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S.A. No. 806 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 806 of 2009
and M.P.No. 1 of 2009

Vedharathinam

... Appellant

Vs.

Arunachalam

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 18.12.2008 in A.S.No.15 of 2008 on the file of the Sub Court, Nagapattinam confirming the judgment and decree dated 20.02.2008 in O.S.No. 244 of 2005 on the file of the District Munsif, Nagapattinam.

For Appellant : Mr.C.T.Mohan

For Respondent : Mr.T.K.Baskar

JUDGMENT

This second appeal has been filed to set aside the judgment and decree dated 18.12.2008 in A.S.No.15 of 2008 on the file of the Sub Court, Nagapattinam, confirming the judgment and decree dated 20.02.2008 in O.S.No. 244 of 2005 on the file of the District Munsif, Nagapattinam.

2. Before the Trial Court, the plaintiff/respondent herein filed a suit for



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recovery of money due on eight pronotes which were executed on different dates to the tune of Rs.1,00,000/- with costs.

3. For the sake of convenience, the parties are referred to as per their ranking in the suit.

4. The case of the plaintiff is that the plaintiff's son is a teacher by profession and the defendant is a very good acquaintance of the plaintiff's son. Therefore, the defendant is a very close family friend. The defendant wanted to do business in bricks. Therefore, he borrowed money from the plaintiff on different dates a sum of Rs.1,00,000/- and executed the pronotes. Thereafter, the defendant denied to repay the said loan amount to the plaintiff, besides denying the execution of the said pronotes. The plaintiff issued two legal notices in respect of two pronotes dated 15.05.2002 and 24.05.2022, for that, the defendant gave a reply with false allegations and denied repayment of loan. Hence, he filed a suit in O.S.No. 244 of 2005 for recovery of money.

5. In the said suit, the defendant filed his written statement stating that he never executed any pronotes. Due to the personal enmity, the plaintiff's son has created all the forged documents and has filed the suit using his father's name. On obtaining the copies of the pro-notes, he could see that he has never executed any of them. The plaintiff's son somehow managed to create those



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documents as he knew the signature of the defendant. Moreover, the plaintiff sent a legal notice only for the pronote dated 16.04.2005 and he has not referred the other pronotes. If really the defendant has executed all the promotes, the legal notice should contain the particulars about all the pronotes. The plaintiff and his son are money lenders for interest and the plaintiff has filed the suit since his son cannot file the suit as a Government Servant. The plaintiff's son was a money lender and complaints have been sent to his higher-ups about his business. The plaintiff's son under the impression that the complaints were given only by this defendant, to wreak vengeance has filed the suit with false allegations. Hence, he prayed for dismissal of the suit.

6. Considering all the evidence on record, the Trial Court framed two issues:

1. Whether the plaintiff is entitled for recovery of the suit amount from the defendant?
2. To what other reliefs and order as to costs.

7. Both the parties contested and at the time of trial, the plaintiff examined three witnesses and marked sixteen documents. The defendant examined one witness and marked seven documents and nine documents were marked by the Court witness. On hearing both sides and on the basis of the oral and documentary evidence, the Trial Court decreed the suit as prayed for with



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costs and interest @ 6%.

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8. Aggrieved by the judgment and decree passed by the Trial Court, the defendant filed the appeal in A.S.No.15 of 2008 on the ground that the trial Court ought to have come to the conclusion that the plaintiff has not discharged his burden that the pronotes are executed by the defendant. The learned Appellate Judge appreciated the fact that if really the plaintiff has created those pronotes, that is Exs A1 to A10, the defendant ought to have given a complaint to the Police station alleging forgery on the part of the plaintiff, but he has not taken any steps. Hence, the learned First Appellate Judge independently analysed the evidence on record and finally held that the signature found on the pronote belongs to the defendant and there is no evidence produced on the side of the defendant to disprove the signature found on suit pronote. On careful comparison of the admitted signature of the defendant in Ex.A11 with that of the signatures on Exs. A1 to A10, it was found to be resembling one another. Ex.A15 is the income tax return for the assessment year 2003-2004 and Ex.A16 is the income tax statement till 31.03.2003. As such, it is evident that Ex.A16 is an annexure of Ex.A15 and even the seal of income tax office is available on it. Therefore, the contention of the defendant that he has not borrowed any amount from the plaintiff is false and hence, dismissed the appeal



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by confirming the judgment of the Trial Court.

