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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2018

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

S. A.No.202 of 2013

and

M.P.No.1 of 2013

Thaveethu ... Appellant/Defendant

Vs.

Hemalatha ... Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 31.07.2012 made in A.S.No.27 of 2011 on the file of the III Additional District Judge Cuddalore at Virudhachalam confirming the judgment and decree dated 18.01.2011 made in O.S.No.29 of 2010 on the file of Sub Court, Neyveli.

For Appellant : Mr.S.Kadarkarai

For Respondent : Mr.S.B.Viswanathan

JUDGMENT

Challenge in this second appeal is made by the defendant against the judgment and decree dated 31.07.2012 made in A.S.No.27 of 2011 on the file of the III Additional District Judge Cuddalore at Virudhachalam confirming the judgment and decree dated 18.01.2011 made in O.S.No.29 of 2010 on the file of Sub Court, Neyveli.

2. The suit has been laid by the plaintiff for recovery of money with interest and for costs on the basis of the promissory note.

3. For the sake of convenience, the parties herein shall be referred to as per the rank assigned in the suit.

4. According to the plaintiff, the defendant borrowed a sum of Rs.2,00,000/- from her on 05.08.2007 and in evidence thereof, executed a promissory note in her favour agreeing and promising to repay the above said amount at the rate of 12% per annum on



5. The case of the defendant, in brief, is as follows:

6. In support of the plaintiff's case Pws1 to 3 were examined and one exhibit Ex.A1 were marked. On the side of the defendant, DW1 has been examined and no document has been marked.

8. At the time of admission of the Second Appeal, the following substantial questions of law were framed:-

b) Whether the Courts below are correct in decreeing the suit when the Court itself is not compared the signature in the Promissory Note with the admitted signature already existing in the suit?



9. The suit has been laid on the promissory note. According to the plaintiff, the defendant borrowed a sum of Rs.2,00,000/- from her on 05.08.2007 for family expenses and in evidence thereof, executed the suit promissory note in favour of the plaintiff agreeing to repay the said amount with interest at the rate of 12% per annum to the plaintiff on demand. The defendant having failed to repay the borrowed sum with interest as promised, according to the plaintiff, she has been necessitated to institute the suit against the defendant for recovery of money.

10. Per contra, it is the case of the defendant that he had not borrowed the suit sum from the plaintiff on 05.08.2007 as claimed in the plaint and not executed the suit promissory note in evidence thereof and according to the defendant, the suit promissory note is a fabricated document. It is contended that the plaintiff has fabricated the suit promissory note and laid the false suit. Further, according to the defendant, there is no necessity on his part to borrow the said huge amount from the plaintiff as put forth in the plaint nor the signature contained therein is his and he never borrowed any amount from the plaintiff and the plaintiff is a total stranger to the defendant. At the instigation of his son-in-law enemies, the plaintiff has come forward with the suit to harass the defendant and hence, the suit is liable to be dismissed.

11. The plaintiff has laid the suit against the defendant for recovery of money on the basis of the promissory note. The plea has been taken by the defendant that the suit promissory note is a fabricated one. In such view of the defence put forth by the defendant, it is evident that the burden of proving that the defendant had borrowed the amount from the plaintiff as pleaded and executed the suit promissory note in his favour squarely rests upon the plaintiff. With reference to the same, the plaintiff has examined himself as PW1 and further examined the scribe of the promissory note as PW2 and PW3 and the promissory note has been marked as Ex.A1. PWS1 to 3 have consistently and clearly deposed about the borrowal of the amount by the defendant from the plaintiff and the execution of the suit promissory note by the defendant in favour of the plaintiff. The evidence of Pws1 to 3, with reference to the above aspect, as rightly found by the courts below, are found to be inspiring, convincing and also trustworthy. No material, as such, has been pointed out by the defendant to discredit their testimony. However, it is argued by the appellant/defendant's counsel that the Courts below ought to have seen that the respondent/plaintiff is residing at Sundararajapuram, Bodinaikanur Taluk and the said address was given in the



Promissory Note, but the alleged Promissory Note executed at Neyveli which shows that the Promissory Note is a fabricated one. However, the above pointed contradiction in my opinion and as rightly held by the Courts below do not in any manner affect the plaintiff's case or undermine the testimony of PWs1 to 3. Barring the above point, the appellant/defendant has not projected anything to reject the evidence of PWs1 to 3. On the other hand, as rightly found by the Courts below, it is seen that PWs1 to 3 have clearly deposed about the factum of the borrowal of the defendant of the suit amount from the plaintiff and the execution of the promissory note, in evidence thereof, in favour of the plaintiff.

