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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

SECOND APPEAL (MD) No.91 of 2014

AND

M.P. (MD).No.1 of 2014

Madasamy

... Appellant /Respondent/
Defendant

Vs.

Mariappan

... Respondent /Appellant /
Plaintiff

PRAYER: Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 27.03.2013, made in A.S.No.113 of 2012 on the file of the Principal Sub-Court, Tirunelveli, reversing the judgment and decree, dated 24.06.2011, in O.S.No.42 of 2004 on the file of the I-Additional District Munsif, Tirunelveli.

For petitioner

... Mr.H.Arumugam

For respondent

... Mr.S.Meenakshi Sundaram,
Senior counsel for
Mr.R.Manimaran

JUDGMENT

The appellant herein is the unsuccessful defendant in a suit for declaration of money based on the promissory notes and mortgage deed. There are totally three transactions involved in the suit. The transactions supported by Exs.A1 and A2 are not in dispute, as the defendant himself conceded to the execution of the same. The dispute is only with respect to Ex.A3, dated 29.06.2001, which is a promissory note, alleged to have been executed by the defendant in favour of the plaintiff for a sum of Rs.50,000/-. The execution of Exs.A1 and A2 are in the year 1995 and the execution of Ex.A3 is in the year 2001. The defendant/appellant has categorically denied his signature on Ex.A3, though he has admitted his signatures on Exs.A1 and A2. The trial Court had compared the signatures found on Exs.A1, A2 and A3, and held that the claim of the defendant is *bona fide*, as the signature found on Ex.A3 is different from the admitted signatures on Exs.A1 and A2. On the basis of the same, the suit was dismissed regarding the claim based on Ex.A3. On appeal, the suit was decreed reversing the finding of the trial Court.

<https://hcservices.ecourts.gov.in/hcservices/>

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



3. This second appeal has been admitted on the following substantial questions of law?

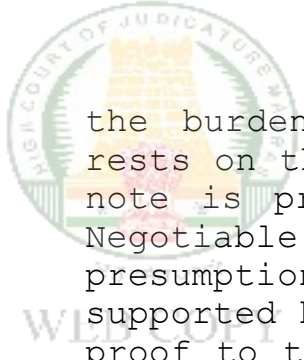
(a) Whether the lower appellate Court is right in reversing the decree in respect of Ex.A3, pro-note dated 29.06.2001 simply on the ground that the trial Court ought not to have compared the signature when admitted signatures are not contemporaneous period of document without giving any finding about the signature?

b) When it is an admitted fact that on the complaint of appellant a criminal case was registered in Crime No.07/04 in respect of Ex.A3, and the same is pending whether the lower appellate Court is committed error in not considering the same?

c) When the trial Court has invoked Section 73 of the Indian Evidence Act, 1872, and found that the signature in Ex.A3 not belongs to appellant and when the respondent has not taken any steps to get an opinion from handwriting expert whether the lower appellate Court is right in giving a finding that the appellant has not taken steps to get expert opinion?

4. According to the learned counsel appearing for the appellant/defendant, the execution of Exs.A1 and A2 were admitted by the defendant and he was ready to pay the liability arising out of the same and at the same time, he denied his signature found on Ex.A3. Ex.A3 was said to have been executed in the year 2001 by the defendant, having received a sum of Rs.50,000/-. The said promissory note was attested by the two witnesses viz., one Alwar and Raman, who is PW2. PW2 has stated that Ex.A3 was typewritten and brought by the defendant and after receiving a sum of Rs.50,000/- from the plaintiff, the defendant had put his signature. The plaintiff had also sent a suit notice under Ex.A4 which was received and acknowledged by the defendant under Ex.A5. The signature found on Ex.A5 is admitted by the defendant. The trial Court had compared the signatures found on Exs.A1, A2 and A3 and came to the conclusion that the signature in Ex.A3 differs with Exs.A1 and A2 and the same could not have been executed by the defendant, and disbelieved the case of the plaintiff, insofar as Ex.A3 is concerned.

5. In a suit for promissory note, the burden initially lies on the plaintiff, who has got the bounden duty to prove that the execution of the promissory note is proved, the rule of presumption laid in Section 118 of the Negotiable Instruments Act helps him to shift



the burden to the other side. The burden of proof, therefore, rests on the plaintiff. As soon as the execution of the promissory note is proved by the plaintiff, once again Section 118 of the Negotiable Instruments Act imposes a duty on the Court to raise a presumption in his favour that the said promissory note is supported by consideration. This presumption shifts the burden of proof to the defendant. If the onus is shifted on the defendant, it is for him to adduce direct evidence to prove that the promissory note is not supported by valid consideration. It is open to the defendant also to rely on the circumstantial evidence.

6. The two documents admitted by the defendant were executed in the year 1995, for which he has fairly conceded to pay the amount. Whereas the plaintiff has not established the circumstances which warranted the defendant to borrow a sum of Rs.50,000/-, after a gap of six years. When the defendant has specifically contended that the signature found on Ex.A3 is a forged one, the plaintiff ought to have taken steps to prove the same in the manner known to law. Merely because the suit notice was not responded by the defendant, it will not automatically lead to the inference that the execution of suit promissory note is proved. The defendant also has stated in the written statement that he had lodged a complaint before the Commissioner of Police for the forgery committed by the plaintiff on the suit promissory note - Ex.A3 and the same was forwarded to the District Crime Branch and an FIR was registered. From the above act, it can be seen that the defendant has taken steps to show the fraud played on him by giving a criminal complaint. At-least, thereafter, the plaintiff could have taken steps to prove the signature of the defendant on Ex.A3 and discharge his burden. But, he has not done so. The lower appellate Court has wrongly held that the burden is on the defendant to prove the execution of the promissory note. As stated earlier, the other circumstantial evidence also has to be considered before deciding the case.

7. When the defendant has admitted the execution of the other two documents, but refused the execution of Ex.A3, the plaintiff ought to have proved that on the day of Ex.A3 was executed, he had sufficient money for lending and that the defendant had borrowed the same by executing Ex.A3. Though it may not be safe for the Court to compare the signature on its own, the trial Court has done the said exercise. However, that may not be the reason for the lower appellate Court to reverse the judgment, when the plaintiff has failed to discharge the initial burden cast on him. In such circumstances, the judgment of the lower appellate Court granting a decree with respect to Ex.A3 transaction is unsustainable as the same is done without adverting to the settled principle of law. The plaintiff/respondent, having failed to prove the execution of Ex.A3, is not entitled to the decree as prayed for. Accordingly, the questions of law are answered in favour of the appellant/defendant.



8. In the result, this second appeal is allowed and the judgment and decree passed by the lower appellate Court are set aside and the judgment and decree passed by the trial Court are restored. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Tirunelveli.
2. The I-Additional District Munsif, Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate, SR No. 65121.

+1 CC to M/s.R.MANIMARAN, Advocate, SR No. 64696.

GCG

PSM/KKR/SAR2/24.07.2017/4P/5C

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12.07.2017