

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.12.2017

PRONOUNCED ON:20.12.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.580 of 2002

1.Sivanappa Gounder (Died) ... 1st Appellant/Defendant

2.Kariammal

3.Palanisamy

4.Punithavathi

5.Jothi

6.Gomathi ... Appellants

(Appellants 2 to 6 brought on record as L.R's of the deceased sole appellant vide order of the Court dated 24.09.2010 made in C.M.P.Nos.350 to 352 of 2010)

Vs.

Subbammal @ Seethammal ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 31.10.2001 made in A.S.No.140 of 2001 on the file of the Principal District Court, Erode, confirming the judgment and decree dated 30.04.2001 made in O.S.No.232 of 1999 on the file of the Second Additional Sub Court, Gobichettipalayam.

For Appellants : Mr.N.Manokaran
For Respondent : Mr.R.T.Doraisamy

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 31.10.2001 made in A.S.No.140 of 2001 on the file of the Principal District Court, Erode, confirming the judgment and decree dated 30.04.2001 made in O.S.No.232 of 1999 on the file of the Second Additional Sub Court, Gobichettipalayam.

2. Parties are referred to as per the rankings in the trial court.

3. Suit for recovery of money.

4. The case of the plaintiff in brief is that the defendant borrowed a sum of Rs.30,000/- from her and in evidence thereof, executed a promissory note dated 17.11.1996, agreeing to pay the borrowed sum with interest at 12% per annum and inasmuch as the defendant did not pay the amount, despite several demands, according to the plaintiff, she issued a lawyer's notice on 14.08.1999 and the defendant, on the receipt of the same, issued a reply on 19.08.1999 containing untenable allegations and hence according to the plaintiff, she has been necessitated to lay the suit for recovery of money.

5. The case of the defendant in brief is that he did not receive the suit amount from the plaintiff on 17.11.1996 as claimed in the plaint and also did not execute any promissory note in favour of the plaintiff in evidence of the above said alleged borrowal and the suit promissory note is a forged document, and with a view to make an unlawful gain and grab the properties of the defendant, the plaintiff in collusion with others had forged the promissory note and laid the suit falsely against the plaintiff and hence the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A4 were marked. On the side of the defendant, D.W.1 was examined. Exs.B1 to B11 were marked.

7. The Courts below, on an appraisal of the oral and documentary evidence adduced by the respective parties and the submissions made were pleased to accept the plaintiff's case, and accordingly decreed the suit in favour of the plaintiff. Aggrieved over the same, the present second appeal has come to be laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

(1) Whether the plaintiff has discharged the burden of proving Ex.A1?

(2) Whether the plaintiff has established his case as per the law laid down in AIR 1987 A.P.139 (FB)?

(3) Whether law findings of the Courts below in decreeing the suit by comparing the suit promissory note with vakalath and written statement, without assistance of the scientific expert in a case for defence of forgery is correct in law in view of the law laid down by the Honourable Supreme Court in AIR 1979 S.C.14 and AIR 1996 S.C.1140?

