

(2011) 06 MAD CK 0329
In the Madras High Court
Case No : S.A. No. 280 of 1998

Kuppayammal

APPELLANT

Vs

A. Sitheswaran, S. Natarajan, Shanmugham.S. and S.
Palanivel

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118, 20, 7, 8, 9
Stamp Act, 1899 — Section 2(12), 2(14)

Citation : (2011) 06 MAD CK 0329

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : K. Vasu Venkat, for the Appellant; S.V. Jayaraman, for T.
Chanasekaran, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice R.S. Ramanathan

1. The plaintiff in all the suits is the appellant. The plaintiff in these appeals filed suit on the basis of promissory notes executed by the defendants and the trial Court decreed the suits and the Lower Appellate Court reversed the judgment and decree of the trial Court and allowed the appeals. Hence, these appeals are filed by the plaintiffs.

2. The case of the plaintiff was that the defendants executed suit promissory notes after receiving consideration stated therein and thereafter, they made one payment and failed to pay the amount due on the promissory notes despite demands and hence, the suits were filed for recovery of the amount.

3. The defence of all the defendants was that no consideration was passed under the suit promissory notes and there was a dispute in the family of the defendants and one of the brothers of the defendants by name Palanivel, who is also a respondent, in some of the appeals, borrowed money and for the purpose of

defeating the rights of Palanivel, as per the advise given by Muthu Gounder, the plaintiff in O.S.Nos.141 of 1983 and 29 of 1983, these promissory notes were created as if the other defendants borrowed money from the plaintiffs and no consideration was passed and to defeat the rights of Palanivel, the defendants put their signatures in blank promissory notes and also affixed thumb impression in the front and back so as to make it appear that there was an endorsement and after the disputes between the family members of the defendants was over, the respondents did not get back the promissory notes from Muthu Gounder and taking advantage of the blank promissory notes, the said Muthu Gounder has filed these suits through his son, daughter and other relatives as if the respondents/defendants executed promissory notes in their favour for consideration stated therein and therefore, they are not liable to make any payment.

4. At the time of admission, the following substantial questions of law were framed:-

1. Whether the plaintiffs/appellants are entitled to the benefits u/s 20 of the Negotiable Instruments Act, as the case of the defendants is that they had signed and affixed their LTI on inchoate instrument?

2. Whether the presumption u/s 118 of the Negotiable Instrument Act will enure to the benefit of the plaintiffs/appellants or not inasmuch as the defendants have miserably failed to prove that the suit pro-note is a forged one?

5. It is submitted by the learned counsel appearing for the appellants, Mr. K. Vasu Venkat, that the Lower Appellate Court without appreciating the provisions of section 20 and 118 of the Negotiable Instruments Act, reversed the findings of the trial Court on surmises and conjectures and without appreciating the fact that the execution of promissory notes were admitted by the respondents.

6. He further submitted that the case of the appellants was that the respondents received the money and executed promissory notes in their favour. The defence was the defendants signed in the blank promissory notes for the reasons stated in the written statement and for the purpose of settling disputes, at the instance of Muthu Gounder and Muthu Gounder retained the promissory notes even after the dispute between the family members of the defendants was over and created the promissory notes by filling the blanks and filed the suits through his wife, daughter, sister, son and by himself. He, therefore, submitted that once the defendants admitted their signatures in the promissory notes, it amounts to execution and once execution is admitted the presumption u/s 118 of the Negotiable Instrument Act, will have to be drawn and therefore, the promissory notes must have been executed for consideration stated therein and in the absence of any evidence to disprove the same, the plaintiffs are entitled to the decree. He further submitted that it is the specific case of the plaintiffs/appellants that the promissory notes were executed by the defendants.

7. The defendants case was that the signatures found in the promissory notes

were that of the defendants, but they signed in those documents only for the purpose of settling the family dispute and no consideration was passed. The learned counsel appearing for the appellants, therefore, submitted that without proving the circumstances under which the defendants signed in those documents viz., in blank promissory notes, it has to be presumed that the documents were executed for consideration when the defendants admitted the signatures. He further submitted that the case of the defendants about the reason for signing in the blank promissory notes cannot be accepted and no attempt was made by the defendants to prove the circumstance under which the documents were alleged to have been executed by them.

