

Mrs.Kanagambal Vs. Kanniappan.

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Court : Chennai

Decided On : Mar-22-2012

Judge : P.Devadass, J.

Acts : [Negotiable Instruments Act, 1881](#) - Section 118(a); Code of Criminal Procedure (CrPC), - Section 313,(1)(b)

Appeal No. : Second Appeal (MD) No.1238 of 2006

Appellant : Mrs.Kanagambal

Respondent : Kanniappan.

Advocate for Pet/Ap. : Mr.S.Harihara Ramachandran, Adv.

Judgement :

JUDGMENT

1. The plaintiff in O.S.No.216 of 1998 on the file of District Munsif, Vedasanthur is the appellant.

2. The suit was instituted on the basis of Ex.A.1 promissory note dated 22.01.1997 stated to have been executed by defendants 1 and 2 in favour of the plaintiff for their receipt of Rs.25,000/- agreeing to repay it with 12% interest p.a. However, they did not pay as agreed. So, the plaintiff issued them Ex.A.2 Lawyer's notice dated 27.4.1998. But, it was returned by them (Ex.A.3 returned postal

acknowledgment). But, on 15.5.1998, they have issued Ex.A.4 reply denying plaintiff's claim. In the circumstances, the plaintiff sued them.

3. The defendants have resisted the suit by filing written statement. They have stated that first defendant is related to the plaintiff. He stayed in her family, friendship developed between them. In 1995, on her request, first defendant had pledged her jewels in his name with Primary Agricultural Co- operative Bank, Vedsanthur for Rs.9,000/- and gave the money to her. Later, first defendant arranged his marriage. But, plaintiff objected to this. However, on 21.02.1996, he married Maheswari, the daughter of second defendant. In the circumstances, due to enmity, on 21.01.1997, plaintiff had falsely complained to Superintendent of Police, Dindigul that the first defendant had pledged her jewels and cheated her. On 21.01.1997 and on 22.01.1997, the first defendant was kept in custody in All Women Police Station, Dindigul. Inspector Fathima Beevi instructed him to redeem the jewels and as a security, he was forced to execute a promissory note for Rs.25,000/-. It was attested to by plaintiff's men. K.A.Somasundaram, Veeramuthupandi, Ramachandran, Baluchamy and Karunanidhi were also present. With the assistance of his father-in-law, first defendant had redeemed the jewels and gave them to the plaintiff. But, she evaded returning of the promissory note. On 20.2.1997, first defendant complained to Superintendent of Police, Dindigul. In the circumstances, based on the said promissory note, plaintiff filed this suit. Plaintiff's lawyer's notice has been suitably replied. Thus, the promissory note was obtained by coercion and force. It was not supported by consideration. So, the defendants are not liable to pay the suit amount.

4. The District Munsif, Vedsandur, framed the necessary issues and tried the suit. During the trial, plaintiff Kanagambal examined herself as P.W.1 and marked Exs.A.1 to A.4. Defendants 1 and 2 have examined themselves as D.Ws.1 and 2 and the attestors to the promissory note, namely, Jaganathan and Duraimarikannu as D.Ws.3 and 4 and Subbaiah, Secretary, Primary Agricultural Co- operative Bank, Vedsandur as D.W.5 and marked Ex.B.1. The cash receipt of the said Bank has been marked as Ex.X.1.

5. Appreciating the above evidence and the rival submissions, the trial Court came to the conclusion that the execution of the promissory note has been proved by the plaintiff. So, the presumption under Section 118 of the Negotiable Instruments Act arises. However, that has not been rebutted by the defendants by acceptable evidence. Thus, decreed the suit as prayed for with costs.

6. The defendants went in appeal in A.S.No.126 of 2004. The Additional Sub-Judge, Dindigul, coming to the conclusion that the defendants have established that Ex.A.1 promissory note was obtained from first defendant at the Police Station under coercion and there was no consideration for Ex.A.1. Thus, allowed the appeal and set aside the decree and judgment of the trial Court and dismissed the suit with costs.

7. Aggrieved, the plaintiff had directed this Second Appeal. At the time of admission, this Court formulated the following substantial questions of law for consideration:

1. Whether the respondents/defendants are entitled to raise the plea of failure of consideration after having admitted the execution of the promissory note dated 22.1.1997?

