(2009) 04 MAD CK 0110

In the Madras High Court

Case No : A.S. No. 358 of 1996

Thirugnanam APPELLANT

Vs

Manimuthu RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Citation : (2009) 04 MAD CK 0110

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

Bench : Single Bench

Advocate : N. Natarajan and Y. Prakash, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The plaintiff is the appellant in this appeal.

2. The plaintiff filed the suit for recovery of Rs. 30,000/- with interest on the basis of the promissory note executed by the respondent/defendant on

14.02.1990 in his favour.

3. The case of the plaintiff is that on 14.02.1990 for the purpose of his Gas Agency business the defendant borrowed a sum of Rs. 30,000/- from

him and executed a promissory note on the same day promising to repay the same with interest at the rate of 36% per annum and thereafter,

despite repeated demands, the defendant failed to make the payment and hence, he filed the suit.

4. The defendant denied the execution of promissory note and the borrowal of Rs. 30,000/- from the plaintiff. According to the defendant, there is

no privity of contract between the plaintiff and the defendant and he never borrowed any amount or executed the promissory note.

5. The plaintiff examined himself as P.W.1 and marked the promissory note as Ex.A1 and the defendant examined himself as D.W.1.

6. The learned Sub Judge on the basis of the above pleadings and evidence framed the following issues:

1. Whether the defendant executed a promissory note on 14.02.1990 after receiving Rs. 30,000/- in favour of the plaintiff?

2. Whether the defendant is entitled to the benefit of the Debt Relief Act?

3.Whether the interest demanded by the plaintiff is usurious?

4. Whether the plaintiff is entitled to the reliefs as prayed for in the plaint?

5. To what relief the plaintiff is entitled to?

7. The learned Sub Judge after analyzing the oral and documentary evidence, came to the conclusion that the promissory note was not executed by

the defendant and the plaintiff failed to prove that the promissory note was executed by the defendant and the plaintiff further failed to prove that he

had means to lend Rs. 30,000/- and dismissed the suit. Aggrieved by the same, this appeal is filed by the plaintiff.

8. In a suit on promissory note, when the defendant admitted the execution of the promissory note, a statutory presumption arises in favour of the

creditor that the promissory note was executed for consideration and it is for the defendant, the borrower, to prove that no consideration was

passed and under the promissory note and if the borrower is able to prove by preponderance of probabilities that there was no passing of

consideration as stated in the promissory note, the burden shifts to the creditor to prove that there was passing of consideration.

9. In this case, the respondent/defendant denied the execution of the promissory note and further contended that the plaintiff did not have means to

lend Rs. 30,000/-. When the defendant denied the execution of the promissory note, the plaintiff has to prove initially that the promissory note was

in-fact executed by the defendant. Once the plaintiff proved that fact, the burden would shift to the defendant.

10. The point for consideration in this appeal is whether the finding of the lower Court that the promissory note was not executed by the defendant

and there was no passing of consideration is correct?

11. In this case, the learned Sub Judge, after analyzing the oral evidence has given cogent reason for coming to the conclusion that there was no

passing of consideration under the promissory note and the plaintiff did not prove that the defendant executed the promissory note on 14.02.1990

as stated by him. In his evidence, the plaintiff was prevaricating about the date on which the defendant demanded the amount and the date on

which he made the payment. In the plaint it is stated that on 14.02.1990 the defendant borrowed Rs. 30,000/- and executed a promissory note

under Ex.A1. The plaintiff would also state that on 14.02.1990, the defendant demanded money but he would also say that two days earlier to

Ex.A1 viz., the promissory note, the defendant demanded Rs. 30,000/- and on that day he had the money with him and he informed the defendant

that he would make arrangements for lending that amount and for that purpose he got two days time. Further, he would state that he was getting

Rs. 3,000/- per month after deducting his expenses and by entering into a higher purchase agreement he got Rs. 30,000/-. When the defendant

specifically denied the execution of the promissory note and passing of consideration, the duty is heavily on the plaintiff to prove the execution of

the promissory note by the defendant.

12. In this case, it is admitted by the plaintiff that while he gave the amount to the defendant it was known to one Chandrasekar and Singaram

Chettiar and Chandrasekar is Office Manager of P.L.S. Company and on his recommendation only he gave the money to the defendant. When the

defendant denied the execution of the promissory note, the plaintiff could have proved the same by examining the said two persons. As a matter of

fact the Singaram Cherriar was the attesting witness to the promissory note and the promissory was filled up by a scribe in a printed form and

therefore, the plaintiff could have examined the scribe or Singaram Chettiar or Chandrasekarn to prove the execution of the promissory note when

that was specifically denied by the defendant.

13. Further, the plaintiff had stated that he was having that amount by entering into a hire purchase agreement. It is a common knowledge that while

entering into the hire price agreement, the borrower will not be paid the money and the money will be paid to the Manufacturer or Dealer or

supplier, who supplies the article on hire purchase and therefore, the allegation of the plaintiff that he was having Rs. 30,000/- with him by

executing hire purchase agreement cannot be believed. In addition to that the plaintiff has not proved his means to make the payment especially

when he was getting Rs. 3000/- per month after expenses.

14. The learned Sub Judge after carefully analyzing all these aspects has correctly come to the conclusion that the plaintiff has failed to prove that

the defendant executed the promissory note and there was no passing of consideration and dismissed the suit. I am satisfied with the reasons given

by the learned Sub Judge and there is no need to interfere with the findings of the lower Court.

15. In the result, the appeal is dismissed and the decree and judgment of the lower Court is confirmed. There is no order as to costs.