Ex.A1 in support of the suit loan is materially altered ignoring the evidence of scribe PW2 and absence of such replies to Exs.A2 to A5 have vitiated the judgment of the lower Court as contrary to law?

6. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials placed before this Court.

7. The learned counsel for the appellant contended that the defendant has admitted his signature in the suit promissory note and therefore the presumption is in favour of the plaintiff for decreeing the suit which the Trial Court has rightly done. According to the learned counsel, when the defendant admits that it is a blank promissory note which is signed by him, the entitlement of the plaintiff to fill up the same cannot be questioned in view of Section 20 of the Negotiable Instruments Act, 1881. Therefore, he contended that the question of material alteration does not arise in this case. Consequently, the learned counsel for the appellant submitted that when the suit promissory note was executed on 03.09.2004 as found in Ex.A1, the suit filed was well within time and therefore, the Lower Appellate Court was not justified in rejecting the suit.

8. Per contra, the learned counsel for the respondent reiterated the findings rendered by the Lower Appellate Court in support of the defendant in respect of material alteration and limitation and submitted that when there is a material alteration with regard to the date, the plaintiff is not entitled to the relief, more particularly when the suit itself came to be filed beyond the period of limitation.

9. It is true that the defendant admitted his signature in the suit promissory note. It is also true that the defendant has admitted the receipt of Rs.38,000/- from the plaintiff and signed a promissory note. But the area of dispute between the parties is not with regard to its execution but the time of such execution. According to the plaintiff, it was executed on 03.09.2004, whereas the defendant contended that he executed the same on 03.09.2001. It is the further contention of the defendant that he repaid the money due under such promissory note after 1 years. Therefore, it has to be seen as to whether the said promissory note marked as Ex.A1, as such, supports the case of the plaintiff or the defendant.

10. I have perused Ex.A1, viz., the original promissory note. It is apparent that the date of such promissory note, more particularly the year, is altered from 2001 to 2004. Yet another factor that came to light on perusal of the original Ex.A1, which according to me is vital to the plaintiff's case, is that apart from altering the year of the promissory note, a sentence is also written at the beginning as follows:

Tamil

11. A careful perusal of the said sentence would indicate and show that the same was not written by one and the same person who has written the other recitals of the suit promissory note, as I could see the difference in the style of letters written by the scribe of such promissory note. Therefore, it is evident that the plaintiff, apart from altering the numerical date, more particularly the numerical year in the suit promissory note, has also gone one step further and inserted a sentence with the date, month and year of such promissory note in letters, of course by a different person, even though in the same colour, viz. black ink, may be as an abundant caution in justification of the alteration of the year in numerical letter. In my considered view, this cannot be brushed aside as not the one of material alteration, even if the defendant has admitted his signature and that the suit promissory note is given in blank to the plaintiff.

12. Needless to say that the entitlement of the holder of promissory note under Section 20 of the Negotiable Instruments Act, 1881, for filling up the blank promissory note, admittedly signed by the defendant, does not mean that he is also entitled to alter the contents or recitals or date of such promissory note at his own will and pleasure latter. Once it is filled up, if any correction or alteration is found in the recitals and the same is disputed by the executor, certainly such action of the holder would fall within the meaning of material alteration and will not be protected by Section 20 of the said Act. When such being the position in this case and the material alteration is very evident on the face of it, I find that the Lower Appellate Court is justified in rejecting the suit by holding that the same is barred by limitation, apart from the ground that there was a material alteration made to the suit promissory note. The Trial Court, unfortunately failed to consider all these aspects while decreeing the suit.

13. Therefore, the questions of law raised in this appeal are answered against the appellant. Accordingly, the second appeal fails and it is dismissed. No costs.

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