

**(2011) 01 MAD CK 0397**

**In the Madras High Court**

**Case No : S.A. (MD) No. 956 of 2010 and M.P. (MD) No. 1 of 2010**

S. Antony

APPELLANT

Vs

M. Dharmaraj, A. Suresh and A. Ramesh

RESPONDENT

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**Date of Decision : 04-01-2011**

**Acts Referred:**

**Citation : (2011) 01 MAD CK 0397**

**Hon'ble Judges : P.R. Shivakumar, J**

**Bench : Single Bench**

**Advocate : H. Arumugam, for the Appellant; S. Sivathilagar, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

P.R. Shivakumar, J.—The first Defendant in the original suit filed by the first Respondent herein, is the Appellant in the present Second Appeal. The second and third Respondents herein were also made as co-Defendants.

2. The Respondents 2 and 3 herein/Defendants 2 and 3 are the sons of the Appellant herein/first Defendant. The suit was filed for recovery of money due under a promissory note allegedly executed jointly by all the three Defendants for a sum of Rs. 1 lakh. The defence plea taken by the Defendants before the trial court was that the promissory note based on which the suit was filed was not a genuine one and the same was a fabricated one. It was not even the case of the Defendants that the promissory note was concocted with the help of their signatures obtained in blank forms or blank stamp papers. On the other hand, the plea of the Defendants before the trial court was total denial of execution of the promissory note.

3. The first Respondent herein/Plaintiff, besides examining himself as first witness on his side, examined the scribe of the promissory note, marked as Ex.A2, as P.W.2. The said witness corroborated the evidence of P.W.1 in all respects regarding the execution of the promissory note and passing of consideration and both the courts below have concurrently held that the suit

promissory note was proved to be genuine. They have also concurrently found that the execution of the suit promissory note and passing of consideration were proved by the first Respondent herein/Plaintiff. The case of the first Respondent herein/Plaintiff was also crystal clear that it was a pure loan transaction in which a sum of Rs. 1 lakh was lent by the first Respondent to the Appellant herein/first Defendant and the promissory note was executed by the first Respondent herein/Appellant along with the Respondents 2 and 3/Defendants 2 and 3.

4. It is pertinent to note that the Respondents 2 and 3/Defendants 2 and 3 did not contest the suit and they also did not challenge the decree passed by the trial court. They have also not chosen to join with the Appellant herein for filing the second appeal. The decree was passed against all the three Defendants. The Defendants 2 and 3 seem to have no grievance against the decree passed by the trial court, which stand confirmed by the lower appellate court.

5. The plea of the Appellant herein/first Defendant is that though he had made borrowals from the first Respondent/Plaintiff to the tune of Rs. 1,10,000/- (which is Rs. 10,000/- more than the amount covered by the suit promissory note), he repaid the same and discharged the loan in full. The very contention of the Appellant herein/first Defendant that he was provided with financial assistance by the first Respondent/Plaintiff to the tune of Rs. 1,10,000/- without getting any document is quite improbable. Apart from that, the admission that he had borrowed an amount, which is even higher than the amount covered by the suit promissory note, will also make it clear that the suit promissory note is genuine and is supported by consideration. The courts below have arrived at a correct conclusion of a question of fact regarding the genuineness of the suit promissory note and the question of consideration, which decision cannot be termed "perverse" to enable the court to interfere with the same in the second appeal.

6. The further contention of the Appellant herein/first Defendant before the trial court was that the liability to repay the loan was discharged. But, not even a scrap of paper was produced by the Appellant herein/first Defendant to show such discharge in full or in part. Excepting the ipse dixit of the Appellant herein/first Defendant, who deposed as the sole witness on his side, there is no other evidence to corroborate his version. The courts below, on a proper appreciation of evidence, have arrived at a correct conclusion that the first Defendant failed to prove the alleged discharge and hence, the said conclusion cannot be termed either defective or infirm, much less perverse. There is no ground, whatsoever, for interference with the concurrent findings of the courts below. No substantial question of law is proved to have involved in this second appeal. Therefore, this Second appeal deserves to be dismissed even without notice to the lower appellate court.

7. Accordingly, the Second Appeal is dismissed. Consequently, connected Civil Miscellaneous Petition is dismissed. No costs.