

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.2301 of 2009

M.Saminathan ... Appellant/Respondent/
Plaintiff

Vs.

P.S.Kolandasamy ... Respondent/Appellant/
Defendant

Prayer : Civil Miscellaneous Appeal filed under Section Order 43 Rule 1(a) of C.P.C. against the judgment and decree dated 15.12.2008 made in A.S.No.119 of 2008 on the file of the Court of the Principal District Judge, Erode District, Erode reversing the judgment and decree dated 31.01.2008 made in O.S.No.8 of 2006 on the file of the Court of the District Munsif cum Judicial Magistrate, Perundurai.

For Appellant : Mr.R.Agilesh

For Respondent : Ms.S.Meenakumari

JUDGMENT

This Civil Miscellaneous Appeal is preferred against the judgment in A.S.No.119 of 2008 on the file of the Principal District Court, Erode, remanding the suit in O.S.No.8 of 2006 to the trial Court (District Munsif cum Judicial Magistrate Court, Perundurai) for adjudicating on the genuineness of the signature in the suit promissory note, which is disputed by the defendant in the suit.

2. The appellant/plaintiff has filed the suit for recovery of money on a promissory note alleged to have executed by the respondent/defendant on 11.08.2002. The respondent contested that he had never executed any promissory note and disputed the signature purported to be his in the promissory note. Admittedly, no expert opinion was obtained on this aspect before the trial Court and on the basis of the evidence before it, the trial Court proceeded to decree the suit. Challenging the decree, the respondent preferred an appeal in A.S.No.119 of 2008 and Vide impugned order, the learned District Judge remanded the matter to the trial Court with a direction that appellant/plaintiff shall take steps for establishing that the purported signature executed in the promissory note is that of the respondent/defendant. In arriving at this conclusion, the learned District Judge has

observed the the burden to establish that the promissory note was executed by the defendant was solely on the appellant/plaintiff.

3. Heard both sides. The learned counsel for the appellant submitted that the trial Court has found that the defendant had executed EX.A1, promissory note and that, it has also indicated in his judgment that the defendant has admitted that the signature is his.

4. On going through the relevant passage in the trial Court judgment and juxtaposing it with Ex.A1, this Court understands that what is observed in trial Court judgment is that PW.2 has testified that the signature in the column intends for scribe in the promissory note is his and this cannot be read out of context and must be attributed to the defendant.

5. For establishing the solitary fact, the genuineness of signature through an expert, the entire case need be remanded to the trial Court, and it is sufficient to remit the matter to the trial Court for the limited purpose of appointing an expert to enter a finding on it.

6. This appeal is therefore is partly allowed and the order of remand is set aside. However, there is a direction to remit the matter to the trial Court for the limited purpose of appointing an expert and to enter a finding as to the genuineness of the purported signature of the defendant in Ex.A1. Even though the burden is on the appellant/plaintiff, the learned counsel for the respondent submits that he would take necessary steps to move the trial Court for appointing an expert. No costs.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To:

1. The Principal District Judge,
Erode District, Erode.
2. The District Munsif cum Judicial Magistrate Court,
Perundurai.
3. The Record Keeper,
V.R. Section,
High Court, Madras.

C.M.A.No.2301 of 2009

EV (CO)

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CA(03/01/2017)