

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2018

CORAM

THE HON'BLE MR.JUSTICE N.SESHASAYEE

S.A.No. 1609 of 2008

and

M.P.No.1 of 2008

Ramalingam

....Appellant/Appellant/
Defendant

Vs.

Rajavel

...Respondent/Respondent/
Plaintiff

Prayer: Appeal filed under Section 100 of C.P.Code 1908 against the judgment and decree passed in A.S.No.14 of 2006 on the file of Additional District Judge, Vridhachalam (Fast Track Court No. 3), dated 11.02.2008 confirming the Judgment and decree dated 23.03.2005 in O.S.No.386 of 2003 on the file of Additional Sub-Court, Vridhachalam.

For Appellant : Mr.S.R.Gowthama Narayanan

For Respondent : Mr. S.N.Subramani

JUDGMENT

This appeal is preferred by the defendant in O.S.No.386 of 2003, challenging the concurrent finding of the Courts below in a suit for money.

2. The plaintiff had laid the suit on a promissory note, dated 07.09.2000 for recovery of a sum of Rs.1,00,000/- with interest payable at the rate of 9% per annum. The loan, according to the plaintiff was obtained for securing a job for defendant's daughter. The defence offered by the appellant are that :

a) That the plaintiff alleges that the loan was obtained by the defendant/appellant in connection with the employment of latter's daughter. However, on the date of the promissory note, she was already employed.

b) the promissory note itself was fabricated as the signature in the promissory note vary.

3. Before the trial Court, the promissory note was marked as Ext.A1. The plaintiff had issued a suit notice and a copy of the same was marked as Ext.A2 before the trial court and the acknowledgment signed by the appellant was marked as Ext.A3. On comparing the signature of the appellant in Ext.A1 along with the admitted signature in Ext.A3, the trial Court rendered a finding that the promissory note was executed by the appellant. This was confirmed by the first Appellate Court in A.S.No. 14 of 2006.

4 This appeal has not been admitted. However, notice was served on the respondent and he has entered appearance.

5.1. Presently, the learned counsel for the appellant reiterated the same facts that the appellant had pleaded before the trial Court. So far as comparison of the disputed signature of the defendant in Ext.A-1 along with that of his admitted signature in Ext.A-3 by the Courts below is concerned, the courts are empowered to do so under Section 73 of the Evidence Act and as to whether the court was wrong and entered a perverse finding is concerned, the defendant/appellant has not offered any documents containing his admitted signature executed at the relevant time when the promissory note was executed. To that extent, he has forfeited his option to canvas his present argument.

5.2 The other aspect is as to the material relied on by the courts below in Ext.A3 for comparing the signature is concerned, at the point when a suit notice was served on the defendant, he will be little prepared to anticipate what the contents of the notice would be. Therefore, if the ordinary course of human conduct is the barometer to assess his conduct, then his signature in Ext.A3 acknowledgment card would be his natural and ordinary signature. Therefore, there is an element of reliability about the appellant's signature in Ext.A-3. Once, this is crossed then the findings of the Court below is chiefly one on fact and it does not involve any substantial questions of law.

6. Turning to the other aspect as to the circumstances in which the loan was said to have been obtained by the defendant/appellant is concerned, it is too remote, a fact to effect the factum of obtaining loan cannot be related.

7. In conclusion, this Court does not find any merit in this appeal and the same is dismissed with costs. The judgment and decree dated 11.02.2008 passed in A.S.No.14 of 2006 on the

file of Additional District Judge, Vridhachalam (Fast Track Court No. 3), confirming the Judgment and decree dated 23.03.2005 in O.S.No.386 of 2003 on the file of Additional Sub-Court, Vridhachalam is hereby confirmed. Consequently, connected miscellaneous petition is closed.

ssn/kmm

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Fast Track Court No. 3,
Vridhachalam.
2. The Additional Sub-Court,
Vridhachalam.
3. The Section Officer
VR Section
High Court, Madras.

+1cc to Mr.S.N.Subramani, Advocate, S.R.No.76649

S.A.No. 1609 of 2008

Kak(13/03/2019)

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