2. Whether the Lower Appellate Court is correct in rejecting the evidence of D.W.4 as his cross-examination was taken after one year and two months, holding that there was failure of consideration?

3. Whether the defendants are not bound to prove the force and coercion by the Police in executing the suit promissory note dated 22.1.1997?

8. According to the learned counsel for the appellant, plaintiff had proved execution of promissory note by the defendants. Defendants have also admitted the execution. In the circumstances, the First Appellate Court holding that it was not executed by the defendants as stated by the plaintiff is as against the evidence and the admission of the defendants. Once the execution is admitted the presumption under Section 118 of the Negotiable Instruments Act arises. Thereafter, it is for the defendants to dislodge it. (See BHARAT BARREL & DRUM

MFG. CO. Vs. AMIN CHAND PAYRELAL [1999 (3) SCC 35]). The learned counsel added that the defendants must prove the probability of their defence by acceptable evidence. Flaws in plaintiff's case will not discharge the burden of proof cast upon the defendants to rebut the presumption arising under Section 118 of the Negotiable Instruments Act. (See MURUGAN Vs. SUBRAMANIA GOUNDER [1997 (III) CTC 478]). The First Appellate Court must record his reasons as to why it disagree with the findings of the trial Court, otherwise the First Appellate Court cannot be said to have properly discharged its duty. (See MADHUKAR Vs. SANGRAM [AIR 2001 SC 2171] and PARVATHY, Vs. RAMAKRISHNA MISSION ETC. & 4 OTHERS [2001-3-LW. 182]). The learned counsel further contended that there is no proof that the jewels were of plaintiff. Ex.X.1 does not show that when the jewels were pledged? and whose jewels they are? The evidence let in will not show that the jewels belongs to the plaintiff. Without proper basis and reasoning the well reasoned judgment of the trial Court has been wrongly set aside by the First Appellate Court.

9. On the other hand, it has been contended by the learned counsel for the respondents that even without independent evidence, defendants can establish their case from the evidence of plaintiff itself. However, in this case, voluminous evidence has been let in by the defendants and it had rebutted the presumption under Section 118 of the Negotiable Instruments Act. (See H.M.KARI GOWDER Vs. S.A.K. CHINNATHAMBI CHETTIAR AND OTHERS [1976-2-MLJ 191]. A suit cannot be decreed merely on the basis of presumption under Section 118 of the Negotiable Instruments Act. (See G. VASU Vs. SYED YASEEN [AIR 1987 AP 139 FB]. Defendants need not prove their version beyond reasonable doubts. It is enough that something probable has been brought on record to dislodge the presumption under Section 118 of the Negotiable Instruments Act. Thereafter, the onus shifts to the plaintiff. (See KUMAR EXPORTS Vs. SHARMA CARPETS [2009 (2) SCC 513]. The evidence of D.Ws.1 to 5 and Ex.X.1 would clearly show that the 1st defendant had pledged the jewels of the plaintiff and given them back and under coercion and undue influence at the police station Ex.A.1 promissory note has been obtained from the defendants. No consideration has been passed for Ex.A.1. In this circumstances, the First Appellate Court has rightly dismissed the suit.

10. The suit has been filed by the plaintiff on the strength of Ex.A.1 promissory note dated 22.01.1997, which is stated to have been executed by defendants 1 and 2, who are son-in-law and father-in-law for they having received Rs.25,000/- from plaintiff and agreeing to repay it with 24% interest p.a.

11. As regards the presumption under Section 118 of Negotiable Instruments Act, onus of the plaintiff and of the defendant has been dealt with by the Hon'ble Supreme Court in BHARAT BARREL & DRUM MFG. CO. Vs. AMIN CHAND PAYRELAL [1999 (3) SCC 35].

