

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.319 of 2015

M.Mallika

... Appellant/Respondent/Plaintiff

Vs.

Perumal Pillai

... Respondent/Appellant/Defendant

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 18.08.2014 passed in A.S.No.87 of 2014 on the file of the Subordinate Court, Arakkonam, reversing the judgment and decree dated 24.08.2011 made in O.S.No.205 of 2010 on the file of District Munsif Court, Sholingar.

For Appellant : Mr.M.Chidambaram

J U D G M E N T

The Second Appeal is filed by the plaintiff against the judgment and decree dated 18.8.2014 passed in A.S. No. 87 of 2014 passed by the Subordinate Court, Arakkonam, wherein and by which the judgment and decree dated 24.08.2011 recorded in a suit for recovery in O.S.No.205 of 2010 on the file of the District Munsif Court, Sholingar, were reversed allowing the first appeal at the instance of the defendant.

2. The case of the plaintiff is that the defendant / respondent had borrowed a sum of Rs.20,000/- and executed a promissory note dated 22.11.2007 in his favour agreeing to repay the same in demand, with interest at 24% p.a.

3. Resisting the suit, the defendant filed written statement denying the execution of the promissory note.

4. Before the trial Court, the plaintiff's husband was examined as P.W.1 and marked the documents as Exs.A1 to A.4. To

nullify the evidence adduced on behalf of the plaintiff, the defendant examined himself as D.W.1 besides examining one Kasi as D.W.2 and marked the document as Exhibit B.1.

5. The Trial Court after considering the facts and the circumstances of the case, believing the evidence of P.W-1, who is the husband of the plaintiff, has come to the conclusion that the promissory note was executed by the defendant and consideration was passed. The Trial Court has also discredited the evidence of DW-2. As the signature of the defendant is denied, the Trial Court had compared the signature and found that the signature of the defendant is true and genuine. Aggrieved by the same, the defendant had filed an appeal, which was allowed, setting aside the judgment and decree of the Trial Court. Hence, the plaintiff has come up with the instant Second Appeal.

6. Heard Mr. M. Chidambaram, learned counsel appearing for the appellant and perused the records.

7. Though it is incumbent upon the plaintiff to establish the execution of the promissory note, in this case, excepting the evidence of PW-1, who is the husband of the plaintiff, no other evidence is forthcoming. The evidence of D.W-2, Kasi, has been disbelieved by the Trial Court on the ground that he had also borrowed money from the plaintiff / appellant and was facing a case for recovery of the sum borrowed. Hence, the Trial Court had concluded that the evidence of DW-2 cannot be believed.

8. The Cardinal principle is that the burden is on the plaintiff who comes before the Court, to establish the execution of the promissory note, on proof of which, the onus shifts on the defendant. In this case, inspite of the denial of execution of the promissory note, the plaintiff / appellant has not taken any steps to send it to an expert or to prove the execution by any other independent means. When the defendant had specifically denied the signature on Ex.A1, the plaintiff ought to have proved the signature by appointing an expert. Excepting the interested testimony of P.W.1 who is the husband of plaintiff no other evidence is adduced to prove Ex.A1. Besides admittedly the plaintiff is bed ridden for more than a decade. Even on the date of Ex.A.1 plaintiff was sick. Whiles, the appellate court found that it is improbable that plaintiff lent money to defendant and obtained Ex.A.1 pronote. There is no perversity in the above finding as the defendant also had denied the execution and there is no other evidence to support the borrowal by defendant, the said finding cannot be interfered with. The Lower Appellate Court has rightly dismissed the suit, which does not warrant any interference in this second appeal. Hence, the same is liable to be dismissed.

Accordingly, the Second Appeal is dismissed and confirming the Judgment and decree dated 18.08.2014 passed in A.S.No.87 of 2014 on the file of the Subordinate Court, Arakkonam, reversing the judgment and decree dated 24.08.2011 made in O.S.No.205 of 2010 on the file of District Munsif Court, Sholingar. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

srn

To

- 1.The Subordinate Court,
Arakkonam
- 2.The District Munsif Court,
Sholingar

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.26211

S.A.No.319 of 2015

BR(CO)
CA(09/07/2015)

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