8. He further submitted that u/s 20 of the Negotiable Instruments Act, the holder of the promissory note is empowered to fill inchoate instruments even assuming that the blank promissory note was signed by the defendants as alleged by them and therefore, the plaintiffs are entitled to sue on those promissory notes and without appreciating all these aspects, the Lower Appellate Court presumed that the promissory notes were not executed for consideration and the defendants have only put their signatures and thumb impressions and dismissed the suits.

9. In support of his contention, the learned counsel appearing for the appellants relied upon the following judgments:-

1. P. Talamalai Chetty Vs. Rathinasamy,

2. Mohammed Ali Vs. Abdul Sinab,

03 K. Mani Vs. Elumalai,

10. Mr. S.V. Jayaraman, the learned Senior Counsel appearing for the respondents submitted that the execution is different from signing the instrument and the presumption u/s 118 of the Negotiable Instruments Act can be drawn only when the execution is admitted and in this case, the respondents/defendants have not admitted the execution of the documents, but only stated that they put their signatures and affixed their thumb impression in the blank promissory notes, which were later filled up at the instance of Muthu Gounder in the name of his wife, son, sister and brother and therefore, the Lower Appellate Court has rightly held that there was no admission of execution. Therefore, the presumption under 118 of the Negotiable Instruments Act, can not be drawn.

11. He further submitted that when a person admits that he puts his signature in a blank promissory note, it will not amount to execution of the document and a person is said to have executed a document, only when the contents of the document were read by him or the same has been read over to him and understood by him and in case of blank promissory note, it cannot be stated that he has understood the contents and therefore, there is no admission of execution. In support of his contention, he relied upon the judgment reported in Velayudhan Vs. Velayudhan,

12. He further submitted that having regard to the fact that various promissory

notes were alleged to have been executed within a short period and the amounts were alleged to have been borrowed from the same family members would also probalilise that the promissory notes would not have been executed as alleged by the plaintiffs/appellants after the payment of consideration to the respondents/defendants. He further submitted that when an inchoate instrument was given and that was filled up by a person and makes himself as a payee, he will not become the holder in due course and therefore, he cannot maintain an action for recovery of money as if he is a holder in due course. In support of his contention, he also relied upon the following judgments:-

01 S. Ramiah Thevar Vs. Balasundaram,

2. Sri Khetramohan Ray Vs. Udayanarayan Panda and Another,

3. Ch. Birbal Singh Vs. Harphool Khan and Another,

and contended that when the defendant admitted his signature only in the promissory note and contended that he puts his signature on a blank promissory note, that will not amount to execution and presumption about the execution of the document cannot be drawn u/s 118 of the Negotiable Instruments Act.

13. Heard both sides.

14. To appreciate the contention of the learned counsel appearing for the appellants/plaintiffs, we will have to see the definition of "payee" as defined u/s 7, "holder" as defined u/s 8 and "holder in due course" as defined u/s 9 and they are as follows:-

"Payee"-The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

"Holder"- The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person to entitled at the time of such loss or destruction.

"Holder in due course"- "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer,

or the payee or indorsee thereof, if [payable to order],before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

15. As per section 118 of the Negotiable Instruments Act, until the contrary is proved that every negotiable instrument was made or drawn for consideration.

16. In these appeals, the appellants/plaintiffs filed the suits stating that the promissory notes were executed by the defendants. Therefore, the specific case

was that the defendants executed the promissory notes and they did not pay the amount and therefore, the suits were filed for the recovery of the amount. It is not the case of the plaintiffs that the defendants put their signatures in blank promissory notes and that was later filled up by the plaintiffs and filed the suits.

17. On the other hand, the defence of the defendants was that they only signed in blank promissory notes and they have not executed the documents. Therefore, when the plaintiffs filed the suits on the promissory notes stating that the promissory notes were executed by the defendants and when the defendants contended that they only signed in the blank promissory notes, which were later filled up, the initial burden is on the defendants to prove that they have only signed in the blank promissory notes, which were later filled up by the plaintiffs. Without discharging the initial burden that the blank promissory notes with only signatures were given, the defendants are not entitled to contend that the plaintiffs are not entitled to draw presumption u/s 118 of the Negotiable Instruments Act.

