

In the High Court of Judicature at Madras

Dated: 08.07.2015

Coram:

The Honourable Mrs.Justice PUSHPA SATHYANARAYANA

Second Appeal No.360 of 2009

and

M.P.Nos.1 and 2 of 2009

Venkatesan

.... Appellant/Defendant

Versus

Marimuthu

.... Respondent/Plaintiff

Second Appeal filed under Section 100 read with Order 42 1 of Civil Procedure Code against the Judgment and Decree dated 29.11.2008 made in A.S.No.60 of 2007 on the file of the Subordinate Judge, Kallakurichi, confirming the judgment and decree dated 24.01.2006 made in O.S.No.666 of 2004 on the file of the Second Additional District Munsif, Kallakurichi.

For Appellant ... Mr.T.Arulraj

For Respondent ... Mrs.R.Meenal

JUDGMENT

The defendant, who suffered a decree in a suit for recovery of money based on a promissory note, has filed the above Second Appeal.

2. The defendant has borrowed a sum of Rs.60,000/- from one Pachamuthu Konar on 24.05.2001 and executed the suit promissory note for the said sum with interest payable. As the defendant had not repaid any amount, the said Pachamuthu Konar had made over the suit promissory note in favour of the plaintiff on 13.11.2003. Despite several demands, the defendant did not care to repay the money borrowed. Hence, the suit was filed.

3. The defendant resisted the suit contending that the suit promissory note was fabricated and he had never borrowed money from Pachamuthu Konar.

4. Both the courts below concurrently held that the plaintiff had proved his case and decreed the suit.

5. The appeal has been filed by the defendant contending that the plaintiff had not proved the passing of consideration.

6. The trial Court as well as the appellate court had based their conclusion on the evidence of PWs.1 and 2, who had categorically deposed that they had witnessed the defendant receiving money mentioned in the suit promissory note. Though the defendant had denied the signature in Ex.A1, the plaintiff had established the same by examining the attestors to Ex.A1 and the courts below also have held that there is no reason to discredit the evidence of PWs.1 and 2. The defendant also had not taken any efforts to establish that Ex.A1 was fraudulent and created for the purpose of the case. Ex.A3 is a promissory note executed by the defendant in favour of one Devaki Ammal. The signature on the same has been admitted by the defendant. The courts below have also compared the signatures in Exs.A1 and A3 in exercise of powers given under Section 73 of the Indian Evidence Act and held that both the signatures on the promissory notes are executed by the defendant only. Thus, having established that the signature contained in Ex.A1 is that of the defendant, the presumption is that valid consideration has been passed on the same in the absence of any rebuttal evidence on the side of the defendant. Insofar as the 'made over' is concerned, the courts below had given a categorical finding that the same is true and valid. In the above factual matrix, there is no reason to interfere with the concurrent finding of the courts below in the absence of any substantial question of law.

7. In fine, the Second Appeal is dismissed. Consequently, connected Miscellaneous petitions are closed. No costs.

mra

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge, Kallakurichi.
2. The Second Additional District Munsif, Kallakurichi.
3. The Section Officer, V.R.Section, High Court, Madras 104.

+ 1 cc to M/s.R.Meenal, Advocate SR 34826

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