9. The suit has been laid by the plaintiff for recovery of the suit amount, from the defendant on the basis of a promissory note. The promissory note in question has been marked as Ex.A1. According to the plaintiff, the defendant borrowed the sum of Rs.30,000/- from her and in evidence there of had executed Ex.A1 promissory note, promising to repay the borrowed sum with interest at 12% per annum. Further, according to the plaintiff, despite several demands, inasmuch as the defendant had failed to pay the borrowed sum, she has been necessitated to levy the suit against the defendant. The defendant has set out the defence contending that he did not borrow any sum from the plaintiff on 17.11.1996, as claimed and also did not execute the suit promissory note Ex.A1 in evidence of the alleged borrowal and according to the defendant with a view to grab his properties, the plaintiff along with her henchmen fabricated the suit promissory note and laid the suit falsely and hence the suit is liable to be dismissed. Inasmuch as the defendant has set out the defence contending that the suit promissory note is a forged document and had not received any sum from the plaintiff either the way of the said promissory note or otherwise on 17.11.1996 as put forth in plaint, it is seen that the duty is heavily cast upon the plaintiff to establish that the defendant had borrowed the suit amount from her as claimed, and executed the promissory note Ex.A1 in acceptance thereof. However, it is found that with reference to the above case of the plaintiff, no acceptable and reliable evidence has been placed. A reading of the evidence of P.W.1 as adduced by her, both during the course of chief and cross examination would go to show that she does not know to read and write and only know to put her signature and accordingly she has deposed that she does not know what had been written in Ex.A1 promissory note and also does not know as to the date of promissory note that had been written in the document and does not know the address of the defendant and does not know as what are the addresses of the witnesses, who had attested the promissory note that had been written in the document and further admitted that at the time of execution of the promissory note, her son-in-law was not present and also admitted that she had not seen the scribe, who had written the promissory note. Therefore, a cumulative analysis of the evidence of the plaintiff examined as P.W.1 would go to show that she is unable to throw a clear picture as to the circumstances and in whose presence the promissory note had come to be written and accordingly unable to say as to what are the actual contents that are contained in the promissory note. That apart, it is seen, that the plaintiff's son-in-law, who has been examined as P.W.2 was not present at the time of execution of the suit promissory note. In this connection, the Son-in-law examined as P.W.2 has admitted during the course of cross examination that he did not count the money and had not seen the promissory note and not read the contents of the same and does

not know what had been written there in and does not know as to the recitals of the consideration mentioned in the same and does not know who had attested the document and whether they had written their addresses and does not know in what pen they had all signed in the promissory note. If really, P.W.2 had been present at the time of execution of the suit promissory note as claimed by the plaintiff, naturally P.W.2 would have been the attester of the document. Thus, it is seen that P.W.2 is also unable to project a clear picture as to the consideration and in whose presence the suit promissory note has come to be executed. Such being the evidence of P.Ws.1 and 2, as rightly argued by the defendant's counsel, no safe credence could be attached to their testimony.

10.Despite the above position, in order to establish her case, the plaintiff has not endeavored to examine the attestors of the promissory note and the scribe of the document. With reference to the same, the plaintiff would only contend that inasmuch as they had been won over by the defendant, they did not heed to her request to depose in her favour and had also demanded huge sum for giving evidence in support of her case and therefore according to the plaintiff she was unable to examine the attestors and the scribe of the promissory note. However, the above case of the plaintiff has been disputed by the defendant. When there is no material placed on record to hold that it is only the defendant who had swayed the minds of the witnesses and the scribe in his favour, it is found that the reasonings adduced by the plaintiff for not examining the attestors and scribe as such cannot be accepted. No doubt, the promissory note is a document which is not compulsorily required to be attested. However, when according to the plaintiff, the promissory note had been executed by the defendant in the presence of witnesses in evidence of the borrowal of the suit amount and when the above case of the plaintiff has been seriously challenged by the defendant and when the plaintiff and her son-in-law are unable to project their case in an acceptable and reliable manner, at least, to establish the genuineness of her case, the plaintiff should have endeavored to examine the attestors and the scribe of promissory note. However, the plaintiff has not chosen to examine them and the reasons given by the plaintiff for the same as such cannot be readily accepted sans any material pointing to the same.

11.Left with no other alternative, it is seen, that in the absence of any proof on the side of the plaintiff, that the defendant had borrowed the suit amount from her on 17.11.1996 and in evidence there of, executed the promissory note, it is seen that the Courts below should have proceeded only to reject the plaintiff's case as having not been established. However, it is seen that, the Courts below have on the premise that the

plaintiff is an illiterate lady, proceeded to compare the alleged signature of the defendant in the promissory note Ex.A1 with that on his admitted signature found in the reply notice and acknowledgment and accordingly based on the same, holding that it is only the defendant who had signed the promissory note, resultantly accepted the plaintiff's case and decreed the suit in favour of the plaintiff. However, the above approach of the Courts below cannot be given any seal of approval either on factual aspects or legal aspects.

