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Linga Nadar Vs. Manohari

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Court : Chennai

Decided On : Jan-28-2013

Judge : P.R.Shivakumar

Appellant : Linga Nadar

Respondent : Manohari

Judgement :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

28. 01.2013 CORAM THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR S.A.No.11 of 2013 Linga Nadar .. Appellant -Vs- Manohari .. Respondent Second Appeal filed under section 100 of C.P.C against the judgment and decree of the learned Principal District Judge of Tiruvallur made in A.S.No.14/2011 dated 10.07.2012 reversing the judgment and decree of the learned Subordinate Judge, Ponneri made in O.S.No.51 of 2005 dated 11.09.2009. For appellant : Mr.G.Thangavel ----- JUDGMENT The defendant in the original suit is the appellant in the second appeal. The suit O.S.No.51 of 2005 was filed for recovery of a sum of Rs.1,56,613/- consisting of Rs.1,00,000/- as principal component and Rs.56,613 as interest component upto the date of plaint based on the allegation that the appellant herein/defendant borrowed a sum of Rs.1,00,000/- promising to repay the said amount with an interest at the rate of 24% p.a and executed a promissory note to the said effect on 23.04.2003. The further averment made in the plaint is to the effect that since the appellant/defendant did not make payment either towards principal or towards interest, she had to issue a lawyer's notice on

24.08.2005 which was replied by the appellant/defendant by a reply notice containing allegations which are false according to the respondent/plaintiff and that the same pushed the respondent/plaintiff to file the suit.

2. The suit was resisted by the appellant herein/defendant who filed a written statement contending that he did not borrow any amount from the respondent on 23.04.2003. The appellant/defendant took a stand that he had borrowed a sum of Rs.1,00,000/- from the respondent/plaintiff in the year 2000 and that since he was not in a position to repay the said amount, he had to execute a promissory note in the year 2002 for the amount borrowed in the year 2000. It is his further contention that he repaid the said amount of Rs.1,00,000/- borrowed from the respondent/plaintiff together with interest at the rate of 24% p.a on various dates to the plaintiff in front of the witnesses and the same has also been noted in the account books. The further averment made by the appellant/defendant is that the promissory note executed in 2002 was altered and based on the altered promissory note the suit came to be filed. It is also his further averment that three other suits, namely O.S.No.260 of 2005, 261 of 2005 and 262 of 2005 were filed on the file of District Munsif Court, Ponneri against the appellant herein/defendant for recovery of money with the help of discharged promissory notes after making material alterations. Based on the above said averments, the appellant herein/defendant pleaded for the dismissal of the suit.

3. The learned trial Judge (the Subordinate Judge, Ponneri) framed the following issues:

1) Whether the defendant borrowed a sum of Rs.1,00,000/- on the basis of the suit promissory note dated 23.04.2003?

2) Is it correct that the suit amount was repaid by the defendant?

3) To what other relief? 4. Based on the above said issues framed by the trial Court, trial was conducted in which two witnesses were examined as Pws 1 and 2 and two documents were marked as Exs.A1 and A2 on the side of the respondent herein/plaintiff. On the side of the appellant herein/defendant two witnesses were examined as Dws 1 and 2 and no document was marked. The learned trial Judge

has erroneously noted the number of witnesses examined on the side of the defendant as 3, whereas only two witnesses were examined on the side fo the defendants as seen from the list of witnesses and list of documents annexed to the judgment.

5. The learned subordinate Judge, at the conclusion of trial, considered the evidence and upon such consideration decided the Issue No.1 against the respondent herein/plaintiff. However, the learned trial Judge while observing that the appellant herein/defendant who had pleaded discharge of loan had not produced sufficient evidence to prove it, chose to hold that the second issue could not be decided. The learned trial Judge observed that the respondent/plaintiff was not entitled to any other relief and based on the said findings dismissed the suit without costs by the judgment and decree dated 11.09.2009.

6. The said decree of the trial Court dated 11.09.2009 was challenged before the learned lower appellate Judge, namely the Principal District Judge, Tiruvallur in A.S.No.14 of 2011. Though the appellant/defendant had taken a plea that the suit promissory note was materially altered, the trial Court did not frame a specific issue regarding the same. The vacuum was supplied by the appellate Court in framing the said issue as the first point for consideration. The following points were identified as the points for consideration:

1) Whether the material alteration has been done on the suit promissory note?

2) Whether the plaintiff is entitled for decree and judgment as prayed for?

