

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

S.A.No.175 of 2017

and CMP.No.3644 of 2017

Murugesan .. Defendant/Appellant/Appellant

vs.

Ramalingam .. Plaintiff/Respondent/Respondent

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree of the Additional Sub-Ordinate Judge Court at Vriddhachalam dated 31.3.2010 passed in A.S.No.24/2009, confirming the judgment and decree of the District Munsif cum Judicial Magistrate, Thittakudi dated 20.4.2009 passed in O.S.No.62/2005.

For Appellant : Mr.V.Anand

JUDGMENT

The unsuccessful defendant, who lost before the Courts below, is the appellant and challenging the concurrent findings rendered by the Courts below in decreeing the Suit and upholding the said judgments, came forward to file this Second Appeal.

2. In the Memorandum of Grounds of Appeal, the following substantial questions of law are raised:

1. Whether the Courts below are correct in law in proceeding with the idea that the defendant has not rebutted the evidence of the plaintiff's side while infact the incongruity in evidence of PW2 and PW3 regarding the place of execution of the Suit document in Ex.A1 automatically lifts the presumption under Section 118 of the Negotiable Instruments Act?

2. Whether the Courts below are correct in law in decreeing the suit, completely ignoring the fact that the evidence of PW3 would clearly show that the suit document is not supported by consideration and that the plaintiff has not proved the passing of consideration by independent witness without relying on his close relation (Brother-in-law) PW2 to prove the passing of consideration?

3. The respondent/plaintiff filed O.S.No.62 of 2005 on the file of the District Munsif Court, Thittakudi against the appellant/defendant for a sum of Rs.29,985/- with interest and costs based on Ex.A1/Promissory Note dated 16.08.1999. It is the case of the plaintiff that the defendant agreed to pay the said sum on demand by executing the Promissory Note under Ex.A1 and repaid only a sum of Rs.100/- under Ex.A2 and thereafter, he did not pay the amount and therefore, came forward to file the Suit.

4. The appellant/defendant filed the written statement denying all the averments and also took a stand that he does not know the plaintiff at all and he is inimical with his brother-in-law, namely Samydurai (PW2) and utilizing the services of the brother-in-law/plaintiff, he filed the Suit. The defendant also took a stand that he did not sign the Promissory Note at all and also allege forgery and prays for dismissal of the Suit.

5. During the course of trial, the plaintiff examined himself as PW1 and the attesor and scribe were examined as PWs.2 and 3 and the person who made the endorsement with regard to the receipt of Rs.100/- under Ex.A2 was examined as PW4. The defendant examined himself as DW1 and did not mark any documents. The Trial Court, on consideration of the pleadings, framed necessary issues and found that the execution of the Promissory Note under Ex.A1 has been proved through PWs.2 and 3 and as such, it is supported by consideration and decreed the Suit as prayed for, vide judgment and decree dated 20.04.2009.

6. The defendant aggrieved by the same, filed an appeal in A.S.No.24 of 2009 on the file of the Additional Subordinate Judge, Virudhachalam and the Lower Appellate Court, after formulating necessary questions for consideration, had found that the findings rendered by the Trial Court for decreeing the Suit warrant no interference and dismissed the appeal, vide judgment and decree dated 31.03.2010 and challenging the legality of the same, the defendant came forward to file this Second Appeal.

7. The learned counsel appearing for the appellant/defendant would contend that though the Suit Promissory Note under Ex.A1 said to have been executed on 16.08.1999, the endorsement as to the receipt of a sum of Rs.100/- towards part payment of the amount due and payable to the plaintiff, came to be made only on 14.08.2002 under Ex.A2 and the Suit came to be filed within a short period of time and in order to save the period of limitation only, a sum of Rs.100/- said to have been paid by the defendant under Ex.A2. It is the further submission of the learned counsel appearing for the appellant/defendant that since the defendant, in his written statement, took a stand that he never knew the

plaintiff and that the Suit Promissory Note is fabricated and the signature is forged and it is the bounden duty on the part of the plaintiff to send Ex.A1 for expert opinion and admittedly, the plaintiff has failed to do so and unfortunately the Courts below failed to advert to the said vital aspect and reached a concurrent finding against the defendant and prays for interference.

8. This Court paid its best attention to the submission made by the learned counsel appearing for the appellant and also perused the entire materials placed before it.

9. The plaintiff, in order to prove that Ex.A1/Promissory Note was executed by the defendant, had examined the attessor/PW2 and the scribe/PW3. No doubt, the defendant in his written statement took a stand that Suit Promissory Note is fabricated and the signature was forged and the Courts below had recorded a finding that since Ex.A1/Promissory Note has been proved through the testimonies of the Attestor/PW2 and Scribe/PW3, burden lies on the defendant to produce contemporaneous signature and take further steps to substantiate his defence that the Suit Promissory Note is fabricated, but the defendant had failed to do so.