12. In this connection, the trial court would only state that as the court is empowered to compare the signature, accordingly compared the signature found in the promissory note Ex.A1 with that of the defendant's signature available in Ex.A3 and A4 and according to the trial court, on comparing the signatures, to some extent they tally, excepting minor variations and inasmuch as the defendant had admitted that there would be variance in his signatures, accordingly proceeded to determine that, it is only the defendant who had executed the suit promissory note Ex.A1 in evidence of the borrowal of the suit amount. That apart, the trial court has not given any reason whatsoever as to how in what manner, it had found the signature found in Ex.A1 and the signatures found in Ex.A3 and A4 go together. Similarly, the first appellate court also holding that the court has got all the powers to compare the signatures, accordingly found concurrence with the above said determination of the trial court, based on comparison as above stated and accordingly held that, there is no infirmity in the above said determination of the trial court. Similarly, the first appellate court had also not given any reason whatsoever as to in what manner it had found the signature found in Ex.A1 promissory note and the signatures available in Exs.A3 and A4 tally with each other. It is found that mainly on the basis of the above said position, the Courts below have accepted the plaintiff's case.

13. Learned counsel for the defendant vehemently contended that the above approach of the Courts below cannot be given any legal sanctity and ex facie, the Courts below have erred in comparing the signature found in the promissory note with that of the signatures available in the documents which are post-litem-motem and did not endeavor to compare the signature available in the suit promissory note with the documents anti-litem-motem. It is further stated that the determination of the Courts below that the signatures tally seems to be only on the basis of their subjective satisfaction and not on any thorough examination and detailed analysis and in such view of the matter, it is contended that the findings of the Courts below on the above said aspects for upholding the plaintiff's case should be interfered with. In this connection, contending that the

Courts below are not empowered to compare the disputed signatures with that of the signatures available in the documents, post-litem-motem, the counsel for the defendants placed reliance upon the decisions reported in 2006(3)CTC 39 (Central Bank of India Vs. Antony Hardware Mart) and 2011 (7) MLJ page No.160 (Chandramohan Vs. Pushpa). A perusal of the above decisions would go to show that the Courts below ought not to have compared the disputed signatures with the signatures contained in the documents which had come into existence subsequent to the commencement of the dispute between the parties and on the other hand, if at all the Courts below endeavor to compare the signatures, they should only compare the signatures with the admitted signatures available in the admitted documents which are prior in point of time anterior to the commencement of the disputes between the parties. Therefore, it is seen that prima-facie, the approach of the Courts below in comparing the disputed signature with that of the signatures available in Exs.A3 and A4, which documents are admittedly post -litem-motem is found to be not sustainable in the eyes of law in the light of the above said decisions. Further it is also found that the Courts below have not at all given any reason, what so ever, as to, on what basis they had chosen to accept and determine that the disputed signature tally with the signatures available in Exs.A3 and A4. It is seen that as per Section 73 of Indian Evidence Act, the Court has got all the powers to compare the disputed signatures with the admitted signatures, but the question is when the court embarks upon such an adventure without calling for the aid of an expert it is found that the court should give reasons as to on what materials or facts it had come to a conclusion that the disputed signatures and the admitted signatures tally or do not tally. However, as above pointed out, in so far as this case is concerned, it is only the subjective satisfaction of the Courts below that formed the basis for their determination for upholding the plaintiff's case on the footing that the disputed signature tallies with the admitted signatures. However, the above approach cannot be accepted in any manner.

14.In this connection, I had an occasion to deal with the subject on a different context and in the decision rendered by me which had been reported in 2017 (4) Law Weekly, Page No.830 [Sankara Narayana Pillai Vs. Ignatious Selvaraj], the point in issue was discussed and determined in the following manner.

8. For holding that the petitioner Sankara Narayana Pillai has resigned his post, the Court below is found to have compared his signatures found in the disputed documents with that of his admitted signatures and finding them to be similar, accepted the

case of the contesting Trustees and declined the relief sought for by the petitioner. Aggrieved over the same, the present civil revision petitions have been preferred by the petitioner.

