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S.A.No.609 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.11.2023

CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.No.609 of 2022
and
C.M.P.No.12070 of 2022

Saravanan

...Appellant

Vs.

Kandasamy

...Respondent

PRAYER:

Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and decree dated 12.10.2020 made in A.S.No.32 of 2019 by the learned Sessions (Fast Track Mahila) Judge, Namakkal, confirming the judgment and decree dated 19.03.2019 made in O.S.No.9 of 2015 by the learned Subordinate Judge, Rasipuram.

For Appellant : Mr.S.Saravana Kumar

For Respondent : No Appearance



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J U D G M E N T

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The defendant, who has concurrently been unsuccessful in both the Courts below, is the appellant before this Court, challenging the judgment and decree dated 12.10.2020 in A.S.No.32 of 2019 passed by the learned Sessions (Fast Track Mahila) Judge, Namakkal, confirming the judgment and decree dated 19.03.2019 passed in O.S.No.9 of 2015 by the learned Subordinate Judge, Rasipuram.

2. The brief facts of the case are set out hereinbelow and the parties are referred to in the same array as before the Trial Court.

FACTS OF THE CASE:

2.1. It is the case of the plaintiff that the defendant had borrowed a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) to meet his urgent family necessity on 26.01.2013 and executed a promissory note on the said date, agreeing to repay the amount together with interest at the rate of 12% per annum. On



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05.05.2013, the defendant had once again borrowed a further sum of Rs.75,000/- (Rupees Seventy Five Thousand only) for which, he had executed a promissory note agreeing to repay the money together with interest 12% per annum.

2.2. Though the defendant agreed to repay the amount on demand, when the plaintiff had requested repayment, the defendant had not come forward to make the payment. This constrained the plaintiff to issue a legal notice dated 22.09.2014 to the defendant which was also received by him on the very next day i.e., on 23.09.2014. The plaintiff would further submit that the defendant is not entitled to any relief under the Debt Relief Scheme. Since the money has not been paid, the plaintiff had come forward with the suit in question.

2.3. The defendant had filed a written statement, *inter alia*, at the outset, contending that the two promissory notes are fabricated and do not contain his signatures and left thumb impression. Therefore, it was the categorical contention of the defendant that he had neither executed the promissory notes nor



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affixed his left thumb impression on them.

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2.4. However, the defendant would come forward with a further contention that if after the signatures are sent for forensic examination and it is found that signatures and left thumb impression are those of his, then in such an event, the Court should take note of the fact that, 7 years ago, the defendant had approached the plaintiff for supplying mud for his brick kiln. The plaintiff had permitted him to dig and remove the mud. However, for every truck load of mud removed, the plaintiff insisted on payment. The defendant had sought time till the sale of the bricks to repay the money. Therefore, the plaintiff had insisted upon the defendant providing him those promissory notes and accordingly, two blank promissory notes had been executed and the defendant's left thumb impression was affixed on them.

2.5. The defendant would submit that on the sale of the bricks, he had repaid the sum of Rs.54,500/- (Rupees Fifty Four Thousand and Five Hundred only) by which, the repayment due to



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the plaintiff had been settled. When he had asked the plaintiff to return the promissory notes, he was informed that the promissory notes were misplaced and that the plaintiff would take steps to search the notes and hand them over the minute he locates them. The plaintiff, in June 2014, insisted upon the defendant, to dig mud from his lands. This was turned down by the defendant. Therefore, angered by this, the plaintiff had created these promissory notes.

TRIAL COURT:

3. The Trial Court has framed the following issues:

“1. Whether the plaintiff is entitled to get decree for the suit claim as prayed for?

2. Whether the suit promissory notes are true, valid and supported by consideration?

3. Whether the contention of defendant that he discharged the suit loan by paying Rs.50,000/- towards principal and Rs.4,500/- towards interest is true?

4. Whether the suit promissory notes are materially altered?

5. To what other relief is the plaintiff



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entitled?"

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4. The plaintiff had examined himself as P.W.1 and marked Exs.A1 to A4. On the side of the defendant, the defendant had examined himself as D.W.1 and one Kalaiarasan as D.W.2 and no documents were marked. The handwriting expert's report was marked as Ex.C1.

