

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Second Appeal No.492 of 2009
and
M.P.No.1 of 2009

R.Sekar

... Appellant/Defendant

Versus

Kalyani

.... Respondent/Plaintiff

Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 29.08.2008 made in A.S.No.165 of 2005 on the file of the Subordinate Judge, Kallakurichi, reversing the judgment and decree dated 01.02.2005 made in O.S.No.722 of 2003 on the file of the Principal District Munsif, Kallakurichi.

For Appellant : Mr.Sam Jayaraj Houston
for
M/s.Sarvabhauman Associates

For Respondent : Mr.V.Bhiman

JUDGMENT

The defendant is the appellant in the suit for promissory note.

2. The suit is filed based on Ex.A1-Promissory note dated 10.01.2001 alleged to have been executed by the defendant for a sum of Rs.20,000/-. The said promissory note is denied by the defendant as the same is not true and valid. The plaintiff and the defendant are closely related and according to the defendant, the plaintiff had no means to lend the said sum and also that the defendant had no necessity to borrow the amount. The plaintiff also had filed a suit for partition against the defendant and others in O.S.No.7 of 2002. As there was enmity between the plaintiff and the defendant, the suit has been filed against the defendant with an intention to harass him.

3. Before the trial Court, the plaintiff examined herself as PW.1 besides examining one more witness as PW.2 and marked Ex.A1 promissory note. The defendant examined himself as DW.2 and no documents were marked on the side of the defendant.

4. Considering both oral and documentary evidence adduced on both sides, the trial Court dismissed the suit. Aggrieved by the same, the plaintiff preferred the appeal before the Subordinate Court, Kallakurichi. On appeal, the suit was decreed. Aggrieved, the defendant filed this Second Appeal.

5. At the time of admission, the following substantial question of law is formulated for consideration:-

"Whether the lower appellate court as the final court of fact was correct in law in ignoring the discrepancies in the evidence of PW.1 and PW.2 and the failure on the part of the respondent to examine the persons, who have allegedly witnessed the execution of Ex.A1 pronote?"

6. Heard the learned counsel appearing on both sides and perused the materials available on record.

7. The learned counsel for the appellant/defendant contended that there was a discrepancy in the evidence of PW.1 and the scribe. PW.1 says that Ex.A1-promissory note was written in the evening about 4'0 clock, whereas the scribe, who had been examined as PW.2, has deposed that it was written in the morning around 10 a.m. Even with respect to passing of consideration, PW.1 has stated that the amount was paid to the defendant in the residence of the plaintiff, whereas the scribe has stated that it was paid to the defendant in front of the Registrar Office. The reading of depositions of PW.1 and PW.2 would clearly indicate that in every aspect the plaintiff tried to prove PW.1 and PW.2 have deposed contrary to each other. Therefore, the trial Court had doubted the passing of consideration and the execution of promissory note.

8. Further, the evidence of PW.1 is that the amount that paid to the defendant was a sreedhana property, which was given to her at the time of her marriage, which had taken place 25 years ago. The said evidence of PW.1 was disbelieved as the version of PW.1 that she had kept the cash in her hand for more than 25 years is unbelievable.

9. On the other hand, the learned counsel for the defendant had contended that inspite of denial of the signature in Ex.A1 promissory note, the plaintiff had not taken any steps to send it to the Expert. However, the appellate Court compared the signature of the defendant

on Ex.A1 with the suit summons, vakalath and the affidavit in the Interlocutory Application and also in the deposition. The defendant had disputed the signatures even on the admitted documents. Even in the absence of opinion of an Expert, the plaintiff could have independently proved the signature of the defendant. However, the plaintiff had failed to do so.

10. No doubt, the court has got power to compare the signatures on its own. The question is whether the lower appellate court was right in comparing the disputed signature on Ex.A1 with that of the signatures found in the subsequent documents, namely, written statement, vakalath in the same proceedings is correct? It is also settled principle that the signatures found in the subsequent documents cannot be recorded as the reliable standard for comparison. A comparison can be made only with the contemporaneous admitted signatures of the defendant. In such circumstances, the comparison done by the lower appellate court with the subsequent documents is unsustainable and is liable to be set aside.

11. Though, it is open to the plaintiff to prove the suit promissory note, independent of the expert's opinion, the plaintiff has failed to do so. In the absence of proof of execution of the promissory note, the lower appellate court had shifted the onus on the defendant to prove Ex.A1-promissory note, which is wrong. Besides, the lower appellate court being the final fact finding court, ought to have compared the contradictory version of the evidences of PW.1 and PW.2. In view of the above discussions, it is held that the plaintiff has not discharged the burden on her to establish the execution of the document Ex.A1. Hence, the question of law formulated is answered in favour the appellant/defendant and against the respondent/plaintiff.

12. In the result, the Second Appeal is allowed. The judgment and decree of the lower appellate court is set aside and the judgment and decree of the trial Court is restored dismissing the suit. Consequently, connected Miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mra

To

1. The Subordinate Judge, Kallakurichi.

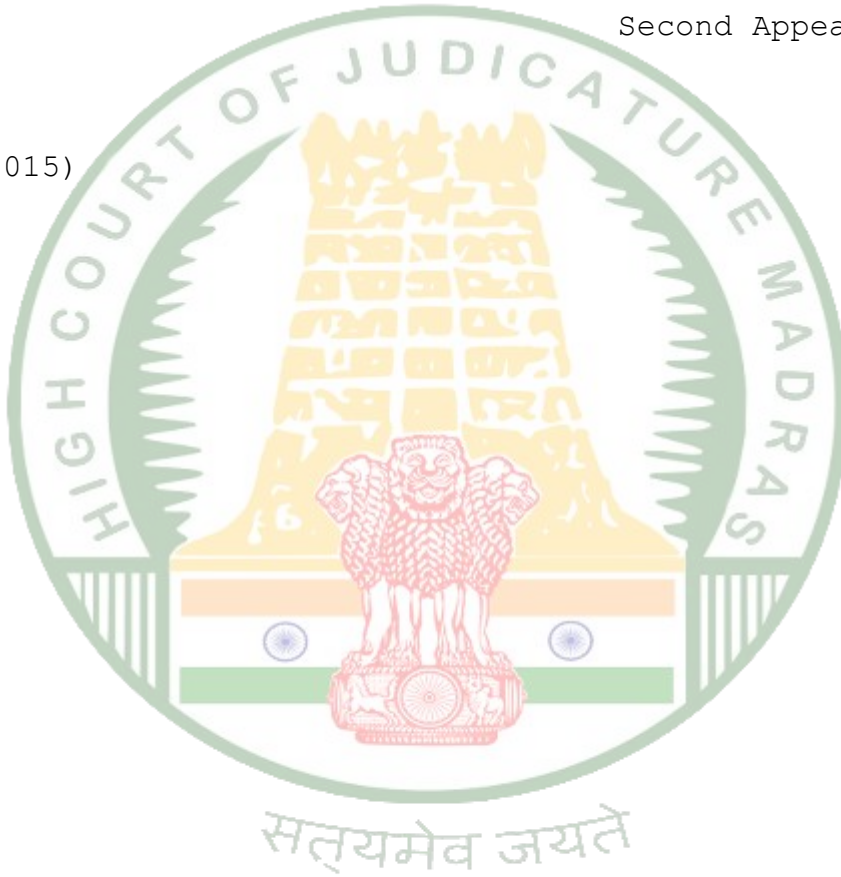
2. The Principal District Munsif, Kallakurichi.

+1cc to Mr.V.Bhiman, Advocate, S.R.No.36818

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.36868

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JSV(CO)
CA(12/08/2015)



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