9. As rightly argued by the learned counsel for the petitioner, the Court below in the impugned orders have not cared to disclose or detail as to with what admitted signatures of the petitioner it had compared the disputed signatures. Therefore, it is unable to detect as to what are the admitted signatures of the petitioner with which the Court below had compared the disputed signatures and therefore, as rightly put forth by the learned counsel for the petitioner, the impugned orders are very silent with reference to the same and therefore, the impugned orders on that score are liable to be set aside. Further, according to the learned counsel for the petitioner, though the Court is empowered to compare the disputed signatures with the admitted signatures as per Section 73 of the Indian Evidence Act, in the light of the decision of the Apex Court and other pronouncements of the High Courts, the Court as a matter of prudence and caution, should be hesitant in giving its findings with regard to the identity of the disputed signatures and the admitted signatures and it is not advisable on the part of the Court to take upon itself the task of comparing the admitted signatures with the disputed one to find out whether the two agree with each other and the prudent course is to obtain the opinion and assistance of an expert. With reference to the same, the learned counsel for the petitioner placed reliance upon the decision reported in AIR 1979 SC 14 [State (Delhi Administration) vs. Pali Ram]. The above aspect of the matter as put forth by the learned counsel for the petitioner is pointed out in the said decision.

10. Therefore, the Court below should be careful in comparing the disputed signatures with the admitted signatures, even assuming

that the Court is empowered to take up the said task by itself, in such circumstances, when the Court is suo motu taking up the role of an expert, it should clearly point out as to what are the admitted signatures with which it had compared the disputed signatures and whether the admitted signatures have been admitted by the party concerned and that apart the Court should also give the reasons in detail as to on what basis or on what aspects, it had found similarities or dissimilarities with the admitted signatures and the disputed signatures on its comparison and the Court should also endeavour to clearly spell out the varying characteristics of the similarities or dissimilarities as observed by it so as to enable the parties to understand that the Court has approached the matter in the right perspective and determined the issue rightly one way or the other and further, the Appellate Forum also would be in a position to understand that the Court below has dealt with the said issue properly and correctly in a scientific manner as that of an expert.

11. However, in so far as this case is concerned, it is found that no such attempt seems to have been made out by the Court below and it has simply held that on comparison of the signatures found in Exs.P2 and P3 with the admitted signatures, they being found to be similar, has resultantly declined the request of the petitioner. As seen above, the Court has not spelt out as to what are the admitted signatures of the petitioner with which it had compared the disputed signatures. Further, it is found that the petitioner has been kept in dark as to the above said endeavour of the Court below and therefore, it is highly doubtful whether at all the Court below would have compared the admitted signatures of the petitioner with the disputed signatures.

12. Further, if at all, as rightly argued, the Court had compared the admitted signatures of the petitioner with the disputed signatures, the

petitioner having not produced any document containing admitted signatures before the Court below, it should be presumed that the Court would have endeavoured its comparison only based upon the signatures available in the

vakalat and written statement. However, it has been held by this Court that the Court cannot direct the disputed document to be compared with the signatures available in vakalat or written statement of a party in the decision

reported in 2010-1-L.W.646 [S.Chinnathai vs. K.C.Chinnadura]. Further, it has also been held in the decision reported in AIR 1996 SC 1140 [O.Bharathan vs. K.Sudhakaran and another] that the approach of the Court in taking upon the task of the expert and comparing the admitted signatures with the disputed signatures on its own without the aid of the expert or the evidence of the person conversant with the disputed signatures is not in conformity with the spirit of Section 73 of the Indian Evidence Act. Therefore, in the light of the above said legal pronouncements, when it is found that the impugned orders do not spell out as to what are the admitted signatures the Court had taken into consideration for comparing with the disputed signatures and further when the Court has also not given any reason whatsoever as to on what basis it has come to the conclusion that the admitted signatures and the disputed signatures are similar and further when the contesting Trustees have not established their claim that in the place of the petitioner, his brother had been elected as a Trustee and thereby one of the Trustees had been discharging his duties as the Managing Trustee

lawfully, it is found that the Court below has committed an error, not sustainable in the eyes of law, in rejecting the case of the petitioner. On the mere evidence of the petitioner that he has handed over his responsibilities could not be taken as an admission that he had resigned the post of Trustee when the petitioner has stoutly denied the said fact and also disputed the

resignation letter projected by the contesting Trustees as a concocted document. In such view of the matter, the Court below is expected to send the document for scientific comparison by an expert and the Court should have been cautious and hesitant to take up the task on its own and even assuming that the Court has the power to carry out the said task, having undertaken to discharge the same, it is expected of the Court that it should give plausible and acceptable reasons as to how it has come to the conclusion that the admitted and disputed signatures are either similar or dissimilar.

