

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.02.2015

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

S.A.No.853 of 2006

Andal

...Appellant/Appellant/
Plaintiff

vs.

Anthonymsamy

...Respondent/Respondent/
Defendant

Second Appeal against the judgment and decree dated 10.03.2006 made in A.S.No.113 of 2005 on the file of the Principal Subordinate Judge, Vridhachalam, confirming the judgment and decree dated 22.03.2005 in O.S.No.591 of 2004 on the file of the II Additional District Munsif Court, Vridhachalam.

For appellant : Mr.G.Surya Narayanan

For respondent : Mr.C.Arunkumar

JUDGMENT RESERVED ON : 11.12.2014

JUDGMENT

Being aggrieved against the concurrent findings of the courts below in dismissing the suit filed by her, the plaintiff has preferred this second appeal.

2. The case of the plaintiff before the Trial Court was that on 20.08.2001 morning the defendant borrowed a sum of Rs.20,000/- from her agreeing to repay the same with interest at Rs.1/- per Rs.100/- and again on the same day ie., 20.08.2001 evening he borrowed another sum of Rs.20,000/-. The defendant settled the amount borrowed by him in the morning hours but did not settle the amount borrowed in the evening hours of 20.08.2001. Hence, this suit for recovery of money.

3. The defendant has filed the Written Statement and denied the execution of the promissory note dated 20.08.2001 and borrowal from the plaintiff. According to him, he borrowed a sum of Rs.10,000/- from one Kaliaperumal, brother of the plaintiff, on 15.10.2000 and executed a blank stamped promissory note and due to political enmity, the plaintiff misused the above blank stamped promissory note and filed this vexatious suit to wreck vengeance. It is further stated that the plaintiff has to prove that the amount borrowed by the defendant under the promissory note executed on 20.08.2001 morning was settled and that the amount borrowed under the promissory note executed on 20.08.2001 evening was not settled. It is her further averment that eventhough the plaintiff had issued notices dated 17.03.2004 and 10.06.2004 stating that the defendant had borrowed Rs.20,000/-, on 20.08.2001, from one Govindammal/mother of the plaintiff, no case was filed under the above promissory notes. Hence, he prayed for dismissal of the suit with cost.

4. The Trial Judge framed the following issues:-

- i) Whether the suit promissory note is a forged/concocted one?
- ii) Whether the plaintiff is entitled to the relief sought for?
- iii) To what relief, the plaintiff is entitled?

5. Before the Trial Court, on the side of the plaintiff, the plaintiff examined herself as PW.1 and examined one Narayanan as PW.2 and marked five documents. The defendant examined himself as DW1 and marked six documents on his side. The Trial Court, on analysis of the oral and documentary evidence adduced on both sides, dismissed the suit with costs. On appeal, the appellate court, confirmed the finding of the Trial Court and dismissed the appeal. Aggrieved against the concurrent judgment and decree of the courts below, the present second appeal has been filed.

6. The second appeal has been admitted identifying the following questions to be the substantial questions of law involved in the second appeal:

- i) Whether the dismissal of the plaintiff's suit without advertting to the material evidence of the witnesses to the promissory note is not vitiating and contrary to the principles of legal reasoning?

- ii) Whether the courts below did not err in merely

undertaking comparison of the signatures in the two promissory notes with some admitted document without testing the genuineness of the document in relation to the eye witnesses' version about the execution of the promissory note?

7. The arguments advanced by Mr.G.Surya Narayanan, learned counsel for the appellant and by Mr.C.Arunkumar, learned counsel for the respondent are heard in detail. The materials available on record are also perused.

8. The learned counsel for the appellant submitted that the courts below did not consider the oral and documentary evidence properly and came to a wrong conclusion that the defendant had not executed the promissory note and there were dissimilarities in the signatures found in the admitted document and the suit promissory note and therefore, the judgment and decree of both the courts below to be interfered.

9. In support of his contentions, the learned counsel for the appellant strongly relied on the following judgments:-

- a) AIR 1992 Guj. 1 (Mangubhai Mansukhram Pandya .vs. Pranjivan Tribhovandas Purohit)
- b) AIR 1987 Mad. 156 (T.A.Umapathy .vs. T.A.Masilamani)
- c) 2012 (3) LW 527 (Ramesh Babu .vs. K.Selvaraj)
- d) AIR 1986 All. 185 (Babban (deceased) by LRs. .vs. Shiv Nath)
- e) 1978 Legal Eagle (SC) 270 : 1979 AIR SC 14 (State .vs. Pali Ram)
- f) Unreported judgment in CRP (PD). 3173 of 2009 (Elumalai .vs. Subbaramani)
- g) AIR 1987 Mad. 17 (The Society of Sacred .vs. M.S.N.P.Thilaga Moorthi)
- h) AIR 1992 SC 2100 (State of Maharashtra .vs. Sukhdeo Singh)
- i) 2013 (6) CTC 71 (C.Madheswaran .vs. K.C.Ramesh)
- j) 1987 ILR 2 Mad 73 (M.Krishnaswamy Naicker .vs. S.Radhakrishna Naicker)
- k) Judgment in S.A.No.1238 of 2006 (Kanagambal .vs. Kanniappan and Athilmoolam Pillai) (manu/ta/0583/2012)

