

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.8 of 2018
and CMP No.217 of 2018

M.Easwaran

.. Appellant/Defendant

Vs.

A.Balasundaram

.. Respondent/Plaintiff

* * *

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 04.09.2008, passed in A.S.No.27 of 2008 on the file of the Subordinate Court, Pollachi, confirming the judgement and decree dated 15.03.2007, in O.S.No.576 of 2004 on the file of the Court of the District Munsif, Pollachi.

* * *

For Appellant : Mr.R.Nandhakumar

For Respondents : Mr.K.Venkatasubban for
Sarvabhauman Associates

J U D G E M E N T

The unsuccessful defendant is the appellant, having lost before the Courts below.

2. The suit is one filed for the recovery of Rs.67,410/- from the appellant based on a promissory note dated 10.12.1999. The plaintiff/respondent herein had stated in the plaint that the defendant/appellant borrowed a sum of Rs.60,000/- on 10.12.1999 and executed a demand promissory note agreeing to repay the same with interest at the rate of 12% p.a. Even after issuance of the pre-suit notice dated 28.03.2001, there was no response. Hence, the suit.

3. The defendant/appellant resisted the suit denying the execution of the promissory note. He had also stated that the plaintiff/respondent's father-in-law one Kaliappan was doing business with the defendant/appellant. The plaintiff/respondent was a chit agent and in between plaintiff/respondent and the defendant/ appellant, chit dealings took place. The said

Kaliappan and defendants were successful bidders in one of the chits and plaintiff had realised the chit amount. Subsequent to the same, the said Kaliappan failed to settle the claim of the defendant/appellant, a misunderstanding arose. The said situation was exploited by the said Kaliappan by fabricating the suit promissory note through his son-in-law, who is the plaintiff. It was attempted by the defendant/appellant to deny the suit claim by stating that the father's name of the defendant in the suit promissory note was incorrect and that there were certain interpolations on the documents.

4. Before the Trial Court, on the side of the plaintiff, P.Ws.1 to 3 have been examined and Exs.A.1 to A.3 were marked. On the side of the defendants, D.Ws.1 and 2 and Exs.B.1 to B.9 were marked.

5. Based on the above pleadings, the Courts below have concurrently held that the suit promissory note was proved to be true and the same was executed on receiving valid consideration. Hence, decreed the suit. The above appeal is filed by the defendant/appellant.

6. The learned counsel appearing for the defendant/appellant contended that the time mentioned by the plaintiff/respondent for the execution of the promissory note was incorrect as the defendant/appellant was not at all available at the place of execution at the relevant time. In order to prove the said contention that the defendant/appellant was not available at the place of execution of the promissory note at the relevant time, as alleged by the plaintiff/respondent, the defendant/appellant had examined D.W.2 and also produced Exs.B.6 to B.9, which are telephone receipts. The Courts below had disbelieved Exs.B.6 to B.9 on the ground that D.W.2, who was said to be running the telephone booth was only a professional photographer and he did not have a valid license to run the telephone booth. Therefore, Exs.B.6 to B.9, which does not even contain the name of the defendant/appellant, cannot be pressed into service to prove the case of the defendant/appellant.

7. The interpolations alleged by the defendant/appellant on the promissory note was also dealt with by the Courts below holding that they are only over-writing and no material alteration has been found. Though the appellant had specifically denied the signature found on the suit promissory note, he had not taken any steps to prove the same by seeking the Court to obtain expert opinion by adopting scientific methods. On the other hand, exercising the powers under Section 73 of the Indian Evidence Act, 1872, the Courts below have compared the same with the signature found on Ex.A.3, the acknowledgement card receipt by the plaintiff for the pre-suit notice and found that the signature found on Ex.A.1 - Promissory note is true and genuine.

8. The promissory note is of the year 1999 and the suit is filed in the year 2001, which was numbered in 2004 and the judgement was delivered in the suit in 2007. In such situation, the argument of the learned counsel for the defendant/appellant that there were discrepancies in the evidence given by P.Ws.1 and 2, and therefore, the same cannot be considered by the Courts below cannot be sustained by passage of time. There is a possibility of the mentioning the precise time of the execution of the document. The same cannot be put against the plaintiff/respondent. The evidence, as a whole, is considered by the Courts below and concurrent findings were arrived at with respect to the execution of Ex.A.1 promissory note. In such circumstances, there is no reason to interfere with the findings of the facts of the Courts below, in the absence of any question of law, much less substantial question of law arising for consideration.

9. In the result, in the second appeal is dismissed confirming the judgement and decree passed by the Courts below. There shall be no order as to costs. Consequently, connected miscellaneous petition shall stand closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge Pollachi.
2. The District Munsif Court, Pollachi.

- +1 cc to Mr.R.Nandhakumar Advocate sr 15803
+1 cc to M/s.Sarvabhauman Associates sr 14937

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