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9. Challenging the concurrent findings of the Courts below, the defendant filed this Second Appeal and the same was admitted on 18.08.2009 on the following substantial questions of law :-

(i). Whether the trial and appellate courts have committed error in assuming the role of an expert without considering other relevant evidence when it is settled law that the court cannot act as an expert as contended by the appellant?

(ii). Whether the trial and appellate courts erred in failing to make a thorough study to ascertain the characteristics, similarities and dissimilarities in the signatures of the defendant?

(iii) Whether the trial and appellate courts have decreed the suit relying upon the weakness of the defendant's evidence rather than assessing the evidence of the respondent/plaintiff as contended by the appellant?

10. Learned counsel for the defendant would submit that the Trial Court failed to compare the signature of the defendant with the signature available on the pronote by getting any expert opinion. The learned Trial Judge also failed to consider the Ex.B4 letter, written by the plaintiff's son Tamilselvan, who helped



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the defendant get the loan amount from his brother-in-law. The learned Judge has not considered the complaint given by the plaintiff to the Inspector of Police, Vaimedu Police Station where there is no mention about Ex.A1 to A10 and it is stated that he lent his retirement benefits to the tune of Rs.75,000/- to the defendant in May 2002 and that he gave the money on faith and belief. Therefore, without any evidence, the learned Appellate Judge erroneously decreed the suit, which is illegal and liable to be set aside.

11. Learned counsel for the plaintiff/respondent herein reiterated the submissions that found favour with the Trial Court and First Appellate court and prayed for dismissal of this Second Appeal.

12. The Trial court compared the signature of the defendant on the pronotes with the signatures of the defendant on the documents received from the Education Department, where the defendant worked as a teacher. As per Section 73 of the Indian Evidence Act, the Court is competent to compare the disputed writings of a person with the other writings which are admitted or proved to be his writings. Therefore, the admitted signatures on the leave letters belonging to the defendant were compared by the Trial Court with the suit pronotes and the same is permissible under law. This Court finds no error in the methodology adopted by the Court below.



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13. When the Courts below rendered a concurrent finding that the signatures on the pronotes and the documents obtained from the Education Department are identical, the defendant cannot contend that the suit was decreed on the basis of the weakness of the defendant's case. Hence, the concurrent findings rendered by the Courts below is purely based on facts warrant no interference and the substantial questions of law are answered in the negative.

14. At this juncture, learned counsel for the defendant submitted that, at the time of admission of the appeal, he deposited a sum of Rs.77,555/- to the credit of O.S.No.244 of 2005 as per the interim order passed by this Court on 18.08.2009. Now, he is ready to pay the balance principal amount with interest @ 6% which is in all amounts to Rs.47,466/-.

15. Learned counsel for the plaintiff raised serious objection to the aforesaid submission and claimed that the plaintiff is entitled for 9% interest.

16. Admittedly, the plaintiff has contested the case for well-high 20 years. In such view of the matter, this Court directs the defendant to pay the balance amount to the tune of Rs.60,000/- to the credit of O.S.No. 244 of



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2005 within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the plaintiff is entitled to withdraw the entire amount, including Rs.77,555/- deposited by the defendant as per the interim order passed by this Court, within a period of two weeks by filing appropriate application. If the defendant reneges from making payment as directed herein above, the plaintiff is entitled to file execution application for recovery of the said sum of Rs.60,000/-.

17. With the above observations, this second appeal is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order



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