12. The learned counsel appearing for the appellant/defendant placed reliance upon the following judgments:-

(i) This Court judgment in the case of P.Ramasamy Vs K.Chinnammal reported in CDJ 2011 MHC 2572 held as follows:-

"14. Relying upon the said judgments, the learned counsel for the respondent submitted that in the instant case, the scribe, who was examined as PW2 had clearly stated in his evidence that the pronote was prepared by him and the appellant had signed the pronote and received amount and one Rakkappa Gounder stood as an attesor. It is the further submission of the learned counsel for the respondent that apart from the evidence of PW2, certain admissions were made by DW1 in his cross examination that there was no enmity between him and the respondent's husband, which would prove the genuineness of Ex.A1. On the other hand, it is the submission of the appellant that the attesor, who was examined as DW2 has stated in his evidence that....

Therefore according to the appellant, by examining the attesor to the subject pronote, he had proved his case that the pronote was a forged one. Under such circumstances, the liability shifts back to the respondent to prove her case and in the said situation, the respondent ought to have sent the pronote for expert's opinion".



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(ii) The Hon'ble Supreme Court in the case of The State (Delhi Administration) Vs Pali Ram reported in 1979(2)SCC 158 held as follows:-

"33. Since even where proof of handwriting which is in nature comparison, exists, a duty is cast on the court to use its own eyes and mind to compare the admitted writing with disputed one to verify and reach its own conclusion, it will not be wrong to say that when a court seised of a case, directs an accused person present before it to writ down a sample writing, such direction in the ultimate analysis, "is for the purpose of enabling the Court to compare" the writing so written with the writing alleged to have been written by such person, within the contemplation of Section 73. That is to say, the words "for the purpose of enabling the court to compare" do not exclude the use of such "admitted" or sample writing for comparison with the alleged writing of the accused by a handwriting expert cited as a witness by any of the parties. Even where no such expert witness is cited or examined by either party, the court may, if it thinks necessary for the ends of justice, on its own motion, call an expert witness, allow him to compare the sample writing with the alleged writing and thus give his expert assistance to enable the court to compare the two writings and arrive at a proper conclusion".

A reading of the above rulings makes it clear that the said principles would not apply to the facts of the case on hand. Thus the contention raised by the defendant/appellant has no force.

13. However the contention of the respondent/plaintiff's counsel is that the plaintiff has established that the signature available in Ex.A1 promissory note is that of the defendant is found by both the Courts below. It is found that the defendant has miserably failed to establish his case that he had not borrowed the suit amount from the plaintiff and the execution of the suit promissory note is fabricated one. The defendant has not taken care to disprove the signature found on the suit promissory note or execution of the same by filing necessary application seeking expert opinion for comparison before the trial Court. The plaintiff has proved his case through PW2 & PW3 in which they have clearly deposed about the factum of the borrowal of the defendant of the suit amount from the plaintiff and the execution of the promissory note, in evidence thereof,



in favour of the plaintiff. All these aspects were rightly considered by the Courts below and decreed the suit and this Court find no reasons to interfere with the judgments of the Courts below. Accordingly, the substantial questions of law are answered against the appellant/defendant.

14. In the result, the Second Appeal is dismissed, confirming the judgment and decree passed by the Courts below. No costs. Connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District Judge, Cuddalore,
Virudhachalam.
2. The Sub Court,
Neyveli.

+1cc to Mr.S.Kadarkarai, Advocate Sr.89193

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and
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