12. The Hon'ble Apex Court held as under:

Once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non- existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the defendant is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the

defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

13. In *G. VASU Vs. SYED YASEEN* [AIR 1987 AP 139 FB], a Full Bench of the Andhra Pradesh High Court held as under:

Where, in a suit on a promissory note, the case of the defendant as to the circumstances under which the promissory note was executed is not accepted, it is open to the defendant to prove that the case set up by the plaintiff on the basis of the recitals in the promissory note, or the case set up in suit notice or in the plaint is not true and rebut the presumption under S. 118 by showing a preponderance of probabilities in his favour and against the plaintiff. He need not lead evidence on all conceivable modes of consideration for establishing that the promissory note is not supported by any consideration whatsoever. The words until the contrary is proved in S. 118 do not mean that the defendant must necessarily show that the document is not supported by any form of consideration but the defendant has the option to ask the Court to consider the non-existence of consideration so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that consideration did not exist. Though the evidential burden is initially placed on the defendant by virtue of S.118 it can be rebutted by the defendant by showing a preponderance of probabilities that such consideration as stated in the pro-note, or in the suit notice or in the plaint does not exist and once the presumption is so rebutted, the said presumption disappears. For the purpose of rebutting the initial evidential burden, the defendant can rely on direct evidence or circumstantial evidence or on presumption of law or fact. Once such convincing rebuttal evidence is adduced and accepted by the Court having regard to all the circumstances of the case and preponderance of probabilities, the evidential burden shifts back to the plaintiff who has also the legal burden. Thereafter, the presumption under S. 118 does not again come to the plaintiff's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance.

14. MOHAMMED ALI [2001 (1) CTC 281] and NATARAJAN [AIR 2005 MADRAS 90] are on the line of BHARAT BARREL [1999 (3) SCC 35]. Once execution is established/admitted, the presumption under Section 118 of the Negotiable Instruments Act will arise, thereafter, it is for the defendant to dislodge it. When the defendant dislodges the presumption, the plaintiff has to disprove it.

15. P.W.1 Kanagammal had stated in her evidence that on 22.01.1997, defendants 1 and 2 have borrowed Rs.25,000/- from her and executed Ex.A.1 promissory note and it was attested to by Jeganathan (D.W.3) and Durai Marikannau (D.W.4) and she had stated that it was executed at her residence. Claiming the amount plaintiff had issued Ex.A.2 Notice dated 27.04.1998. On 15.05.1998, defendants have sent Ex.A.4 Reply denying their liability.

16. In the trial Court, first defendant/D.W.1 Kanniappan admitted he having signed in Ex.A.1. He had also admitted that after knowing the contents only he had signed in Ex.A.1. His father-in-law/second defendant/D.W.2 Athimoolam in his cross-examination also admitted that the second signature in Ex.A.1 has been put by him. Both D.Ws.1 and 2 have accepted the attestation of D.Ws.3 and 4 in Ex.A.1.

17. Thus, defendants have admitted their execution of Ex.A.1 promissory note. However, they say that during 1995, first defendant had pledged plaintiff's jewels in his name with the Primary Agricultural Co-operative Bank, Vedasanthur and paid the amount to her. But, later she gave false complaint against first defendant. He was taken to All Women Police Station, Dindigul and was kept for two days. In the presence of several persons, Fathima Beebi, the Inspector compelled the defendants to execute Ex.A.1 Promissory Note. Later, 1st defendant had redeemed the jewels and gave them to the plaintiff. But, the plaintiff did not return the promissory note, however, instituted the present suit.

18. Defendant is employed in Agricultural Co-operative Bank. D.W.5 Subbiah, Secretary of the Agricultural Co-operative Bank, Vedasanthur stated that on 22.01.1997, D.W.1 had paid Rs.11,749/- under Ex.X.1 and redeemed the jewels. D.W.5 stated that they will give jewel loan only to the owner of the jewels. There is no indication in Ex.X.1 that the jewels belongs to the plaintiff. There is no indication that when the jewels were pledged with the bank. D.W.5 was also

unable to say that when the jewels were pledged with the Bank.

19. D.Ws.1 and 2 have stated that the jewels were redeemed on 22.01.1997 and they were returned to the plaintiff. There is no proof for this. Even as per their version, the jewel matter has gone to the police station and as a security for the jewels the promissory note was executed. If that is so, whether without getting any receipt plaintiff would have given the redeemed jewels to the plaintiff.

20. Ex.A.1 is dated 22.01.1997. Ex.A.2 Lawyer Notice is dated 27.04.1998. Only on 15.05.1998, in their Reply Notice Ex.A.4, defendants have introduced the story that with regard to the redemption of the jewel loan, Ex.A.1 has been obtained at the police station on 22.01.1997.

