

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.7 of 2017

Karuppa Padayachi

... Appellant/Appellant/Plaintiff

Vs

1.Subramaniyan

2.Devan

... Respondents/Respondents/Defendants

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 04.06.2016 passed in A.S.No.3 of 2015 on the file of the III Additional District Judge, Kallakurichi at Villupuram, confirming the judgment and decree dated 08.01.2015 made in O.S.No.25 of 2008 on the file of the Subordinate Judge, Kallakurichi.

For Appellant

... Ms.P.T.Asha

for M/s.Sarvabhauman Associates

JUDGMENT

The plaintiff, who lost before both the Courts below in the suit for recovery of money on a promissory note, is the appellant herein. Seeking to reverse the same, the plaintiff has filed the present second appeal, raising the following substantial questions of law:

(1)Are the Courts below justified in dismissing the suit for money on the basis of promissory note (Ex.A1) when the execution and consideration of the same is proved in the manner known to law?

(2)When the second respondent (D.W.2) himself had admitted his signature in the promissory note and had reposed confidence on P.W.2 in whose presence the promissory note was executed and consideration passed, are the Courts below justified in coming to the conclusion that the promissory note is fabricated for the reason that the address mentioned in the bottom portion of the promissory note is written in blue

colour ink whereas the rest of the portions in the promissory note are filled in black ink, and that purpose for which the borrowal is made as spoken out by P.W.1 differs from the one mentioned in the promissory note?

2.Learned counsel appearing for the appellant submits that the execution is not admitted and therefore, the presumption shifts to the defendants. The defendants have not dispel the presumption as mandated under Section 118 of the Negotiable Instruments Act, 1881. Thus the judgment and decree of the Courts below require interference.

3.Both the Courts have considered the evidence let in by the parties. P.W.1, who is the plaintiff has made a specific and categorical statement that the consideration has been paid on the very same day. P.W.2, who is none other than the parent-in-law (Sambandhi) of the plaintiff has stated that the entire document under Ex.A1 was signed in the same ink. The Courts below found that there is a difference in the colour of the ink between the signature of the defendants and the addresses written along with the recital. Thus the evidence of P.W.2 was disbelieved by the Courts below. The Courts below, on evidence, also found that the plaintiff has received the amount from the defendants at various stages. Thus the factual finding has been given that the evidence of the plaintiff, being inconsistent with the promissory note under Ex.A1, the relief cannot be granted. As the said finding is concurrent, based upon the evidence let in by both sides, this Court is of the view that no interference is required. The defendants have discharged the presumption and thereafter, the plaintiff has not proved his case.

4.In such view of the matter, this Court does not find any substantial question of law involved in the second appeal, warranting interference. Accordingly, the second appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To

1.The III Additional District Judge,  
Kallakurichi at Villupuram.

2.The Subordinate Judge,  
Kallakurichi.

Copy to:

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

+lcc to Mr.Sarvabhuman Associates, Advocate, S.R.No.4399

br (CO)  
md(01/03/2017)

S.A.No.7 of 2017



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