



S.A.No.415 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.415 of 2017

and

CMP.No.11078 of 2017

Munusamy

...Appellant

Vs.

Alamelu

...Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree made in A.S.No.14 of 2014 on the file of the Subordinate Judge, Gingee dated 11.03.2016 and the judgment and decree passed in OS.No.250 of 2011 on the file of the Principal District Munsif Court, Gingee, dated 30.07.2014.

For Appellant : Mr.P.Thilagarajan

For Respondent : Mr.V.R.Appaswamee



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JUDGMENT

The unsuccessful defendant in the money suit is the appellant. The respondent filed a suit for recovery of suit on promissory note. The suit was decreed by the trial Court and the findings of the trial Court were confirmed by the First Appellate Court. Aggrieved by the concurrent judgment, the defendant is before this Court.

2. According to the respondent/plaintiff, the appellant borrowed a sum of Rs.75,000/- on 11.12.2010 and executed a suit pronote and agreed to pay the interest at the rate of 12% per annum. The appellant failed to repay the amount borrowed by him, in spite of several demands made by the respondent. Hence, the pre-suit notice was issued to the appellant on 08.09.2011 calling upon him to pay the amount due. There is no response from the appellant for the pre-suit notice. Therefore, the respondent was constrained to file a suit for recovery of suit promissory note.



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3. The suit was resisted by the appellant by denying very execution of the pronote. It was the further case of the appellant that there was a prior enmity between the appellant and the respondent regarding sale of a plot in the year 2006 and therefore, in order to take revenge on the appellant the respondent concocted the suit pronote and filed the suit.

4. Before the trial Court, the respondent was examined as PW1. Two attestors to the suit pronote were examined as PW2 and PW3. The scribe of the suit pronote was examined as PW4. On behalf of the respondent six documents were marked as Ex.A1 to Ex.A6. The appellant was examined as DW1 and three documents were marked as Ex.B1 to Ex.B3.

5. The trial Court on appreciation of oral and documentary evidence came to the conclusion that the respondent proved the due execution of suit promissory note and decreed the suit. Aggrieved by the same, the appellant herein filed the first Appeal in A.S.No.14 of 2014 on



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the file of the Subordinate Judge, Gingee. The first Appellate Court confirmed the findings of the trial Court and hence, the appellant has come up with this Second Appeal.

6. The learned counsel for the appellant submitted that the respondent failed to prove due execution of pronote by leading cogent evidence. It is the submission of the learned counsel for the appellant that when the evidence of PW4 regarding execution of suit promissory note is shaky, the Courts below ought not to have granted a money decree solely based on the evidence of PW4.

7. It is settled law in a suit for recovery of money based on promissory note, when the execution of the promissory note itself is denied, it is for the plaintiff to prove due execution. In the case on hand, in order to discharge his initial burden of proving execution, the respondent/plaintiff examined herself as PW1. Two attestors of the suit promissory note were examined as PW2 and PW3. The scribe was examined as PW4. PW1 and PW4 deposed about the due execution of



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suit promissory note. One of the attessor, who was examined as PW2, in his proof affidavit and chief examination deposed about the execution of suit promissory note, however, he failed to appear for cross examination. The other attessor of the suit promissory note was examined as PW3. Though PW3 deposed that the appellant did not sign the suit promissory note before him, he deposed about the payment of amount by the respondent/plaintiff. The scribe of the suit promissory note was examined as PW4. He deposed about the due execution of the suit promissory note. Both the Courts below believed the evidence of PW4.

8. In fact, in cross examination of the appellant as DW1 he had admitted that there was no enmity between PW4 and himself. When the appellant was not able to show why the evidence of PW4 regarding execution of suit promissory note should be discarded, the Courts below are right in accepting the evidence of PW4. Before filing the suit, the respondent issued a pre-suit notice calling upon the appellant to pay the amount due under the promissory note under Ex.A2 dated 08.09.2011. The said pre-suit notice was served on the appellant on 12.09.2011 as it is



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seen from Ex.A3 acknowledgment card. Even after receipt of the pre-suit notice, the appellant failed to give any reply to the respondent denying the execution of suit promissory note.

9. It is contended by the learned counsel for the appellant that there was a strained relationship between the appellant and the respondent in connection with the sale of a plot in the year 2006 and therefore, there was no possibility of money transaction between the parties in the year 2010. If the relationship between the appellant and the respondent is strained, immediately after receipt of notice from the respondent regarding suit promissory note, the appellant ought to have issued a reply that he had not executed the pro-note.

10. In the case on hand, even after receipt of pre-suit notice, the appellant failed to give any reply denying the execution. When the appellant was confronted with the pre-suit notice in his cross examination, he deposed as follows:

“வாதி அலமேலுவை எனக்கு தெரியும். அவர் கணவர்



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பெயர் ராமச்சந்திரன். அவரையும் எனக்கு தெரியும். வழக்கு தாக்கல் செய்வதற்கு முன்பாக வாதி 08.09.2011 அன்று வக்கில் நோட்டீஸ் அனுப்பினார் என்றால் சரிதான். வக்கில் நோட்டீசை நான் படித்து பார்க்கவில்லை. யாரிடமும் காட்டி அதன் விபரங்களையும் தெரிந்துகொள்ளவில்லை.”

11. A reading of deposition of the appellant as DW1 would suggest that his failure to give reply to the pre-suit notice was not properly explained. The evidence of DW1 as if he got bed ridden after issuing pre-suit notice is unnatural. In these circumstances, both the Courts below are right in coming to the conclusion that the respondent/plaintiff succeeded in proving the execution of suit promissory note by examining PW4. When there is nothing elicited from the cross examination of PW4, there is no justification to reject his evidence. Hence, I do not find any perversity in the findings of the Courts below in coming to the conclusion that the respondent proved the due execution of suit promissory note and no substantial question of law arises for consideration in this Second Appeal.



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12. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.



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S.SOUNTHAR, J.

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b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

30.10.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation Case : Yes/No

dna

To

1.The Subordinate Judge, Gingee.

2.The Principal District Munsif Court, Gingee.

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and

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