10. The learned counsel for the respondent submitted that both the courts below have considered both the oral and documentary evidence in proper perspective and came to correct conclusion that the suit promissory note is a forged/concocted one and hence, they need not be interfered and the same may be confirmed.

11. In support of his contentions, the learned counsel for the respondent relied on 2014 (2) LW 242 (Ramasamy Udayar .vs. Pavoonamal).

12. It is the case of the plaintiff that the amount borrowed under the promissory note executed in the morning hours was settled and that of the evening hours of the same day was not settled. But the defendant denied the borrowal and execution of the promissory notes in favour of the plaintiff and contended that due to political enmity, the plaintiff misused the blank stamped promissory note executed by the defendant in favour the plaintiff's brother and in the legal notices issued by the plaintiff, there was no mention about the two promissory notes on the same day.

13. The relevant portions in the decisions cited by the learned counsel for the appellant are as follows:-

i) In the decision reported in AIR 1992 Guj. 1 (Mangubhai Mansukhram Pandya .vs. Pranjivan Tribhovandas Purohit), it is held as follows:-

"13. The defendant has also failed to prove that there was no consideration. The presumption under Section 118 (a) of the Negotiable Instruments Act has not been rebutted by the defendant by leading any evidence. A person who was engaged in Government contract work worth Rs. 5 lacs and a person who used to engage about 70 labourers for such a project must be maintaining accounts book. The defendant has not led any documentary or oral evidence to show that either there was a partnership with the plaintiffs or to rebut the presumption of consideration of the pro-notes."

ii) In the decision reported in AIR 1987 Mad. 156 (T.A.Umapathy .vs. T.A.Masilamani), it has been held as follows:

"13. Learned counsel for the appellants took me meticulously through the evidence, oral and documentary, and strenuously contended that the trial Court had not assigned any reason for rejecting the oral evidence that had been tendered by the appellants, which evidence it has discarded without assigning any reason whatsoever. This Court is unable to uphold this contention. The reasons offered by the trial Court for rejecting the evidence of the appellants need not be repeated. It is enough to observe that when once execution of the

instrument is admitted, thereafter the burden of proof of passing of consideration lies entirely on the shoulders of the promisors, which burden has not been discharged by them as per the provisions of the Evidence Act. This is patent on a perusal of the evidence in the case. "

iii) In 2012 (3) LW 527 (Ramesh Babu .vs. K.Selvaraj), it has been stated that once the execution of promissory note is admitted, it is for the defendant to prove that no consideration has been passed thereof.

iv) AIR 1986 All. 185 (Babban (deceased) by LRs. .vs. Shiv Nath) speaks that the witness cannot be treated as hostile merely because his evidence is favourable to the other side and the fact that the witness has become hostile has to be established by eliciting information such as could give an indication of hostility.

v) 1978 Legal Eagle (SC) 270 : 1979 AIR SC 14 (State .vs. Pali Ram) deals with Sections 45, 47 and 73 of the Evidence Act and held that even where proof of handwriting which is comparison in nature, exists, a duty is cast on the Court to use its own eyes and mind to compare the admitted writing with the disputed one to verify and reach its own conclusion.

vi) AIR 1987 Mad. 17 (The Society of Sacred .vs. M.S.N.P.Thilaga Moorthi) held that in a specific performance suit, the opinion of the handwriting expert with regard to comparison of disputed signatures with admitted signatures is an acceptable one.

vii) In AIR 1992 SC 2100 (State of Maharashtra .vs. Sukhdeo Singh), the Hon'ble Apex Court after referring various judgments and Section 45 and 73 of the Evidence Act, 1872, has held that the court to decide reliability of the evidence of handwriting expert in each case on its own merits and weak quality of opinion of expert needs to be corroborated.

(viii) In the judgment in S.A.No.1238 of 2006 (Kanagambal .vs. Kanniappan and Athilmoolam Pillai), this Court has held that the Court shall decide execution of promissory note after considering all evidence of witness and preponderance of probabilities.