10. It is also to be pointed out at this juncture that as per Ex.A2, the defendant had paid a sum of Rs.100/- on 14.08.2002 and according to the learned counsel appearing for the appellant/defendant, only in order to save the period of limitation, the said amount has been paid and it has also been admitted by the fact that the Suit came to be filed within a short span of time. In the considered opinion of the Court, the said submission lacks merit and substance for the reason that PW2 had made an endorsement in Ex.A2 that a sum of Rs.100/- was paid by the defendant. The Courts below had reached the finding that the Suit Promissory Note is supported by valid consideration and it was also proved through the testimonies of PWs.2 and 3, namely Attestor and Scribe and as regards the endorsement in Ex.A2, PW4 has also supported the case of the plaintiff. Though the defendant had entered the witness box, he did not file any document to substantiate his defence and also did not take any steps to send Ex.A1/Promissory Note for expert opinion and admittedly, he did not produce any contemporaneous signature.

11. In the light of the fact that Ex.A1/Promissory Note has been proved through the testimonies of PWs.2 and 3, the onus shift to the defendant to substantiate his defence as to the fabrication and forgery of signature in Ex.A1 and unfortunately, he has failed to do so. The Courts below, on a proper consideration of the pleadings and appreciation of oral and documentary evidence, had reached the conclusion. In the considered opinion of the Court, there is no question of law much less substantial question of law arises for consideration in this Second Appeal and finds no merit in the Second Appeal.

12. In the result, this Second Appeal is dismissed in the admission stage itself, confirming the judgment and decree passed by the Additional Sub-Ordinate Judge, Vriddhachalam dated 31.3.2010 passed in A.S.No.24/2009, confirming the judgment and decree passed by the District Munsif cum Judicial Magistrate, Thittakudi dated 20.4.2009 passed in O.S.No.62/2005. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

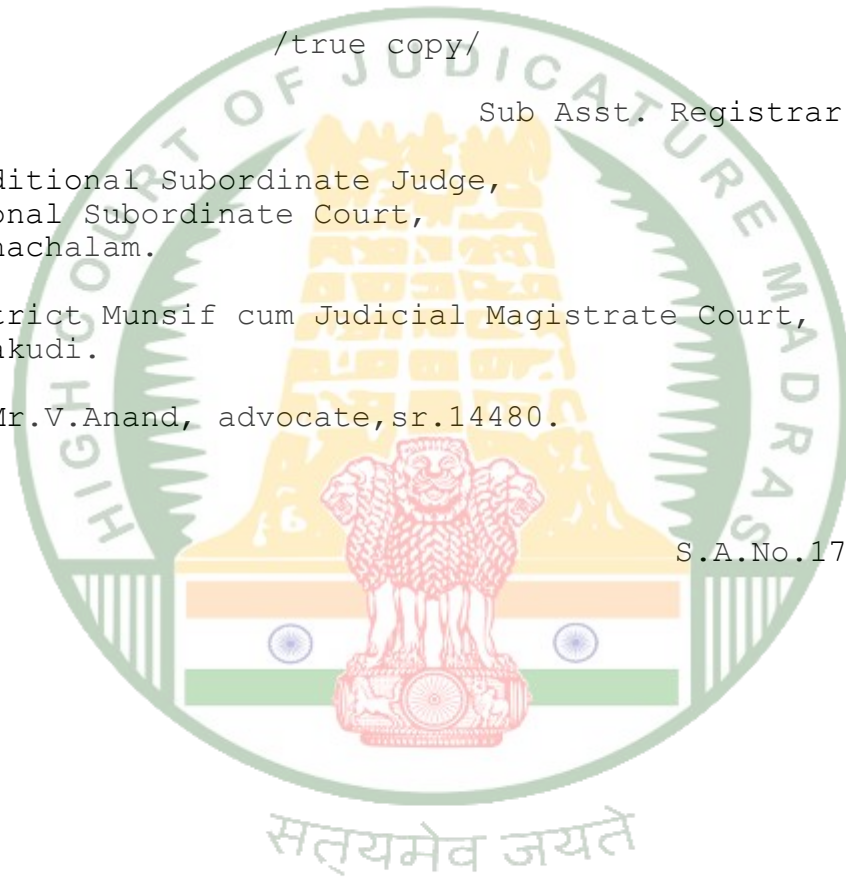
1. The Additional Subordinate Judge,
Additional Subordinate Court,
Vriddhachalam.

2.The District Munsif cum Judicial Magistrate Court,
Thittakudi.

+1 cc to Mr.V.Anand, advocate,sr.14480.

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