21. The first defendant is employed in Agricultural Co-operative Bank. If really Ex.A.1 was executed as stated by the defendants on 22.01.1997, why should they have kept quite till 15.05.1998. They did not make any private complaint as against the plaintiff for falsely obtaining Ex.A.1 promissory note from them. They also did not sent a complaint against Fathima Beevi, Inspector of Police, All Women Police Station, Dindigul to her superiors.

22. Ex.B.1 dated 20.02.1997 is stated to be a complaint given by first defendant as against plaintiff and her husband Meenakshi Sundaram to the Superintendent of Police, Dindigul. It is a copy. There is no acknowledgement or proof that it was lodged with the police or it was received by the police. To establish that, the defendants did not send for the so called complaint from the police.

23. Plaintiff and first defendant are relatives. According to defendants, first defendant acted as a collection agent for her money lending business. He assisted her during 1995. He married second defendant's daughter on 21.02.1996. In the circumstances, there is no acceptable reason for execution of the promissory note by the second defendant also. He had also signed in it.

24. In his written statement, first defendant had stated that when Ex.A.1 was obtained by force, Thandavan, Somasundaram, Veeramuthupandi, Ramachandran, Balucahamy and Karunathi were also present. But, he had not

examined any one of them.

25. D.Ws.3 and 4 Jeganathan and Durai Marikannu are the attestors to Ex.A.1 promissory note. In their evidence they have confirmed they having attested Ex.A.1.

26. According to P.W.1, Ex.A.1 was executed in her residence. However, according to the defendants it was executed when 1st defendant was in police custody.

27. In his chief examination, D.W.3 Jeganathan had stated that Ex.A.1 was executed in All Women Police Station, Dindigul and he also signed in Ex.A.1 there only. D.W.3 had stated about the details regarding execution of Ex.A.1 promissory note, but he stated that he had attested the promissory note in the police station. It is to be seen that the attestor Jeganathan entered the witness box as a witness of the defendants. When he was cross-examined by the plaintiff, he had stated that he did not know who wrote the promissory note. He did not know in whose name, the promissory note was executed. He did not know when it was executed. He did not know for how much amount the promissory note was executed. Top of it, he had stated that he did not see when the promissory note was written. Further, in his cross-examination, he had stated a different version. He had stated that he had signed in Ex.A.1 promissory note outside the police station. Thus, D.W.3 is speaking falsehood. His evidence cannot be taken as advancing the case of the defendants.

28. The other attestor is D.W.4 Durai Marikannu. He had entered the witness box as a witness of the defendants. He had stated all the details pursuant to the execution of Ex.A.1 promissory note as stated by plaintiff. However, he has stated that it was executed at the All Women Police Station. He had deposed in chief-examination on 05.07.2001. Long after that, on 25.09.2002, he was cross-examined. Now, in his cross-examination he did not confirm that the promissory note was executed at the police station. He also did not deny that it was executed at the residence of the plaintiff. In the circumstances, the wholesale rejection of the evidence of D.W.4 by the First Appellate Court due to the passage of time between his chief-examination and cross-examination is not correct in law.

29. The plaintiff had let in evidence as to the execution of Ex.A.1 promissory note by the defendants. In the circumstances, as per law, the presumption under Section 118 of the Negotiable Instruments Act that it was executed for valid consideration arose. But, it is a rebuttable presumption. The defendants have to dislodge this presumption by acceptable evidence. It may be by independent evidence or from the evidence of the plaintiff. If the defendants do so, then only the duty of the plaintiff to dislodge it arises. But, in the case before us, through the evidence of D.Ws.1 to 5, defendants have not rebutted the said presumption. The evidence let in would not establish that Ex.A.1 promissory note has been executed by the defendants at the All women Police Station, Dindigul under coercion and force without receiving any consideration.

30. In view of the foregoing, the view taken by the First Appellate Court is not correct and the trial Court has given cogent and convincing reason for accepting the case of the plaintiff. Thus, this Court answers the substantial questions of law as against the respondents/defendants.

31. In the result, the Second Appeal is allowed with costs. The decree and judgment of the First Appellate Court/Additional Sub Court, Dindigul, made in A.S.No.126 of 2004 are set aside and the decree and judgment of the Trial Court/District Munsif, Vedsanthur made in O.S.No.216 of 1998 are restored.

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