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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.1139 of 2008

Renganathan(died)

1.Selva Rani

2.Raj Kumar

3.Sujatha

4.Saravanakumar :Appellants/Appellants/Defendants

.vs.

P.S.Thanjai Mathi :Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.49 of 2007, dated 31.1.2008, on the file of Principal District Judge, Madurai, confirming the judgment and decree made in O.S.No.501 of 2008, dated 31.10.2007, on the file of Principal Subordinate Judge, Madurai.

For Appellants :Mr.T.Antony Arul Raj
for Mr.Irulappan

For Respondent :Mr.D.Malaisamy

JUDGMENT

The Second Appeal is directed against judgment and decree



made in A.S.No.49 of 2007, dated 31.1.2008, on the file of Principal District Judge, Madurai, confirming the judgment and decree made in O.S.No.501 of 2008, dated 31.10.2007, on the file of Principal Subordinate Judge, Madurai.

2.The defendants in the suit are the appellants. The suit is for recovery of money based on a promissory note.The suit was decreed by the trial Court. The First Appellate Court affirmed the findings of the trial Court. Aggrieved over the concurrent findings, the defendants are before this Court by way of this Second Appeal.

3.According to the respondent/Plaintiff, the defendnats borrowed a sum of Rs.3 lakhs from the plaintiff on 12.07.2002 to meet out the family expenses and agreed to repay the same with interest at the rate of 24% p.a. Inspite of the demand made by the plaintiff, the defendants failed to repay the same and attempted to dispose of the property. Therefore, the Plaintiff filed the suit for recovery of money as stated supra.

4.The suit was opposed by the defendants by denying the very execution of the suit promissory note. It was the specific case of the defendants that the suit promissory note was a forged document.The defendants also disputed the financial capability of



the plaintiff to pay huge sum to the defendants. It was also stated that the defendants had transaction with one Krishnan. At the time of borrowing the amount, the said Krishnan got the important documents of title with respect to the property of the defendants. With these pleadings, the defendants sought for dismissal of the suit.

5.Before the trial Court, the plaintiff was examined as P.W.1 and the attester to the suit promissory note was examined as P.W. 2. The suit promissory note was marked as Ex.A1. The defendant was examined as D.W.1 and one document was marked as Ex.B1. The Forensic Expert's report and the first defendant's signature were marked as Ex.X1 and Ex.X2.

6.The trial Court, on consideration of oral and documentary evidence available on record, came to the conclusion that the plaintiff proved the due execution of the suit promissory note and decreed the suit as prayed for. Aggrieved by the same, the defendants preferred an appeal in A.S.No.42 of 2007 before the Principal District Judge, Madurai.The First Appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings of the Courts below, the defendants have come forward with this Second Appeal.



7.The learned counsel for the appellants submitted that the experts opinion relied on by the Courts below is not conclusive, especially, when the expert was not examined. Therefore, he said the findings based on expert's opinion is vitiated. The learned counsel further submitted that the plaintiff failed to submit any document to demonstrate the financial capacity to pay the suit amount to the defendants. He further submitted that the suit was filed without issuance of pre-suit notice and the said fact creates suspicion over the genuineness of the transaction.The learned counsel further submitted that the plaintiff failed to prove that there was valid demand and refusal by the defendants.

8.The suit was mainly resisted by denying the very execution of the suit promissory note. In order to prove the due execution of suit promissory note, the Plaintiff was examined as P.W.1. The attesor to the suit promissory note has been examined as P.W.2. The Courts below on appreciation of evidence of P.W.1 and 2 came to the conclusion that their evidence are complementary to each other. Apart from the evidence of the attesor as P.W.2, the Courts below relied on the expert's opinion marked as Ex.X1. A perusal of Ex.X1 would suggest that sample signatures of defendants 2 to 4 tally with the signature found in the promissory note. However, with regard to the questioned signature of first defendant in the



suit promissory note, expert said that he could not give any opinion. After taking into consideration the opinion of the expert in Ex.X1, along with the evidence of attesor P.W.2, the Courts below came to the conclusion that due execution of suit promissory note was proved. Though the expert in his report opined that he could not give any opinion with regard to the questioned signature of first defendant and in respect of other defendants, namely defendants 2 to 4, the children of the first defendant, he found that the signature of Defendants 2 to 4 tally with their questioned signature in the suit promissory note. When the signature of Defendants 2 to 4 are found to be true, the Court can presume that first defendant would have signed the document. Therefore, based on the evidence of attesor P.W.2 and expert's opinion, both the Courts below came to a factual conclusion that the due execution of the suit promissory note was proved by the plaintiff and the said finding does not suffer from any perversity.

9.As far as the financial capaity of the plaintiff is concerned, P.W.1 in his evidence deposed as follows:

நான் ரியல் எஸ்டேட் தொழில் செய்கிறேன். 20 வரை வீடு அல்லது பிளாட்கள் வரை விற்பனை செய்துள்ளேன். நான் கடன் உறுதிச் சீட்டின் பேரில் ரூ.3 லட்சம் கடன் கொடுத்தேன்□



10. There is no suggestion by the defendants in the cross examination of P.W.1 disputing his capacity to pay Rs.3 lakhs to the defendants. In such circumstances, the Courts below rightly came to the conclusion that the plaintiff has got the wherewithal to pay the said amount. The learned counsel for the appellants vehemently contended that the plaintiff failed to issue pre-suit notice and the said fact creates suspicion over the genuineness of the transaction. It is seen from the written statement that the plaintiff filed petition to attach the property of the defendants before judgment. It is also stated in the plaint that the defendants attempted to dispose of the property and hence, the plaint was filed. In such circumstances due to urgency, the plaintiff moved the Courts without issuance of any pre-suit notice and hence, the same cannot be put against the plaintiff.

11. The learned counsel for the appellants also submitted that there is no evidence available on record to prove the demand made by the plaintiff. The Plaintiff entered the witness box and deposed about the demand made by him on oath. Further, the very filing of the suit itself is a valid demand. Therefore the submission made by the learned counsel for the appellants regarding the absence of demand is not acceptable. I do not find any substantial question of law to interfere with the findings arrived at by the



Courts below.

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12.In fine, the Second Appeal is dismissed. No costs.

12.07.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

- 1.The Principal District Judge,
Madurai.
- 2.The Principal Subordinate Judge,
Madurai.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A(MD)No.1139 of 2008

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