

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

Second Appeal No.368 of 2018

Kaluvarayan

... Appellant/Plaintiff

Vs

1.Senthamarai

2.Manikandan

3.Dhanam @ Dhanalakshmi ... Respondents/Defendants

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree in A.S.No.4 of 2014 on the file of Additional District Court cum Fast Track Court,Villupuram dated 14.12.2017 in confirming the judgment and decree of the Trial Court in O.S.No.72 of 2007 dated 06.07.2013 on the file of Subordinate Court, Kallakurichi.

For Appellant : Mr.V.Raghavachari

J U D G M E N T

The challenge in this second appeal is to the concurrent finding of fact recorded by the Subordinate Court, Kallakurichi and the Additional District Court, Villupuram dismissing the civil suit filed by the appellant for recovery of the loan amount with interest and cost.

2. The appellant laid a suit in O.S.No.72 of 2007 before the Subordinate Court, Kallakurichi, claiming that a sum of Rs.90,000/- was borrowed by the husband of the first respondent and father of respondents 2 and 3 on 5 August 2004 with stipulation to pay interest at the rate of 9% per annum. The borrower died on 9 January 2007 without making payment. Since the respondents being the legal representatives failed to honour the commitment made by their predecessor-in-interest, the appellant filed the suit for recovery of money.

3. The suit was resisted by the respondents on the ground that the Promissory Note was a fabricated one and that there was no consideration to the transaction.

4. The learned Trial Judge on the basis of the evidence both documentary and oral dismissed the original suit. The decree was upheld by the First Appellate Court.

5. I have heard the learned counsel for the appellant.

6. The learned Trial Judge as well as the Appellate Judge found that there was a serious dispute with regard to the execution of the Promissory Note. Though the Promissory Note was executed on 5 August 2004, the consideration was given only later. The Promissory Note was executed at the office of the Sub-Registrar, Kallakurichi. Even according to P.W.1, the amount was paid only later. Therefore, it is clear that while executing the Promissory Note, payment was not made. The witnesses examined on the side of the appellant tendered contradictory evidence. The Trial Court as well as the Appellate Court therefore concurrently held that the appellant failed to prove either the execution of Promissory Note or the consideration given for such execution.

7. The following observation made by the first appellate court in its judgment is a finding of fact on the basis of evidence:-

"23. PW1 has deposed that he himself purchased the bond paper and Peramana Moopar had signed the promissory note and not put his left thumb impression and in subsequent evidence, PW1 has stated that Peramana Moopar put his left thumb impression also. PW2 has deposed in his cross examination that the deceased Peramana Moopar purchased the promissory note form, stamp and brought. PW1 has deposed that the person who has written promissory note obtained the left thumb impression from Peramana Moopar and he has signed with the pen got from the scribe of Ex.A1 and signed and the scribe of the promissory note took the impression from ink pad which the scribe possessed. But the said scribe was not examined by the plaintiff. PW2 has deposed in his cross examination that Peramana Moopar and the witnesses were signed with the pen used for writing the promissory note after getting from the scribe and Peramana Moopar affixed impression. Admittedly, PW2 witness Paramanandam is plaintiff's sister's son and the other witness Kalvarayan is related to the plaintiff and he had experience to go to Sub Registrar's office. Hence PW1 and PW2 contradicts to each other regarding the signing of Peramana Moopar and affixing his left thumb impression.

29. The plaintiff has not stated any reason why the scribe was not examined. The best person is the scribe who can say about the corrections. The learned counsel for the appellant/plaintiff has argued that there is no

alteration but only correction and the tamil year is tallied with english year and hence it cannot be construed as material alteration. But regarding the execution of the promissory note and passing of consideration, there is major contradictions between PW1 and PW2. Further on perusal of Ex.A1, in the top the amount Rs.10,000/- is altered to Rs.90,000/-. Even though the amount was written in words, the alteration in the amount was not proved through the scribe who wrote the promissory note. According to the plaintiff, the correction was initiated by the scribe himself. The alteration in the year "4" in Ex.A1 and the number in amount "9" cannot be construed as overwritten since the same was not proved by the scribe and was initiated by the scribe himself. Hence there are lot of contradictions regarding the execution of the promissory note and passing of consideration. The plaintiff has not proved the alteration is mere alteration by examining the scribe but the alteration is material alteration which affect the right of the party. Since there is material alteration in the suit promissory note, the suit promissory note is not a valid document."

8. There is no question of law much less substantial question of law raised by the appellant to entertain this second appeal. I am therefore of the view that the second appeal deserves to be dismissed.

9. In the up shot, I dismiss the Second Appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
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Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Court cum

Fast Track Court, Villupuram.

2.The Subordinate Court, Kallakurichi.

+ 1 cc to M/s. V. Raghavachari, Advocate Sr.48828

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RJI (CO)

EU(05/09/2018)