

(2002) 09 MAD CK 0081
In the Madras High Court
Case No : Appeal Suit No. 1205 of 1986

Ramasami Moopar

APPELLANT

Vs

Ramaswami Moopanar and Karuppa Moopar

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118

Citation : (2003) 2 BC 662 : (2002) 4 LW 360 : (2002) 3 MLJ 808 : (2003) 2 RCR(Criminal) 488

Hon'ble Judges : A.S. Venkatachalamoorthy, J;A.K. Rajan, J

Bench : Division Bench

Advocate : T.V. Balakrishnan, for the Appellant; V. Raghavachari, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—The first defendant is the appellant in this Appeal.

2. The plaintiff-1st respondent has filed a suit for recovery of a sum of Rs.31,650/-, based on a promissory note.

The case of the plaintiff is that the plaintiff and defendants are relatives. On 27.07.1982, defendants-1 and 2 received a sum of Rs.25,000/- from

the plaintiff and executed a promissory note, agreeing to repay it with 12% interest thereon. In spite of repeated demands, the amount was not

repaid. The defendants are not entitled for any of the reliefs under the Debt Relief Act. Therefore, the plaintiff filed the suit for recovery of

Rs.31,650/- with interest.

3. The defendants filed a written statement, stating that they never received Rs.25,000/- from the plaintiff. The promissory note is not real. They

received only Rs.10,000/- and for the amount, they signed on a blank

promissory note and that has been filled up by the plaintiff subsequently. In fact, for having received Rs.10,000/-, the plaintiff was put in possession of the defendants' agricultural land and by efflux of time and by application of Tamil Nadu Act-4/38 and 40/79, the usufructory mortgage also gets discharged and therefore, no amount was due and payable by the defendants.

4. On the basis of the pleadings, the trial court framed the issues for consideration. On the side of the plaintiff, two witnesses were examined and on the side of the defendant also, two witnesses were examined.

5. After perusing the evidence on record, the trial court decreed the suit as prayed for. Aggrieved by that judgment and decree, the first defendant has preferred this Appeal.

6. Learned counsel appearing for the appellant submitted that the appellant had admitted only the signature in Ex.A1 promissory note. But, u/s 118 of the Negotiable Instruments Act, there is no presumption that the amount stated therein was received. In support of that contention, he relied upon a Judgment rendered by a learned single Judge of this Court and reported in 1998 TNLJ 95 [S.Laksharam Reddiar vs. K. Chockalinga Nainar and another].

7. The Supreme Court in K.P.O. Moideenkutty Hajee Vs. Pappu Manjooran and Another, , following a number of earlier pronouncements, held

that when a suit is based on a promissory note and the promissory note is proved to have been executed, Section 118(a) raises a presumption,

until the contrary is proved, that the promissory note was made for consideration. In the case of Kundan Lal vs. Custodian, Evacuee Property AIR

1961 SC 1316, the Supreme Court has held that the presumption u/s 118 Negotiable Instrument Act is one of law and a Court shall presume,

inter alia, that the Negotiable Instrument was made or endorsed for consideration. Therefore, the said Judgment of the learned Single Judge is not

in conformity with the Judgment of the Supreme Court. Under Section-118 of the Negotiable Instruments Act, there is a valid presumption with

respect to consideration also. Inasmuch as the learned Single Judge has held that there is no presumption for consideration, it is not a good law.

8. PW-1 in his evidence has categorically stated that he paid a sum of Rs.25,000/- on 27.07.1982 and that amount was received by the

defendants in the suit for discharging of a promissory note executed by them in favour of one Palanimuthu Naicker for a sum of Rs.7,500/- on

05.08.1981 and that discharge promissory note has also been marked as Ex.A-2. When the signature in the promissory note is admitted and when

the signatory states that he executed the promissory note in blank, it is an inchoate promissory note, that is, the plaintiff authorises the creditor to fill

up the promissory note. The plaintiff thereafter claims that it has been forged with false particulars. The evidence of Pws-1 and 2 proves that the

plaintiff has paid Rs.25,000/- on 27.7.1982 and as a guarantee for repayment, the appellant has executed the promissory note. The Judgment of

the trial court is legal and valid. We find no reason to interfere with the same.

9. The trial court granted a decree for a sum of Rs.31,650/- together with interest at 9% p.a. for Rs.25,000/- from the date of plaint till the date of

decree and thereafter at the rate of 6% p.a. till the date of repayment. This Judgment of the trial court is not illegal and it is perfectly valid.

10. The trial court decreed the suit without any costs for the reason that no notice was given to the defendants before filing of the suit. With respect

to costs, Cross Objection has been filed by the plaintiff. The judgment of the trial court in not awarding the costs for non issuance of suit notice is

not illegal and hence, the Cross Objection is also dismissed.

11. In the result, the appeal is dismissed. Cross Objection also stands dismissed. Parties are directed to bear their own costs.