5. Ultimately, the learned Subordinate Judge, by judgment and decree dated 19.03.2019, has decreed the suit as prayed for together with interest at the rate of 9% per annum from the date of the plaint till the date of judgment and thereafter, at the rate of 6% per annum.

LOWER APPELLATE COURT:

6. Aggrieved by the said judgment and decree, the defendant had filed A.S.No.32 of 2019 on the file of the Sessions (Fast Track Mahila) Court, Namakkal. By judgment and decree dated 12.10.2020, the learned Judge dismissed the appeal and



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aggrieved by the concurrent judgment and decree, this second appeal was filed by the defendant.

7. Mr.S.Saravana Kumar, learned counsel appearing on behalf of the appellant, would state that the defendant has disputed his signatures, despite which, the plaintiff had not taken any steps to verify the signatures and the left thumb impression. He would submit that Ex.C1 – handwriting expert's report would show that the left thumb impression cannot be examined as it is faint. Therefore, he would submit that the plaintiff has failed to prove the execution of the promissory notes and he is not entitled to the decree and the same has to be set aside.

8. The arguments that are now advanced are that since the defendant had disputed the signatures, it is for the plaintiff to prove the same, which exercise has not been done successfully by the plaintiff and therefore, the findings of the Courts below that the promissory notes were executed by the defendant is *per se*



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aside.

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9. The learned counsel for the appellant would argue that there are discrepancies in the evidence of P.W.1 and P.W.2. He would also submit that there is a material alteration in the promissory notes and an issue has not been framed in this regard.

10. Heard the learned counsel appearing for the appellant.

DISCUSSION:

11. The defendant had come forward with 2 defences. Firstly, he would submit that the very signatures and the left thumb impression are not his and that the same are subject to proof. Further, in paragraph nos.5 and 6 of the written statement, the defendant would submit as follows:

“5. ஒருக்கால் தாவா " ஏ ", " பி " புரோதோட்டுகளில் உள்ள கைரேகைகளும் கையொப்பங்களும் இப்பிரதிவாதியுடையதுதான் என்று வாதி நீருபிக்கும் பட்சத்தில் தாவா " ஏ ", " பி " புரோதோட்டுகள் இரண்டும் வாதியால் சிருஸ்டிக்கப்பட்டவைகளாகும்.



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6. உண்மையில் 7 ஆண்டுகளுக்கு முன் சித்திரை மாதத்தில் இப்பிரதிவாதி வாதியை அனுகி செங்கல் சூளைக்கு மண் வேண்டும் என்று கேட்டதில் வாதி தன் நிலத்தில் இருந்து வெட்டி எடுத்துக்கொள்ளுங்கள் என்று சொன்னார். ஆனால் ஒவ்வொரு நடை மண் ணுக்கும் பணம் கொடுக்க இம்சித்தார். அதற்கு இப்பிரதிவாதி செங்கல் சூளைக்கு நெருப்பு வைத்து செங்கல் விற்பவன் வட்டியுடன் செலுத்தி விடுவதாக சொன்னார். அதற்கு வாதியும் ஒப்புக்கொண்டு இரண்டு வெற்று புரோநோட்டுகளில் ரேகைகளையும் கையொப்பங்களையும் பெற்றுக் கொண்டார்.”

12. The defendant had admitted to the fact that he has executed two blank promissory notes, in which, he has not only signed but also affixed his left thumb impression. In the light of this admission and the alternative plea taken by the defendant in paragraph nos.5 and 6 of the written statement, the argument of the learned counsel that the plaintiff has failed to prove the execution of the suit promissory notes is without any basis.

13. Both the Courts below have considered the evidence in extenso and decreed the suit. I see no reason to interfere with the concurrent findings of the Courts below and hence, this second appeal is liable to be dismissed, particularly, when the appellant



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does not contemplate any question of law much less a substantial question of law.

Accordingly, this second appeal stands dismissed.

Consequently, connected C.M.P. stands closed. No costs.

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Index :Yes/No

Internet:Yes/No

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To

1.The Sessions (Fast Track Mahila) Judge,
Namakkal.

2.The Subordinate Judge,
Rasipuram.

3.The Section Officer,
V.R.Section, High Court, Madras.



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P.T.ASHA.J,

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