

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.12.2016

Coram:

The Honourable Mr.Justice M.M.SUNDRESH

S.A.No.244 of 2015

P.Selvam

... Appellant/Appellant/Plaintiff

Vs.

K.Dinakaran

... Respondent/Respondent/Defendant

Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree dated 27.08.2014 made in A.S.No.92 of 2012 on the file of Sub Court, Namakkal, confirming the judgment and decree dated 28.10.2011 made in O.S.No.1 of 2007 on the file of II Additional District Munsif Court, Namakkal.

For Appellant : Mr.C.Jagadish

For respondent : Mr.V.Raghavachari

JUDGMENT

The plaintiff in the suit for recovery of money in a promissory note is the appellant herein. Being aggrieved over the concurrent findings rendered by the Courts below, he has filed the above second appeal.

2. The Courts below dismissed the suit on the ground that the facts would reveal that the plaintiff is one of the partners of P.V.K. Finance, Namakkal, and the respondent/defendant's wife has executed blank promissory notes as seen from Ex.X2. Though P.Ws.1 to 3 denied the link, the trial Court has factually found that the plaintiff is indeed a partner of P.V.K. Finance. The lower appellate Court also found that the evidence of P.W.1 was not trustworthy. P.W.1 has stated that he has not given any loan to any other third party. Reliance has been made once again on Ex.X4, which shows that the plaintiff is one of the partners of P.V.K. Finance, which factum was denied by the plaintiff. The plaintiff has deposed that he did not know about the said findings. P.V.K. Finance is the registered firm, in which, the plaintiff is one of the partners. Thus, the lower appellate Court concurred on the credibility of P.W.1's evidence. The lower appellate Court also found that P.W.3 is residing at Kumar

Poultry Farm. The evidence of P.W.2 that he did not know the relationship between the plaintiff and the defendant was also taken note of on a cumulative consideration of the evidence of P.W.3. The lower appellate Court found that the suit promissory note was executed at Kumar Poultry Farm, which is owned by one Kumaravel, who is the partner of P.V.K. Finance. Incidentally, it was found that the plaintiff is the resident of Namakkal and the respondent is the resident of Thiruvannamalai. Thus, the evidence of P.W.1 that Ex.A1 suit promissory note was executed at his friend Sakthivel's house was found to be not correct. Accordingly, the appeal was dismissed. Challenging the same, the present second appeal has been filed.

3. This Court, while admitting the second appeal, framed the following substantial questions of law.

1. Whether the Courts below are right in law in dismissing the suit particularly when the defendant has admitted the execution of the promissory note ExA1 in the written statement and failed to discharge the burden of proof as contemplated under Section 118 of the Negotiable Instruments Act and Sections 101 to 103 of the Indian Evidence Act?
2. Whether the Courts below have properly appreciated Section 118 of the Negotiable Instruments Act read with Sections 101 to 103 of the Indian Evidence Act while dismissing the suit particularly when the defendant has admitted execution of the promissory note?

4. The learned counsel appearing for the appellant, placing reliance on the decision of this Court in R.KAMALAM V. K.K.KUMARASAMY ((2008) 3 Law Weekly 878), submits that having accepted the signature, the onus would shift to the defendant. The learned counsel further made reliance upon the report of the expert, who found similarity with the disputed document with that of the defendant.

5. The learned counsel appearing for the defendant submits that in view of the evidence of P.Ws.1 to 3, no interference is required with respect to the concurrent findings rendered by the Courts below.

6. There is nothing to discredit the findings rendered by the Courts below especially on consideration of the evidence given by P.Ws.1 to 3. When the plaintiff has not proved the very basis of the suit promissory note executed by the defendant in his favour, he cannot maintain the suit. It is not his case as if he is representing P.V.K. Finance. Therefore, the presumption

under Section 118 of the Indian Evidence Act, 1872, would not arise. Similarly, the similarities between the signature as found in the suit promissory note and the sample signature of the defendant do not help the case of the plaintiff in the light of the factual position that there is no contract or agreement between the parties to the suit. At best, the report of an expert is a piece of evidence to be appreciated and compared with by a Court to be applied to the facts of this case. Therefore, this Court does not find any merit in this appeal as no substantial questions of law have arisen. Accordingly, the second appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

raa

To

1.The Subordinate Judge,
Namakkal.

2.The II Additional District Munsif,
Namakkal.

+lcc to Mr.C.Jagadish, Advocate Sr.75938

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