3) Whether the decree and judgment of the trial Court is legally sustainable?

4) To what relief the appellant is entitled 7. After hearing both sides, the learned Principal District Judge, on a reappreciation of evidence, answered the first point for consideration in the negative and all other points for consideration in favour of the appellant herein/plaintiff, with the result that the first appeal was allowed with costs through out setting aside the decree passed by the trial Court in O.S.No.51 of 2005 and decreeing the said suit for a sum of Rs.1,56,613/- together with interest on Rs.1,00,000/- at the rate of 12% p.a from the date of plaint till the date

of decree and thereafter, at the rate of 6% p.a till the date of realization. The said judgment and decree of the lower appellate Court dated 10.07.2012 is challenged in the present second appeal.

8. The matter stands listed today for admission. The arguments advanced by Mr.G.Thangavel, learned counsel for the appellant are heard. The grounds of second appeal, the materials produced in the form of typed-set of papers which include copies of judgments and decrees of the Courts below are also perused and upon paying its consideration to them, the Court pronounces the following judgment.

9. Of course it is a second appeal filed against a reversing decree of the lower appellate Court. A further appeal to the High Court against the decree passed in an appeal by a Court subordinate to the High Court shall lie to the High Court under Section 100 C.P.C. But the scope of entertaining such second appeal has been circumscribed by prescribing a qualification that such a second appeal shall lie only on a substantial question of law.

10. The case is a simple case of money suit based on a promissory note dated 23.04.2003. The respondent herein/plaintiff has approached the Court with the suit on the basis of his claim that he lent a sum of Rs.1,00,000/- on 23.04.2003 for the repayment of which the suit promissory note marked as Ex.A1 was executed by the appellant herein/defendant on the very same day. It is also the contention of the respondent/plaintiff that after the borrowal, no amount was paid either towards principal or towards interest. The defence case of the appellant herein / defendant is not so simple as that of the plaintiff's. According to the defence plea taken by the appellant herein/plaintiff, he borrowed a sum of Rs.1,00,000/- in the year 2000 and for the said amount he was forced (in fact the appellant/defendant in his written statement has used the word instigated) to execute a promissory note in 2002 and that the said promissory note has been produced as Ex.A1 by altering the same regarding its date. According to him, the last column meant for the year was altered from '2' to '3'. Not content with the same, the appellant herein/defendant also took a stand that he had repaid the entire amount borrowed from the respondent/plaintiff together with the agreed interest at the rate of 24% p.a and

that such repayments were made on various dates in pursuance of witnesses and the same came to be noted in the account note books.

11. The suit being the one not filed under Order XXXVII Rule 1 cannot be construed as a simple suit on promissory note for being tried as a summary suit. Of course, suit is based on Ex.A1 promissory note. But the suit has been filed stating the borrowal, the execution of the pronote and the failure to repay forming the bundle of facts constituting the cause of action for the filing of the suit. Even if the promissory note is rejected, then the suit cannot be simply thrown out because the borrowal has also been cited as part of the cause of action for filing the suit. The respondent / plaintiff has taken a categorical stand that the borrowal was made on 23.04.2003. On the other hand, the appellant/defendant, who admits having borrowed the amount stated in the plaint from the plaintiff, has chosen to take a plea that the amount was borrowed not on 23.04.2003 but was borrowed in the year 2000. What was the date of such borrowal in the year 2000 has not been spelt out anywhere in the written statement. Nor has it been brought to light in the evidence.

12. The appellant/defendant does not deny the execution of Ex.A1 promissory note. On the other hand, he would contend that the promissory note has been materially altered. In this regard, as pointed out in the preliminary portion of this judgment, the trial Court failed to frame an issue regarding the said plea of alleged material alteration of the suit promissory note. However, the learned trial Judge chose to hold that there had been material alteration in the year column of the promissory note based on the assumed differences in the figure '3' found at various places in the promissory note itself. Even though the appellant/defendant had taken a stand, after admitting that he had borrowed a sum of Rs.1,00,000/-, that the entire amount borrowed by him was repaid by him with interest at the rate of 24% p.a, the learned trial Judge chose to hold that evidence was insufficient to prove the said plea, but at the same time it gave a novel finding that the issue regarding the discharge of loan could not be decided.

