

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2018

Coram

The Honourable Ms.Justice P.T.ASHA

S.A.No.516 of 2018

S. Lakshmanan ... Appellant/1st defendant

Versus

1. M. Palanisamy ... 1st respondent / Plaintiff

2. L. Yuvaraj ... 2nd Respondent / 2nd Defendant

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree passed by the Learned Principal District Judge, Namakkal dated 26.02.2018 in A.S.No.37 of 2016 confirming the Judgment and Decree dated 04.02.2015 made in O.S.No.1704 of 2002 on the file of the Subordinate Court, Namakkal.

For Appellant : Mr. M. Saravanakumar

J U D G M E N T

The first defendant is the appellant before this Court. The Second Appeal arises from a promissory note suit filed by the 1st respondent herein in O.S.No.17104/2002 on the file of the Sub-Court, Namakkal, which has decreed and challenging the same, the appellant/1st defendant had filed A.S.No.37/2016, on the file of the Learned Principal District Judge, Namakkal and the said Lower Appellate Court also affirmed the judgment and decree of the Trial Court. Hence, this Second Appeal.

2. The brief facts necessary for disposal of the Second Appeal are as follows:

The parties in this Second Appeal are referred to and arrayed in the same ranking as in the suit. The plaintiff had filed the suit in O.S.No.17104/2002 for recovery of a sum of Rs.2,74,750/- due on a promissory note dated 22.02.2002.

3. It was the case of the plaintiff that the 1st defendant had borrowed a sum of Rs. 3 lakhs on the said date and had executed the promissory note as security. The 2nd defendant is the son of the 1st defendant and hence, he was impleaded as a party/respondent in the suit. The defendants had resisted the above suit inter-alia denying the signature and thumb impression in the promissory note and also raised a plea that he has no necessity or requirement for borrowing money, and, also that the plaintiff did not have the necessary wherewithal to give such a huge sum. The 1st defendant had also filed an additional written statement wherein he would contend that he and his brother borrowed a sum of Rs. 6000/- from one Velur Finance and had given two empty promissory notes. It is his further statement that the entire amount has been repaid ; however the promissory notes have not been returned on the ground that the interest for the sum borrowed is yet to be paid that the said Pronotes would be returned once the interest amount is paid by the defendants. It is the further statement of the 1st defendant that using the said empty promissory notes, the present suit has been laid falsely against them.

4. The 2nd defendant also filed the written statement adopting the statements made by the 1st defendant in his written statement. It is further averred by the 2nd defendant that no cordial relationship exist between the 2nd defendant and his father, the 1st defendant herein.

5. The Trial Court decreed the suit relying upon the evidences of PWs.2 and 3 who are witnesses to the promissory note as well as the report of the Forensic Department which clearly found that the thumb impression found in the promissory note was that of the 1st defendant. The said decree was taken up on challenge by the 1st defendant in A.S.No.37 of 2016 and the learned Principal Judicial Magistrate, Nammakkal dismissed the appeal and confirmed the decree and Judgment of the Trial Court. Challenging the said judgment and decree of the Lower Appellate Court, the 1st defendant is before this Court.

6. Heard Mr.M.Saravana Kumar, learned counsel for the appellant.

7. The court below had recorded a clear finding that the 1st defendant had not proved his case that the promissory note which is given by him for the other loan obtained by him from one Velur Finance, has been misused by the plaintiff. That, on appeal, the 1st defendant who had specifically come forward with the case that the signature in the promissory note and the thumb impression was not that of his, has been proved wrong by the a mere perusal of Ex.C1 - the Report of the Forensic Science Department. The 1st defendant has therefore failed to

substantiate his defence and therefore, no question of law much less the substantial question of law arises for consideration, warranting interference of this Court. I do not find any infirmity or illegality in the judgments and decrees passed by the Courts below.

8. In the result, the Second Appeal is dismissed confirming the judgment and decree passed in AS.No.37/2016 on the file of the Court of the Principal District Judge, Namakkal dated 26.02.2018. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Principal District Judge, Namakkal.
2. The Subordinate Judge, Namakkal.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.M.Saravanakumar, Advocate SR.No.80079

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RSI (CO)
CSL/23.01.2019