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Court : Chennai Madurai

Decided On : Oct-24-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : S.A.No. 1273 of 2003

Appellant : Chellan

Respondent : P.G. Mony

Judgement :

(Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 15.03.2003 made in A.S.No.151 of 2002 on the file of the Principal District Court, Kanyakumari, confirming the Judgment and decree dated 03.07.2002, made in O.S.No.166 of 1998 on the file of the Subordinate Court, Padmanabhapuram.)

1. This Second Appeal has been filed against the judgment and decree dated 15.03.2003 made in A.S.No.151 of 2002 on the file of the Principal District Court, Kanyakumari, confirming the Judgment and decree dated 03.07.2002, made in O.S.No.166 of 1998 on the file of the Subordinate Court, Padmanabhapuram.

2. The defendant, who lost in the both the Courts below, is the appellant. The first respondent is the plaintiff. He filed a suit in O.S.No.166 of 1998 before the Subordinate Court, Padmanabhapuram, for recovery of a sum of Rs.40,500/- together with interest at 12% p.a. from the date of filing of the suit till the date of

decree; and at 6% p.a. from the date of decree till the date of realisation.

3. Facts of the case:

(i) According to the respondent, the appellant borrowed a sum of Rs.1,00,000/- on 18.06.1998 promising to repay the same together with interest at 12% p.a. and executed a promissory note. On the same day, he also executed one consent letter agreeing to repay the sum of Rs.1,00,000/- together with interest within one month. The appellant did not pay the amounts as promised. Therefore, the respondent issued a notice dated 30.07.1998 through his Advocate. Thereafter, the appellant has paid a sum of Rs.61,500/- by way of Demand Draft, drawn on State Bank of India, Arumanai. The appellant did not pay the balance sum of Rs.40,500/- to the respondent. Hence, the respondent has filed the suit in O.S.No.166 of 1998.

(ii) The appellant filed written statement and denied borrowal of money and execution of promissory note. The appellant has stated that he purchased a house from one Kanagaraj and his sisters for a total sale consideration of Rs.5,00,000/-. The said Kanagaraj is the co-brother of the respondent. As there was a shortage of Rs.1,00,000/- in receipt of sale consideration, at the instruction of the said Kanagaraj, the appellant executed the promissory note and consent letter in favour of the respondent. Subsequently, the appellant, came to know that the said Kanagaraj mortgaged the property with State Bank of Tranvancore, Thiruvattar Branch and borrowed money. The appellant paid the amounts due by Kanagaraj totally Rs.39,000/- and sent the Demand Draft for balance amount of Rs.61,500/- to the respondent and therefore, no amount is due to the respondent.

4. The Trial Court based on the pleadings, framed necessary issues and additional issues.

5. Before the Trial Court, the respondent examined himself as P.W.1 and marked six documents as Exs.A.1 to A.6. On behalf of the appellant, the appellant examined himself as D.W.1 and one Rajarathinam, scribe of the document was examined as D.W.2 and 10 documents were marked as Exs.B.1 to B.10.

6. The learned Subordinate Judge, Padmanabhapuram, considering the pleadings, oral and documentary evidence and the arguments of the learned counsel for the parties, decreed the suit rejecting the contention of the appellant.

7. Against the said judgment and decree, dated 03.07.2002, the appellant has filed A.S.No.151 of 2002 before the Principal District Court, Kanyakumari District at Nagercoil.

8. The learned Principal District Judge, Kanyakumari District at Nagercoil, framed necessary points for consideration.

9. The learned Principal District Judge after considering the pleadings, oral and documentary evidence, the judgment of the Trial Court and the arguments of the learned counsel for the parties, held that there is a presumption that the appellant received the consideration as mentioned in Ex.A.1, and the rebuttal put forth by the appellant was not acceptable and dismissed the appeal.

10. Against the said judgment and decree, dated 15.03.2003, the present second appeal is filed.

11. At the time of admitting the second appeal, this Court framed the following substantial questions of law:

(a) Have not the courts below committed an error of law in not evaluating the evidence in the nature of rebuttal brought before Court by the defendant in a legal manner resulting in miscarriage of justice?

(b) When the statutory presumption under Section 118 of the Negotiable Instruments Act is a rebuttal presumption and when there is legal evidence by way of rebuttal, is not the judgment of the Courts below vitiated in not adverting to various materials referred to above?

12. The learned counsel for the appellant submitted that the Courts below failed to consider Sections 44 and 45 of Negotiable Instruments Act while interpreting Section 118 of the Negotiable Instruments Act. The lower appellate Court ought to have held that the appellant rebutted the presumption by letting in evidence of

D.W.1 and D.W.2 and by marking of documents Exs.B.1 and B.2. The Courts below did not disbelieve the evidence of D.W.2, the scribe of Exs.A.1 and B.2 and ought to have held that the appellant did not borrow any money from the respondent, but executed Ex.A.1. The execution of Ex.A.1 - Promissory note is only for payment of amounts due to the said Kanagaraj, the vendor of the appellant, who is the co-brother of the respondent. The appellant has paid the amounts after deducting the amounts paid by him on behalf of the said Kanagaraj.

13. Per contra, the learned counsel for the respondent submitted that both the Courts below considered the admission of the appellant that he executed Exs.A.1 and A.2 and therefore, there is a presumption that he received consideration as mentioned in Ex.A.1. The Courts below considered the exhibits marked by the appellant and rejected the same on the ground that if Exs.B.3 to B.5 and B.7 to B.10 are accepted, that would amount to payment of more than Rs.1,00,000/- by the appellant to the respondent and therefore, there is no error in the judgment and decree of the Courts below and prayed for dismissal of the second appeal.

14. I have carefully perused all the materials available on record and the judgment and decree of the Courts below and considered the arguments advanced by the learned counsel appearing for the parties.

15. Once the appellant has admitted the execution of the promissory note and payment of part of the amount, it must be presumed that he received the consideration as mentioned in the promissory note. The presumption is rebuttal as per Section 118 of the Negotiable Instruments Act. From Exs.B.3 to B.5 and B.7 to B.10, it is seen that the appellant has paid a total sum of Rs.61,622/- on the behalf of the said Kanagaraj. Further, in Ex.B.1, Agreement of sale, it is not mentioned the Ex.B.2 - Sale deed, dated 18.06.1998. Therefore, the learned Principal District Judge, held that rebuttal of the appellant is not acceptable.

16. Further, it is seen that the appellant has not taken any steps against the said Kanagaraj or his sisters for recovery of the amounts alleged to have been paid on behalf of the said Kanagaraj. The appellant has not informed either the said Kanagaraj or the respondent that he has paid a sum of Rs.61,622/- as per Exs.B.3 to B.5 and B.7 to B.10. Under the circumstances, the Courts below have

considered Section 118 of the Negotiable Instruments Act in proper perspective and applying the said provision to the facts of the present case, has held that the appellant has rebutted the presumption in the manner known to law.

17. Considering all the materials available on record, this Court held that there is no error in the judgment and decree of the Courts below, warranting interference by this Court. In the circumstances, the substantial questions of law framed are answered accordingly.

18. In the result, the second appeal is dismissed confirming the judgment and decree of the Courts below. No costs.

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