13. The learned lower appellate Judge, conscious of the pitfalls and the lacuna found in the judgment of the trial Court, supplied the materials to fill up the vacuum

by framing necessary points for determination. As pointed out supra, the learned appellate Judge cured the defect of not framing an issue regarding material alteration of the suit promissory note by framing the first point for determination. The learned lower appellate Judge, after traversing the evidence, both oral and documentary, in the light of the pleadings made by both parties, rendered a finding that the case of material alteration of the suit promissory note was not substantiated. The question whether the suit promissory note has been materially altered or not is a question of fact. Such a question of fact was decided by the final court of appeal on reappreciation of evidence. Unless such a finding is shown to be perverse, in which case alone such a question will get elevated to the position of a substantial question of law, this Court cannot interfere with such finding of the Court below.

14. The learned counsel for the appellant would contend that the respondent/plaintiff filed three more suits namely O.S.No.260 of 2005, 261 of 2005 and 262 of 2005 on the file of District Munsif Court, Ponneri which were dismissed by the trial Court and on appeal, the decrees of the trial Court were confirmed and that no further appeal has been filed so far. Though the appellant/defendant might have referred to those three suits which, according to him, were dismissed and the decrees were confirmed on appeal, the judgment copies and the decree copies were not produced. Even assuming that those three suits filed by the respondent herein against the appellant herein ended in dismissal, the reason for the dismissal of those cases cannot be read into evidence in this case. The evidence adduced in this case have to be independently assessed and a decision have to be arrive at. No evidence adduced in the other case can be imported into the present case unless it is admitted in accordance with the rules for the admission of evidence.

15. So far as the case on hand is concerned, the plaintiff's case is that the borrowal was made on 23.04.2003 and Ex.A1 promissory note was executed on the said date. But the appellant/defendant, who has admitted the borrowal, has come forward with a plea that the borrowal was made in 2000 and the promissory note was executed in 2002. In this regard, Pws 1 and 2 have deposed in clear terms that the borrowal was made on 23.04.2003 and Ex.A1 promissory note was

executed on the same day. When such is the case, the appellant/defendant, who has pleaded that the borrowal was made in 2000 and the promissory note was executed in 2002 and not in 2003, ought to have led sufficient evidence to prove the said contention. The appellant/defendant, besides examining him as DW1, examined his own son-in-law as DW2 to show the amount borrowed from the respondent / plaintiff was finally repaid in full. According to them, the appellant/defendant was running a grocery shop and the same was sold to DW2 and out of the sale price, a sum of Rs.1,64,000/- was paid towards the full discharge of the amount borrowed from the plaintiff in the month of January 2003. The learned lower appellate Judge meticulously evaluated the evidence adduced on the side of the appellant herein/defendant through Dws 1 and 2 and came to the conclusion that their evidence was not trustworthy. The learned lower appellate Judge has referred to the defence plea of the appellant/defendant that the amount was repaid on various dates to the plaintiff in the presence of witnesses and the same had been noted in the account note books and the fact that contrary evidence was adduced through the witnesses to the effect that a sum of Rs.1,64,000/- was paid in the month of January 2003. Learned lower appellate has also referred to the fact that no scrap of paper was produced to show that the appellant/defendant was having a grocery shop and the same was sold to DW2. Though the appellant/defendant had taken a stand that the amount was repaid on various dates and the repayments were noted in the account books, account books were not produced. Learned lower appellate Judge has also found that the evidence was contrary to the pleading and hence, the alleged discharge pleaded by the appellant/defendant was not proved.

16. The case of the appellant herein/defendant seems to be that he had borrowed a sum of Rs.1,00,000/- in the year 2000. But he has not furnished the date of such borrwal. According to him, for the amount borrowed in 2000, he was made to execute a promissory note in 2002, namely on 23.04.2002. If at all, he had borrowed the amount in the year 2000 and not in 2002, the amount due would have been much more than Rs.1,00,000/-. No prudent man would have chosen to get a promissory note for the principal alone. It is not the case of the appellant herein/defendant that before the admitted execution of the pro-note in 2002, he had paid the entire interest upto the date of execution of the pro-note. On the other

hand, the appellant herein/defendant has made a categorical admission that he did not make payment after the borrowal. The relevant averment is found in paragraph 2 of the written statement. The following extract will make it clear: "The defendant has borrowed Rs.1,00,000/- from the plaintiff in the year 2000. Subsequently he was not in a position to repay the amount. Hence at the instigation of the plaintiff the defendant has executed the pronote in the year 2002 for the amount borrowed in the year 2000. Subsequently the defendant has repaid Rs.1,00,000/- together with interest at the rate of 24% per annum on various dates to the plaintiff in front of the witnesses and the same had been noted in the account note book." A reading of the said averment found in the written statement will show that according to the defence plea, there was no payment in between the date of alleged borrowal in the year 2000 till 23.04.2002. If it was so, the total amount on 23.04.2002, would have been much more than Rs.1,00,000/-. It would be nearly Rs.1,50,000/-. As pointed out supra, no prudent person would have chosen to get a promissory note for Rs.1,00,000/- alone when the amount due would be around Rs.1,50,000/-.