15. In the light of the above position, it is seen that the Courts should be very very careful in comparing the disputed signatures with admitted signatures and if at all the Courts proceed to take up the task on itself without deriving support from any expert on the subject, the court in such event should give plausible reasons as to how it had come to the conclusion that the admitted and disputed signatures are either similar or dissimilar as above explained.

16. In so far as this case is concerned, as above mentioned, there is no reason at all given by the Courts below for holding that disputed and admitted signatures tally. Further, the trial court had only held that on comparison, to some extent, the two signatures tally. The same had been concurred by the first appellate court. It is seen that even as per the determination of the Courts below the two signatures namely the disputed and the admitted signatures do not tally in all aspects. Such being the position, it is seen that the Courts below had completely fallen into error in upholding the plaintiff's case merely on the naked comparison of the signatures in question without pointing out in a scientific and acceptable manner, as to how the two sets of signatures either tally or do not tally. The Courts below is thus found to have flawed in their approach and erred in holding that the plaintiff has established her case merely on the basis that the two sets of signatures which they have compared are similar which decision is found to be only on the basis of the subjective satisfaction of the Courts concerned and not on any detailed and scientific analysis as required to be done as per law. Therefore, it is found that the judgment and decree of the Courts below for accepting the plaintiff's case on the above said basis cannot be allowed to sustain further.

17. A reading of the judgment of the Courts below would

only go to show that instead of calling upon the plaintiff to establish her case the Courts seem to be have shifted the burden on the defendant as if he owes a duty to establish his defence. When according to the defendant, the suit promissory note is a fabricated one, the burden of proof rests only on the plaintiff to establish the genuineness of the same and only on the plaintiff establishing the same satisfactorily, the burden would be shifted to defendant to establish that no consideration passed under the document as put forth by him. When the plaintiff has miserably failed to establish that the suit promissory note is a genuine document and had been executed by the defendant only in evidence of the borrowal of the suit amount and with reference to the above claim of the plaintiff there is no material at all on record and the plaintiff had also not endeavored to place the best evidence available with reference to the same i.e., by examining the attestors and the scribe of promissory note and the reasons given by the plaintiff for not examining them being found to be unacceptable and baseless, it is found that, only on the basis of the comparison of the signatures and based on the subjective satisfaction, without giving any reason whatsoever for the said determination, the Courts below had accepted the plaintiff's case. However, when the above approach of the Courts below is found to be against the principles of law, as above discussed, it is found that the judgment and decree of the Courts below cannot be accepted in any manner and liable to be interfered with.

18.In this connection, the counsel for the defendant placed reliance upon the decisions reported in AIR 2008 Supreme Court 1541 [Thiruvengada Pillai Vs. Navaneethammal & Anr.], AIR 1987 Andhra Pradesh 139 (FB)[G.Vasu Vs. Syed Yaseen Sifuddin Quadri], 1999 (3)SCC 35 [Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand payrelal]. Similarly, the plaintiff's counsel in support of his contention, placed reliance upon the decision reported in 2012 (II) AD (Delhi)337 [Cogent Ventures (India) Ltd Vs. Raj Karan]. The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the case at hand.

19.In the light of the above discussions, the substantial questions of law formulated in this matter are accordingly answered against the plaintiff and in favour of the defendant.

20.In conclusion, the judgment and Decree made in A.S.No.140 of 2001 on the file of the Principal District Court, Erode, confirming the judgment and decree made in O.S.No.232 of 1999 on the file of the Second Additional Sub Court, Gobichettipalayam are set aside. Resultantly, the suit laid by

the plaintiff is dismissed with costs. Accordingly, the second appeal is allowed with costs. Connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

mfa

To

1. The Principal District Judge,
Erode.
2. The Second Additional Subordinate Judge,
Gobichettipalayam.

Copy To

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

+1cc to Mr.R.T.Doraisamy, Advocate SR.No.91290
+1cc to Mr.N.Manokaran, Advocate SR.No.91234

S.A. No.580 of 2002

VD(CO)
GN(19/02/2018)

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