

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09 - 09 - 2015

CORAM:

THE HON'BLE TMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 1045 of 2009

K. Vijayakumar ...Appellant/Plaintiff

Vs.

1. P.M. Moorthy

2. Vasanthi ...Respondents/Defendants

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S. No. 147 of 2008 on the file of the Additional District Judge, (FTC II) Gobichettipalayam, dated 27.04.2009 confirming the judgment and decree passed by the Principal Subordinate Judge, Gobichettipalayam, in O.S. No. 21 of 2007 on 25.6.2008.

For Appellant : Mr. V. Anandhamoorthy

For Respondents : Mrs. R. Meenal

JUDGMENT

Aggrieved by the unanimous decision of dismissal of the suit for recovery of money, by the Courts below, the plaintiff has preferred the instant Second Appeal.

2. The suit was filed for recovery of money based on a promissory note. The respondents / defendants are husband and wife. It is alleged by the plaintiff that on 23.3.2005, the defendants borrowed Rs. 1 lakh from him repayable on remand along with 12% interest. As there was no repayment, the suit came to be filed.

3. The suit was resisted by the defendants contending that there was no necessity for them to borrow money from the plaintiff. They had also denied the signatures on the promissory note. According to the defendants, the suit promissory note was created for the purpose of the suit and there is no truth in it.

4. The Courts below had concurrently held that the execution of suit promissory note was not proved. Challenging the same, the plaintiff has come up with the present Second Appeal.

5. Heard the learned counsel appearing for the parties and perused the records.

6. When the Second Appeal was posted for admission, only notice was ordered on 05.10.2009.

7. The only point that arises for consideration in this Second Appeal is whether the concurrent finding of the Courts below regarding the suit promissory note, requires any interference.

8. The plaintiff in the process of proving the suit promissory note Ex. A.1 had examined three witnesses besides examining himself. The Lower Appellate Court has held that when the execution of the suit promissory note denied and signature on the same is disputed, it is for the plaintiff to establish the same by sending it to the expert for comparison with the admitted signatures and prove the same. As the same has not been done by the plaintiff, the execution was held to be not proved.

9. As there are other modes of proving the execution of suit promissory note, the plaintiff had examined P.W.2 and P.W.3, who are the witnesses to the suit promissory note and also the scribe as P.W.4. Learned counsel contended that all the three witnesses and also plaintiff had deposed that the suit promissory note was duly executed and the witness had signed on the same. Significantly, all the witnesses examined on the side of the plaintiff have deposed that they did not know the place where the suit promissory note was written. Ironically, the scribe of Ex. A.1 also has deposed that he did not know the place where the promissory note was written. The scribe further deposed that he did not know about the payment of money and also the place where the suit promissory note was written.

When the scribe, who had written the document, is unable to speak about the place of execution of the promissory note and also the passing of consideration, the Courts below had rightly disbelieved the case of the plaintiff and dismissed the suit. The witnesses to Ex. A.1 who were examined as P.W.2 and P.W.3 also had pleaded ignorance about the execution and passing of consideration. When the plaintiff, who has got the initial burden of proving the execution of the suit promissory note, has failed to do so by proving the signature on the same with the aid of the report of an expert or through any admissible evidence, the initial burden is deemed to be not discharged. When the burden cast on the plaintiff is not discharged, he is not entitled to a decree and he has been rightly non-suited by the Courts below. Even in this appeal, there is no question of law arising for consideration in view of the concurrent finding of facts.

In the result, the Second Appeal is dismissed confirming the judgment and decree 25.6.2008 passed by the Principal Subordinate Judge, Gobichettipalayam, in O.S. No. 21 of 2007 as affirmed by the Additional District Judge, Gobichettipalayam, in A.S. No. 147 of 2008 by judgment and decree dated 27.04.2009. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District,
(FTC - II),
Gobichettipalayam.

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2. The Principal Subordinate Judge,
Gobichettipalayam.

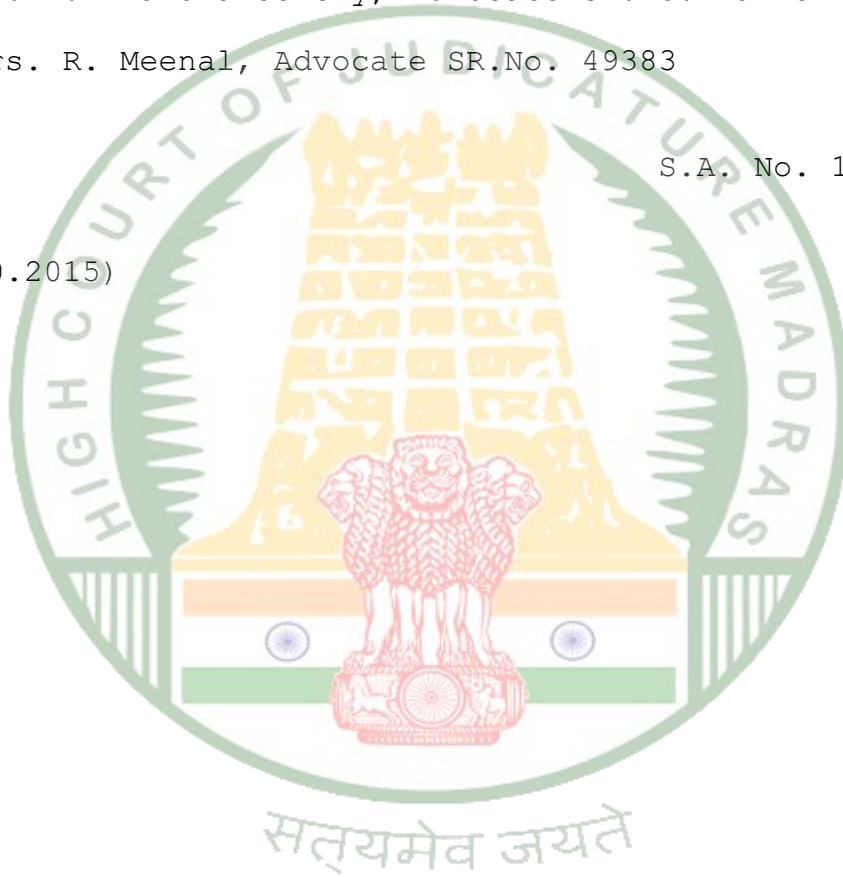
3. The Record Keeper,
V.R. Section,
High Court, Madras.

1 CC to Mr. V. Anandhamoorthy, Advocate SR.No. 49175

1 CC to Mrs. R. Meenal, Advocate SR.No. 49383

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MP (CO)
PSI (19.10.2015)



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