17. Secondly, if at all the promissory note was executed on 23.04.2002, by the end of January 2003, the amount to be repaid would be around Rs.1,18,000/- alone. It is the evidence adduced on the side of appellant/defendant that a sum of Rs.1,64,000/- was paid in the month of January 2003 which is highly improbable. Therefore, this Court is of the view that the lower appellate Court has rightly found the plea of discharge to be one not substantiated by reliable evidence. There is no evidence and proof to show that the appellant herein had taken receipts of the alleged payments made by him. If at all the entire debt had been discharged, he would have asked for the return of the promissory note. Without the production of the promissory note, he would not have repaid the entire amount. In case it was informed by the lender that the promissory note had been misplaced and it would be traced and handed over to the borrower, the borrower would have insisted upon passing of a receipt narrating the facts and incorporating an undertaking to cancel the promissory note and return it in case it is found out. That was not done. Considering all the above aspects alone, the learned lower appellate Judge had come to the conclusion that the plea of discharge made by the appellant/defendant was not substantiated. There is no defect or infirmity, much less perversity in the

said finding for this Court to interfere with the same in the second appeal.

18. Coming to the question of alleged material alteration, as pointed out supra, the finding regarding the same is only a factual finding. The learned trial Judge, without even framing an issue had chosen to make a comparison of the figure '3' found at various places in Ex.A1 promissory note and expressed an opinion that the last digit of the year column in the promissory note at the top of it and also in the date noted with the signature of the appellant herein/defendant, there had been a correction correcting the figure '2' into '3' and hence it had been materially altered. This court is not in a position to understand on what basis the Court came to such a conclusion. The learned lower appellate Judge drawing its attention to the date mentioned in Ex.A1 promissory note made the following observations: "On the promissory note, on the right side top, the date of execution was mentioned as 23.04.2003. On the stamp the defendant has signed and under the stamp also the defendant signed and put the date of execution i.e., 23.04.2003. The case of the defendant is that in 2002, '2' is changed as '3' to save the limitation. On the right side of the pronote on the numerical number '2' it was over written as '3'. But the defendant himself signed on the stamp and also under the stamp put the date of execution as 23.04.2003. No alteration has been made in the dates put under that signatures. Therefore, the Court comes to the conclusion that no material alterations were made regarding the date of execution on the pronote as alleged by the defendant. The trial Court has wrongly come to the conclusion that material alterations were made on the suit promissory note regarding the date of execution to save limitation." 19. Such a clear observation made by the learned lower appellate Judge on a factual issue does not require any interference unless it is shown to be perverse. Learned lower appellate Judge has fairly pointed out the fact that there had been a overwriting in the place provided for date at the top of the promissory note. However, the learned lower appellate Judge has made a clear finding that the date put up by the appellant herein/defendant below his signature was not at all altered and the same shows the date of execution to be 23.04.2003. It is not the case of the appellant herein/defendant that he did not have the practice of putting the date below his signature. On the other hand, it is his contention that the date of execution mentioned in the pronote has been altered to show the year as 2003 instead of

2002. The reasons assigned by the learned lower appellate Judge for coming to the conclusion that there was no material alterations draws support from the fact that the defence plea regarding the date of borrowal, date of execution of the promissory note and the plea of discharge has not been substantiated.

20. Therefore, this Court comes to the conclusion that the finding of the lower appellate court that there is no material alteration in the suit promissory note is not either defective or infirm much less perverse, giving room for interference with the same in the second appeal. There is no merit in the second appeal. No substantial question of law is shown to have been arisen in the second appeal and not even a question of law is shown to have been decided by the lower appellate Court erroneously. Hence, the second appeal deserves dismissal at the threshold. Accordingly, the second appeal is dismissed. gpa To 1. The Principal District Judge Tiruvallur 2. The Subordinate Judge Ponneri

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