18. The appreciate whether the initial burden was discharged by the defendants, we will have to see the case put up by the defendants in the statement.

19. It was alleged that there was a family dispute in the family of the defendants and they wanted to create some documents to project as if the family incurred some debts and for that purpose, they approached Muthu Gounder, who is their family friend and as per the advise of Muthu Gounder, the defendants put the signatures in blank promissory notes and it was entrusted with Muthu Gounder and after the settlement of family dispute and partition was effected, they failed to get back the said blank promissory notes from Muthu Gounder and Muthu Gounder made use of the promissory notes by filing those blank promissory notes.

20. To prove that there was a family dispute during the relevant period and they entered into a family partition, which was written later, no evidence was let in except the oral testimony of the defendants.

21. Further the story alleged by the defendants cannot be accepted. According to the defendants, Muthu Gounder was the family friend and at his instance, the promissory notes were signed by the defendants for the purpose of showing that the family had incurred some debts. It was not stated why those blank promissory notes were allowed to be kept in the custody of Muthu Gounder and why no attempt was made by the defendants after the dispute was over, to get back the documents from Muthu Gounder. No explanation was forthcoming and as a matter of fact, there was an attempt by the defendants to prove their case by sending notice to Muthu Gounder and they manaveoured to create a reply as if Muthu Gounder admitted the receipt of the blank promissory notes from them and that attempt made by the defendants to prove that Muthu Gounder himself admitted the receipt of the blank promissory notes was rightly rejected by the Courts below. Therefore, in the absence of any proof adduced by the

respondents/defendants that they only put their signatures in blank promissory notes and they have not executed promissory notes after it has been filled up, according to me, the plaintiffs are entitled to draw presumption u/s 118 of the Negotiable Instruments Act.

22. The word "executed" was not defined in the Negotiable Instruments Act, but in the Indian Stamp Act 1899, section 2(12) deals with "executed" and "execution" and it is stated that "executed" and "execution" used with reference to instruments, mean "signed" and "signature". Therefore, as per the Indian Stamp Act, when a person signed an instrument, which is defined u/s 2(14) it amounts to execution of the instrument. Therefore, even assuming that the defendants only put their signatures in blank promissory notes, having regard to the provision of section 2(12) and 2(14) of the Indian Stamp Act, it can be held that they have admitted the execution of the document. However, according to me, the respondents/defendants failed to prove that they have only signed their names in the blank promissory notes and in the absence of discharging that initial burden on their part, the plaintiffs are entitled to draw presumption u/s 118 of the Negotiable Instruments Act that the promissory notes were executed for consideration received and this was not properly appreciated by the Lower Appellate Court.

23. Once execution is admitted, the plaintiff is entitled to draw presumption u/s 118 of the Negotiable Instruments Act and it is for the defendants to rebut the presumption. As stated supra, no evidence worth the name was let in by the defendants to disprove the presumption drawn in favour of the plaintiffs u/s 118 of the Negotiable Instruments Act.

24. As regards the contention of the learned Senior Counsel Mr. S.V. Jayaraman, appearing for the respondents that having regard to the case of the defendants that they have only affixed their thumb impression and put their signatures in blank promissory notes, the plaintiffs are not entitled to the benefits of section 20 of the Negotiable Instruments Act, in my opinion, that argument cannot be accepted in the light of the provisions of sections 7, 8 and 9 as stated supra.

25. As per section 20 of the Negotiable Instrument Act, where one person signs and delivers to another a person a paper stamped in accordance with the law relating to negotiable instruments then in force, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp.

26. It is further stated that a person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. It was also provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid there under. Therefore, as per

section 20 of the Negotiable Instruments Act, authority was given to the holder of the blank promissory note by the executant to complete the same and the person signing such instrument is liable to any holder in due course for such amount. According to me, this section can be considered only when the defendants prove to the satisfaction of the Court that they only gave blank promissory notes with their signatures and it was filled up by the plaintiffs later.

27. I have already held that the defendants have not discharged that initial burden and they have only stated that they have given blank promissory notes with signatures and in the absence of any satisfactory proof and that they only gave the blank promissory notes with signature, having regard to the provision 2(12) and 2(14) of the Indian Stamp Act, even assuming the defendants have given blank promissory notes with signature, it will amount to execution.

