

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.63 of 2016
and
C.M.P.No.1776 of 2016

R.Anbalagan ... Appellant/Defendant

vs.

Ganesan ...Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 30.01.2015 in A.S.No.58 of 2013 on the file of the III Additional District and Sessions Judge, Cuddalore at Vridhachalam, confirming the judgment and decree dated 30.08.2010 in O.S.No.189/2007 before the Principal Sub-Court, Vridhachalam.

For Appellant : Mr.R.Meenal

For Respondent : Mr.R.Agilsh

J U D G M E N T

The defendant is the appellant. The respondent/ plaintiff filed the suit for recovery of a sum of Rs.4,99,900/- based on a promissory note dated 28.10.2005 executed by the defendant in favour of the plaintiff. The defendant contested the suit by filing a written statement. It is his specific contention that he has not executed the suit promissory note and not borrowed the sum as alleged by the plaintiff. He further contended that he was bedridden and was admitted in a private hospital during the relevant point of time. The plaintiff examined himself as P.W.1, the scribe of the suit promissory note marked as Ex.A1 and the attesting witness of the same as P.W.2 and P.W.3 respectively. The plaintiff marked Exs.A1 to A5 in support of his claim. The defendant has not examined either himself or any third party witness or marked any document. The trial Court, after considering the rival pleadings of the parties and also on appreciation of the entire facts, circumstances and the evidence let in by the plaintiff, decreed the suit as prayed for. The appeal preferred by the defendant in A.S.No.58 of 2013

before the III Additional District and Sessions Court, Cuddalore at Virudhachalam, came to be dismissed by confirming the judgment and decree of the trial Court. Hence, this appeal is filed and listed before this Court at the adjourned admission stage.

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. The present appeal is filed by the defendant who has lost before both the Courts below. The plaintiff filed the suit for recovery of money based on the suit promissory note marked as Ex.A1. The defendant in his written statement denied such execution and borrowal of the money. Therefore, the initial burden lies on the plaintiff to prove the execution of the suit promissory note by the defendant and passing of the consideration thereunder. To discharge such onus, the plaintiff examined himself as P.W.1 and has spoken about the execution of the promissory note and passing of the consideration. Apart from examining himself, he examined the scribe of Ex.A1 as P.W.2 and one of the attesting witnesses as P.W.3. Both these witnesses have categorically spoken about the execution of the suit promissory note by the defendant in favour of the plaintiff and the passing of consideration thereunder. Therefore, it is evident that the plaintiff has discharged the initial burden. Consequently, the onus shifts on the defendant to disprove the case of the plaintiff by adducing material evidence both oral or documentary to substantiate his contention. But the fact remains that the defendant has not chosen to examine any witness on his side including himself and mark any document. The lower Appellate Court specifically pointed out that the trial Court has given sufficient opportunity to the defendant from 09.06.2010 to 12.07.2010, on seven occasions by adjourning the matter for him to lead evidence. However, it is seen that the defendant has not chosen to utilise the opportunity and consequently, his side was closed on 12.07.2010. Further, it is seen that the defendant has taken out an application before the trial Court in I.A.No.387 of 2010 for sending the suit promissory note to the Forensic Science Department for comparison with the admitted signature and the said application was dismissed by the trial Court on 09.08.2010 itself. It is seen that the defendant has not challenged the said order by filing any revision. However, he has chosen to file similar application in I.A.No.466 of 2014 before the First Appellate Court once again, as though the same is filed as the first time. The First Appellate Court pointed out the dismissal of similar application filed before the trial Court and rejected the I.A.No.466 of 2014 and also dismissed the appeal.

4. Learned counsel appearing for the defendant/ appellant before this Court contended that the lower appellate Court was not right in dismissing the application filed by the appellant for getting the suit pro-note examined by an expert when the defendant has specifically denied the execution and that the suit promissory note itself is a false one. Therefore, she contended that a question of law arises, which according to her, is a substantial one for entertaining this Second Appeal.

5. I am not inclined to agree with the above said submission made by the learned counsel for the appellant as I found that no question of law muchless substantial question of law arises for consideration in this case, especially, when the defendant, who has denied the execution, has not chosen to examine himself as a witness or any third party to substantiate his pleadings. When the plaintiff has substantiated his case by adducing the material evidence as stated supra, it is for the defendant to disprove such case of the plaintiff and substantiate the contention raised by him in the written statement by adducing contra evidence. It is well settled that mere pleading cannot be taken as true statement without substantiating the same by adducing evidence in support of such pleadings. Therefore, the question of considering the defendant's claim for sending the suit promissory note for expert's opinion does not arise at all. Hence, I find that both the courts below have rightly rejected the case of the defendant, with which, I find no infirmity or irregularity, more particularly, in the absence of any substantial question of law arising for consideration. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected C.M.P.No.1776 of 2016 is closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

vsi

To

1. The III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.

2. The Principal Subordinate Judge, Vridhachalam.

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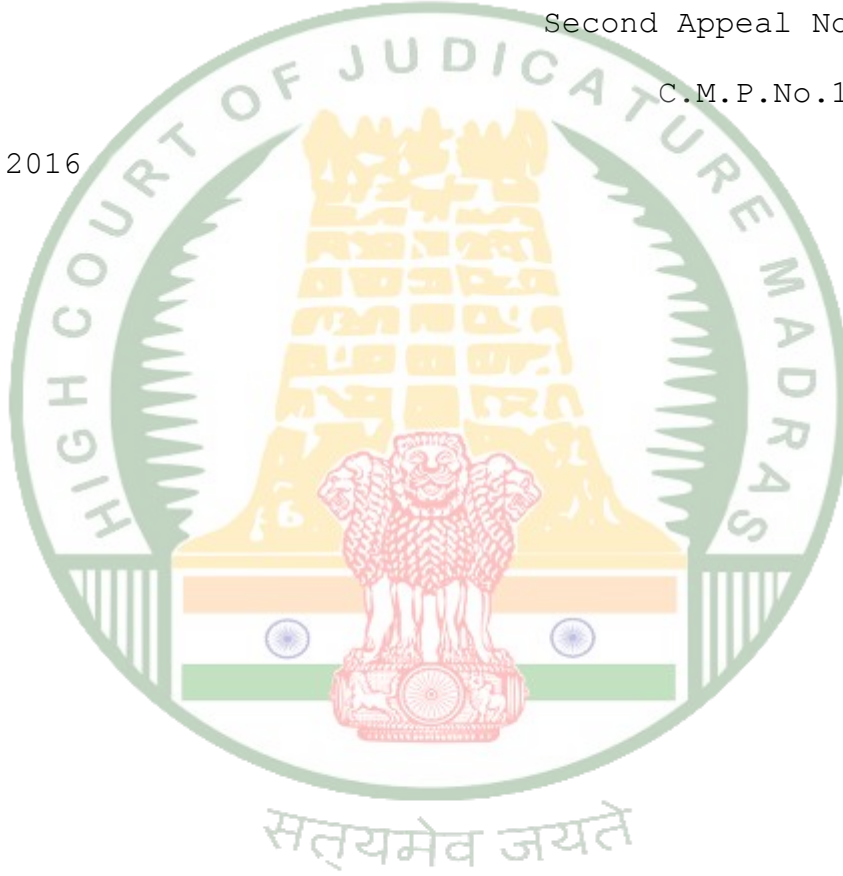
Copy to:

The Section Officer,
VR Section, High Court,
Madras.

1cc to M/s.R.Meenal, Advocate, sr.29774
1cc to Mr.T.Dhanasekaran, Advocate, sr.29174

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