

(2012) 02 MAD CK 0154
In the Madras High Court
Case No : Second Appeal No. 208 of 2007

C. Arumugam

APPELLANT

Vs

G. Selvadurai

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Citation : (2012) 02 MAD CK 0154

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : G. Jayachandran, for the Appellant;

Final Decision : Dismissed

Judgement

T. Raja

1. The appellant herein filed a suit in O.S. No. 353 of 2004 on the file of the Principal District Munsif Court at Vellore, seeking recovery of the

loan amount lent to the defendant/respondent herein together with interest and costs, by pleading that the defendant/respondent had borrowed a

sum of Rs. 30,000/- by executing a promissory note on 14.06.1990 and that, on demand by the plaintiff for repayment later, the defendant failed

to settle the loan amount. By Judgment dated 04.04.2005, the trial court decreed the suit ordering recovery of the principal amount to

thedefendant/respondent with interest @ 9% p.a. from the date of plaint till the date of decree and there after, @ 6% p.a. till the date of realisation.

Aggrieved over the said Judgment of the trial court, the defendant filed an Appeal in A.S. No. 54 of 2005 on the file of the Sub ordinate Court at

Vellore, and the learned Sub Judge, disagreeing with the reasonings of the trial court, reversed the judgment and decree passed by the trial court;

hence, the present Appeal by the plaintiff.

2. At the time of entertaining the Appeal, this Court formulated the following substantial questions of law for consideration:-

a) Whether the first appellate court was right in holding that the Ex.A1 was duly discharged through Ex.B5 when the alleged signature in Ex. B5

was specifically denied by the plaintiff?

b) Whether the first appellate court was right in entertaining the appeal of the defendant in a suit for money without paying proper court fees u/s 52

Explanation (3) of the Tamil Nadu Court Fee and Suit Valuation Act, 1955?

3. With reference to the questions of law, learned counsel for the appellant would submit that the learned Sub Judge, in order to reverse the

judgment and decree of the trial court in directing the defendant to pay to the plaintiff the principal amount of Rs. 30,000/- with interest at the rate

of 9% p.a. from the date of plaint till the date of decree and there after at the rate of 6% p.a. till the date of realisation, solely relied upon Ex.B5-

discharge receipt, where in, it is mentioned that the defendant discharged the principal amount of Rs. 30,000/- on 05.09.1994 in the presence of

panchayat da Rs. According to the learned counsel, in the light of categoric findings of the trial court against the recital contained in Ex.B5 by

observing that the defendant miserably failed to prove the execution of Ex.B5, the contrary conclusion of the lower appellate court depicts that the

said court totally misdirected itself in approaching the issue in its correct perspective, therefore ,it is absolutely necessary for this Court to step in to

efface the erroneous finding so as to restore the judgment of the trial court.

4. It is the case of the plaintiff/appellant that he had lent a sum of Rs. 30,000/- to the defendant and, in consideration of the same, the defendant

executed Ex.A1 Promissory Note, dated 14.06.1990. The contention raised by the defendant was that actually, Rs. 30,000/- was not paid to him

and that, for the earlier loans he had obtained from the plaintiff, by calculating interest thereon, double the amount was written in the Promissory

Note/Ex.A1 as security for ensuring repayment of the loan. In that regard, DW-1, in his evidence, would state that a panchayat was convened,

wherein, it was decided that the principal, interest and court expenses shall be Rs. 30,000/- and the defendant shall pay the said amount in full

discharge of all claims in respect of the suit promissory note. It is the emphatic

case of the defendant/respondent that a sum of Rs. 30,000/- was paid to the plaintiff on execution of the discharge receipt under Ex.B5 dated 05.09.1994. Under these circumstances, the only relevant question to be dealt with is as to whether the consideration mentioned in the pronote has been discharged or not.

5. The pronote under Ex.A1 is dated 14.06.1990 and it seems that a power of attorney was also executed on the same day. Subsequently, the defendant cancelled the power of attorney against one Sampath, examined on the side of the plaintiff before the trial court as PW-2. By looking into the same, the first appellate court held that in view of cancellation of the power of attorney which was executed in favour of Sampath, the plaintiff was instructed by Sampath not to withdraw the suit despite discharge of the loan by the defendant through execution of Ex.B5-discharge receipt. That is why, after exhaustively analysing the circumstances and the background behind initiation of the suit with reference to Ex.B5 and cancellation of power of attorney in favour of PW-2 Sampath by the defendant, the first appellate court declined to act upon the testimonies of PWs-2 and 3 as well as PW-4/Sampath by terming them as gained-over witnesses. Further, by verifying the signature found in the Vakalatnama with that of Ex.B5, the first appellate court arrived at a categorical conclusion that both the signatures found in the two documents are that of one and the same person. Insofar as Ex.B5 is concerned, the trial court declined to accept the same by citing a few trivial discrepancies. It could be seen that the panchayat was convened one week prior to repayment of the loan, which was done on 05.09.1994. To prove discharge of the loan amount of Rs. 30,000/- payable to the plaintiff by the defendant, a discharge receipt was marked under Ex.B5, where in, the plaintiff agreed to withdraw the suit, however, he failed to do so. Further, both DWs-2 and 3 stated that payment was made at about 2.30 pm. on 05.09.1994. When the above two witnesses have categorically deposed by getting into the witness box that they witnessed the plaintiff signing the discharge receipt under Ex.B5 on receipt of Rs. 30,000/-, the reason cited by the trial court for disbelieving the Discharge Receipt by stating that it was not written by a document-writer or an Advocate does not stand to any logic so as to disbelieve the discharge recitals under Ex.B5. On the contrary,

the lower appellate court aptly observed that it was written by the village people and that is why, there is no endorsement as to who wrote, which aspect does not affect the case of the defendant. This Court does not find any flaw or error with the finding of the lower appellate court in holding that Ex.B5 is a genuine document evidencing repayment of loan due under the pronote-Ex.A1 consequent to the decision of the panchayat and that the plaintiff acknowledged the receipt of Rs. 30,000/- in full quit towards the payment of his debt and thus, the defendant is not liable to pay any further amount.

In the light of the fore going discussion, by answering both the substantial questions of law as against the appellant, the second appeal is dismissed.

No costs.