



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.741 of 1993

S.Sundaramoorthy .. Appellant/1st Respondent/Plaintiff

Versus

1.D.Gopal

2.S.Visalakshi

3.T.Saroja

4.T.Santha

5.T.Vijaya .. Respondents/Appellants 2 to 5 /
Defendants

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.6 of 1990 dated 30.08.1991 on the file of the Sub-Judge, Dharmapuri reversing that of the judgment and decree in O.S.No.733 of 1987 dated 31.03.1989 on the file of the District Munsif, Dharmapuri.

For Appellant :: Mr.P.Gopalan

ORDER

The plaintiff is the appellant. The plaintiff had filed O.S.No.733 of 1987 on the file of the District Munsif Court, Dharmapuri, on the strength of a promissory note, dated 07.11.1984 executed for a sum of Rs.5,000/- by one Thanikachalam. Plaintiff sought recovery of the amount together with interest at 12% per annum. The defendants were the legal representatives of Thanikachalam.

2. In the written statement, the defendants appear to have taken various defences including availability of funds with the plaintiff to lend the money. The primary issue was whether the promissory note dated 07.11.1984 was a true and genuine document.

3. To support the case of the plaintiff, he had examined P.W.2 and P.W.3 who were witnesses to the promissory note. The



learned District Munsif decreed the suit by judgment and decree dated 31.03.1989.

4. Challenging that judgment, the defendants filed A.S.No.6 of 1990 which came up for consideration before the Sub-Court, Dharmapuri. The learned Sub-Judge, observed that he had the power to examine the signatures found in the promissory note with the supposed by admitted signatures of Thanikachalam. The learned Sub-Judge examined them under Section 73 of the Indian Evidence Act. Unfortunately, the document with which, the signatures of the promissory note was compared was a document addressed to the Tahsildar by Thanikachalam dated 07.01.1986. It is not known how a document addressed by Thanikachalam to the Tahsildar was available with Thanikachalam or with his legal representatives. The original must have been available only with the Tahsildar. At any rate, the document is dated 07.01.1986 whereas, the promissory note is dated 07.11.1984. Both the documents are not contemporaneous and there is a gap of more than two years between the two documents. This is significant since Thanikachalam was dead even at the time of institution of the suit in 1987 and there is no evidence regarding his age or physical condition.

5. Quite honestly, this Court is not an expert in comparing signatures and is not prepared venture in to such exercise. The trial Court had given a definite finding regarding the execution of promissory note and witnesses are also examined who have spoken about the execution of promissory note. If the promissory note is to be disputed then the attesting witnesses should have been cross-examined on those lines.

6. A learned counsel Mr.V.P.Venkat had entered appearance on behalf of the respondents. Half way during the pendency of the Second Appeal, the respondents have not reposed continuous confidence in him. They opted to change him. Notice was directed to the respondents. Names have been printed in the cause list. At any rate, it is the look out of the respondents to appoint a fresh counsel.

7. The Second Appeal had been admitted on the following substantial questions of law:-

1. Whether the lower Appellate Court is right in reversing the well considered judgment of the trial Court without appreciating the scope of Section 118 of the Negotiable Instruments Act?

2. Whether the lower Appellate Court is right in shifting the burden on the plaintiff?

3. Whether the non-consideration of



evidence of P.Ws.2 and 3, who are the attesting witnesses in the suit pro-note vitiates the findings of the lower Appellate Court?

8. The first substantial question of law relates to Section 118 of the Negotiable Instruments Act wherein, presumption is drawn if signature is admitted. The second question of law is with respect to the shifting of burden of proof on the plaintiff in a suit based on promissory note. The plaintiff can only produce the original promissory note and state his case. He has proved execution by examining the witnesses to the promissory note. The plaintiff has no other burden to prove except primarily to produce the original promissory note. The third substantial question of law is non-consideration of the evidence of P.W.2 and P.W.3.

9. It appears that the lower Appellate Court had assumed that P.W.2 and P.W.3 were interested witnesses. It is the evidence of the witnesses which is more important rather than their status. Once a witness had stated that the defendant executed the promissory note, then the Court necessarily will have to take recourse to Section 118 of the Negotiable Instruments Act and a presumption of the execution and consequently draw presumption of passing of consideration.

10. I hold that the first Appellate Court had unfortunately misdirected itself on fundamental principles of proof.

11. This Second Appeal is allowed with costs. The judgment of the First Appellate Court is set aside and judgment of the Trial Court is confirmed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub-Judge, Dharmapuri.
2. The District Munsif, Dharmapuri.

+lcc to Mr.P.Gopalan, Advocate SR.No.83917

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AD(CO)

GN(14/02/2022)