



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

S.A. (MD) No.198 of 2011

and

M.P. (MD) No.1 of 2011

K.M.Rajendran .. Appellant/Respondent/Plaintiff

Vs.

B.Venkatammal .. Respondent/Appellant/Defendant

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.25 of 2009, dated 06.10.2010 on the file of I Additional District Judge, Madurai, reversing the judgment and decree in O.S.No.91 of 2007, dated 07.07.2009, on the file of the Principal Subordinate Court, Madurai.

For Appellant	: Mr.N.Vallinayagam
For Respondent	: Mr.P.Pethu Rajesh

JUDGMENT

Challenging the judgment and decree passed in A.S.No.25 of 2009, on the file of I Additional District Court, Madurai reversing the judgment and decree passed in O.S.No.91 of 2007, the plaintiff has filed the above second Appeal.

2. The plaintiff filed the suit in O.S.No.91 of 2007 to direct the defendant to pay a sum of Rs.1,47,950/- with subsequent interest at the rate of 12% per annum on the principal amount of Rs.1,10,000/- by passing preliminary decree and to pass a final decree for the sale of the mortgage property and for the other reliefs.

3. According to the plaintiff, the defendant executed a demand promissory note dated 02.04.2004 for a sum of Rs.1,10,000/- and also handed over the original title documents as security for the due repayment of the loan amount. Since the defendant failed to repay the amount, a notice was sent to the defendant and she also



sent a reply to the plaintiff. In these circumstances, the plaintiff filed the suit.

4. According to the defendant, she did not execute the suit promissory note. Further she has stated that on 03.07.2000, she borrowed a sum of Rs.25,000/- from the plaintiff and the plaintiff obtained her signature in two blank promissory notes and also obtained title deeds of the property belonging to her. Further, the defendant has stated that she repaid the said loan amount to the plaintiff. That apart, the defendant has specifically stated that she did not execute any promissory note in favour of the plaintiff on 02.04.2004. She has also stated that she did not borrow any amount on 02.04.2004. In these circumstances, the defendant prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff two witnesses were examined and 6 documents viz., Exs.A.1 to A.6 were marked and on the side of the defendant, she was examined as D.W.1 and one document viz., Ex.B.1 was marked. The trial Court, after taking into consideration the oral and documentary evidences let in by the parties decreed the suit. Aggrieved over the same, the defendant preferred an appeal in A.S.No.25 of 2009 and the lower Appellate Court reversed the judgment and decree of the trial Court and allowed the appeal. Aggrieved over the judgment and decree of the lower Appellate Court, the plaintiff has filed the above Second Appeal.

6. Heard Mr.N.Vallinayagam, learned Counsel appearing for the appellant and Mr.P.Pethu Rajesh, learned Counsel appearing for the respondent.

7. The appellant has raised the following Substantial Questions of Law in the Second Appeal:

"1. Whether the lower appellate Court is correct in accepting the oral evidence of the respondent, which are contrary to her pleadings?

2. Whether the lower appellate Court is correct in law reversing the decree and judgment relying the evasive denial of the respondent in her pleadings?

3. Whether the lower appellate Court is correct in law reversing the decree and judgment of the lower Court when all the probabilities are in favour of the appellant?

4. Whether the lower appellate Court is correct in shifting the onus on the appellant, while the respondent had denied the execution of promissory note specially in her pleadings?"



8. On a careful consideration of the materials available on record and the submissions made by the learned Counsel appearing on either side, it could be seen that the plaintiff contended that the defendant borrowed a sum of Rs.1,10,000/- on 02.04.2004 and executed Ex.A.1 promissory note. However, the defendant specifically denied that she did not execute any promissory note on 02.04.2004 and that she has not borrowed any money on 02.04.2004.

9. On a perusal of the copy of the promissory note, it could be seen that on the revenue stamp, one P.Senkattammal had signed the promissory note. The defendant's name is B.Venkattammal. While the name of the defendant is B.Venkattammal, in the promissory note it has been signed as P.Senkattammal, which itself is sufficient that the defendant has not signed the suit promissory note, dated 02.04.2004. When the name of the defendant itself differs in Ex.A.1 promissory note, I do not find any reason to decree the suit. The lower Appellate Court, taking note of all these aspects, rightly reversed the judgment and decree of the trial Court and dismissed the appeal.

10. In these circumstances, I do not find any ground much less any substantial question of law to interfere with the judgment and decree of the lower Appellate Court. The Second Appeal is liable to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

1. The I Additional District Judge, Madurai.

2. The Principal Subordinate Judge, Madurai.

+1 cc to M/s.N.Vallinaygam, Advocate in SR.No. 7105

+2 cc to M/s.P.Pethu Rajesh, Advocate in SR.No. 6950

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CSL/SKN/14.03.2017 : 3P/5C

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