(ix) None of the above decisions will help the plaintiff so as

to succeed her claim, since the subject matter dealt in those case are not relevant to the facts and circumstances of this case.

14. On the other hand, in 2014 (2) LW 242 (Ramasamy Udayar . vs. Pavoonaamal), the decision relied on by the learned counsel for the respondent, this Court, after referring the decision in Central Bank of India v. Antony Hardware Mart (2006 3 LW 58) held that having failed to discharge the burden cast upon the plaintiff, he cannot be allowed to succeed.

15. From the perusal of the oral and documentary evidence, it is seen that one of the promissory notes alleged to have been executed by the defendant in the morning hours of 20.08.2001 was not produced, but the disputed promissory note ie., the promissory notes alleged to have been executed by the defendant in the evening hours of 20.08.2001 was produced before the Court. To prove the claim of the plaintiff, the plaintiff ought to have produced both the promissory notes. Moreover, during the relevant point of time, legal notice issued by the plaintiff did not disclose the second promissory note on the same day. Since the claim agitated by the defendant that there cannot be two promissory notes on the same day is acceptable one and the claim of the plaintiff was not corroborated by any witnesses, there need not be any presumption so as to arrive at the conclusion. It is the duty of the plaintiff to establish his case when the defendant denied the execution of the promissory note, but the plaintiff failed to discharge the burden cast upon him. Upon consideration of the rival submissions as well as documentary evidence, the trial court came to the conclusion that the case was not proved by the plaintiff. Since both the courts below dismissed the suit pursuant to the documentary evidence produced, there is no need for interfering with the concurrent judgments and decrees of courts below.

16. In the result, the second appeal fails and the same is dismissed confirming the judgments and decrees of both the courts below. No costs.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

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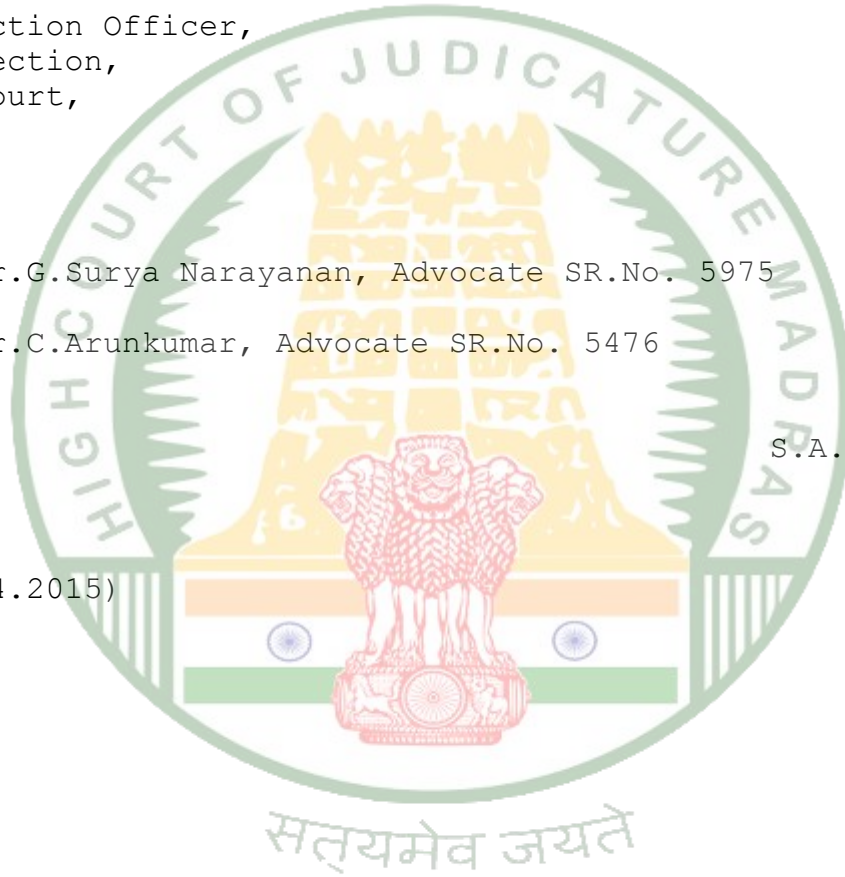
1. The Principal Subordinate Judge,
Vridhachalam.
2. The II Additional District Munsif,
Vridhachalam.
3. The Section Officer,
V.R. Section,
High Court,
Madras.

1 CC to Mr.G.Surya Narayanan, Advocate SR.No. 5975

1 CC to Mr.C.Arunkumar, Advocate SR.No. 5476

S.A.No.853 of 2006

GP (CO)
PSI (01.04.2015)



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