

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:07.03.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.168 of 2018
and C.M.P.No.4397 of 2018

S.Ramalingam .. Appellant/defendant
Vs.

M.K.Senniiappan .. Respondent/plaintiff

Prayer:- Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree of the IV Additional District Judge, Erode, Bhavani made in A.S.No.18 of 2015 dated 05.10.2017 confirming the judgment and decree of the Subordinate Judge, Bhavani made in O.S.No.92 of 2011 dated 20.04.2015.

For Appellant : Mr.C.Chokkalingam

JUDGMENT

Aggrieved by the unanimous decisions of the Courts below, the defendant has preferred the above Second Appeal in a suit for promissory note.

2. The case of the plaintiff is that the defendant had borrowed a sum of Rs.1,00,000/- on 19.01.2009 and executed a promissory note. Despite repeated demands and issuing legal notice, there was no response from the defendant. Hence, the suit has been filed.

3. The defendant denied the execution of promissory note dated 19.01.2009 and contended that he never borrowed any amount from the plaintiff. The defendant specifically denied the signature found on the suit promissory note, as it is not that of his signature. Hence, prayed for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as PW-1 and two more witnesses were examined as P.W.2 and P.W.3 and marked Exs-A1 to A5. On the side of the defendant, the defendant was examined himself as D.W.1 and two more witnesses were examined as D.W.2 and D.W.3

and Exs.B1 to B3 were marked. Apart from these documents, Attendance Register is marked as Ex.X1.

5. After considering the oral and documentary evidence, the Courts below have concurrently decreed the suit in favour of the plaintiff.

6. Learned counsel for the appellant /defendant specifically pleaded that the defendant had deformed left thumb with two fingers, which is not fully grown and he could not have affixed his thumb impression as shown in Ex.A-1.

7. The plaintiff himself was examined as P.W.1, who had deposed that he had paid the amount to the defendant and got the suit promissory note executed and attested. P.W-2, is the scribe of Ex.A1-Promissory note and he was also cross examined by the defendant, wherein, it is stated that the defendant had asked him to go to the plaintiff's house to write Ex.A-1. It is the categorical version of P.W-2-Scribe that the thumb impression found on the suit promissory note is that of the defendant. In the process of proving the suit promissory note, P.W-3 was also examined, who is the attestor of Ex.A-1, had categorically stated that the defendant had affixed his thumb impression and put his signature in the suit promissory note. Considering the cogent evidence of the plaintiff's side witnesses, the Courts below have come to the conclusion that the plaintiff has discharged the initial burden of proving the execution of Ex.A-1.

8. In the cross examination, the appellant/defendant had stated that he knew the plaintiff and P.W-2 also studied with him in his School. The witnesses were known to the defendant even prior to execution of the promissory note. Considering the fact that in the written statement, the defendant has stated that he does not know, who the plaintiff was, but in the oral examination, he has admitted that he is Pangali, the evidence of D.W.1 was disbelieved by the Courts below. In order to prove that the defendant was not available at that time the promissory note alleged to have been executed, the defendant examined D.W-2, who is the Assistant of Tamil Nadu State Corporation, Erode division and he had also produced the attendance certificate and deposed that the defendant was on 19.01.2009 from 05.15a.m to 09.00p.m. However, as the original was not brought before the Court, it was not considered by the Court. The said document was marked as Ex.X-1. The lower appellate Court had also considered the document Ex.X1 and given a finding that the defendant's signature was not found there. Besides, the trip sheet of the bus had not been produced. Therefore, the defendant failed in his attempt to prove that he was not present

at the time of execution of Ex.A-1.

9. Yet another contention raised by the defendant is that he is incapable of affixing his thumb impression, as he has got two fingers on his thumb and the same is not fully grown. However, it cannot be stated that the defendant cannot put his thumb impression. Even presuming for a moment the argument of the defendant is correct, the defendant could have send the suit promissory note as well as the admitted thumb impression for forensic and to prove that it was a forgery.

10. Having failed to do so, the defendant cannot now turn around to dispute the thumb impression found on the suit promissory note. Hence, the Courts below have concurrently held that the plaintiff had proved the execution of the promissory note and that the same is supported by consideration and that the appellant /defendant failed to re-pay the same. Accordingly, the suit was decreed. As there is no infirmity in the judgment and decree of the Courts below and there is no substantial question of law or much less question of law arising for consideration in this Second Appeal.

11. Accordingly, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs. Consequently connected miscellaneous petition is closed.

srn

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge, Erode, Bhavani
2. The Subordinate Judge, Bhavani

+1cc to Mr.C.Chockkalingam, Advocate Sr.No.17602

SV(CO)
sm:9.4.2018

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