28. It was contended by the learned Senior Counsel appearing for the respondents that the Hon"ble Supreme Court in *S. Ramiah Thevar Vs. Balasundaram*, and *Kadarkarai Reddiar Vs. Arumugam Nadar*, that a person entrusted with a blank promissory note with his signature and fills his name as payee will not become in due course and therefore, the appellants cannot take advantage of section 20 of the Negotiable Instruments Act.

29. No doubt, in the judgment reported in *S. Ramiah Thevar Vs. Balasundaram*, which was followed in *Kadarkarai Reddiar Vs. Arumugam Nadar*, , the learned Judges have held relying upon the judgment reported in *Tarachand Kevalram Vs. Sikri Brothers*, , a person who makes himself the payee of an inchoate document by writing up or completing the negotiable instrument cannot be regarded as a holder in due course of that document. u/s 118 (g) of the Negotiable Instruments Act, there was a presumption that the holder of a negotiable instrument is a holder in due course. Therefore, having regard to the judgments rendered in *P. Talamalai Chetty Vs. Rathinasamy*, *Mohammed Ali Vs. Abdul Sinab*, ; and *K. Mani Vs. Elumalai*, , I am unable to agree with the view of the learned Judges" view in the judgment reported in AIR 1982 1 MLJ 341 and *Kadarkarai Reddiar Vs. Arumugam Nadar*, .

30. In this case, the plaintiffs in O.S.Nos.220, 222, 221 of 1984 and 141 of 1983 filed the suits on the ground that the promissory notes were executed in their favour by the defendants and they filed the suits in the capacity of "payee" and not in the capacity of "holder in due course". The plaintiffs in O.S.No.29 of 1983 also filed the suit as the legal-heirs to the payee and the plaintiff in O.S.No.219 of 1984 only filed the a suit as a holder in due course.

31. As per the judgment rendered in *S. Ramiah Thevar Vs. Balasundaram*, which was followed in *Kadarkarai Reddiar Vs. Arumugam Nadar*, a person who puts his name as payee cannot become the holder in due course. Though, the other judgments referred to above took a different view, even according to the judgment reported in 1982 (1) MLJ 341, a person who makes himself as a payee by filling blank promissory note will not become the holder in due course unless

he is able to prove that he became the holder in due course by paying consideration. According to me, the judgment reported in AIR 1982 1 MLJ 341 and Kadarkarai Reddiar Vs. Arumugam Nadar, can be applied only when it was admitted or proved that the defendants gave blank promissory notes with their signature only. But in this case, it was not proved and therefore, the contents in the judgment reported in 1982 (1) MLJ 341 will not be applicable to the facts of these case. However, having regard to the fact that the respondents/defendants have failed to discharge the initial burden that they only put their signatures in blank promissory notes and having regard to sections 2(12) and 2(14) of the Indian Stamp Act, it has to be presumed that the document was executed by the defendants and therefore, u/s 118 of the Negotiable Instruments Act, presumption shall be drawn in favour of the plaintiff that the document was executed for consideration and the defendants have not discharged their burden that no consideration was passed under the document.

32. Further, in the judgments reported in P. Talamalai Chetty Vs. Rathinasamy, Mohammed Ali Vs. Abdul Sinab, ; and K. Mani Vs. Elumalai, this Court has held that under Sec.20, a person who was given a blank promissory note with signature can fill the same and file the suit.

33. Hence, the common judgment and decree of the Lower Appellate Court is set aside and both the substantial questions of law are answered in favour of the appellants that the presumption u/s 118 of the Negotiable Instruments Act, will enure to the benefit of the plaintiffs as the defendants have miserably failed to prove that they gave only blank promissory notes with signatures and section 20 of the Negotiable Instrument Act, will not be applicable to the facts of the case, as it was not proved that the plaintiffs filled their name in blank promissory notes and therefore, they were not entitled to the benefits u/s 20 of the Negotiable Instruments Act. In the result, the common judgment and decree of the Lower Appellate Court is set aside and the suits are decreed and these second appeals are allowed. No costs.