

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 24.01.2018
PRONOUNCED ON : 29.01.2018
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A. No.1260 of 2003

P.Sekar

...Appellant/Defendant

Vs.

Srinivasal Naidu

...Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree of Principal District Judge, Vellore in A.S.No.1 of 2003 dated 11.03.2003, reversing the judgment and decree of Additional District Munsif, Vellore in O.S.No.626 of 1997 dated 18.07.2002.

For Appellant : Mr.S.V.Karthikeyan

For Respondent : Exparte Vide order this Court dated 24/01/2018

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 11.03.2003 passed in A.S.No.1 of 2003 on the file of Principal District Court, Vellore reversing the judgment and decree dated 18.07.2002 passed in O.S.No.626 of 1997 on the file of the Additional District Munsif Court, Vellore.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for recovery of money.

4. The case of the plaintiff in brief is that the defendant borrowed a sum of Rs.12,000/- from him on 05.01.1993 and in evidence thereof, executed the suit promissory note in his favour, agreeing to repay the borrowed sum with interest as recited in the promissory note and on 07.11.1995, the defendant paid a sum of Rs.1,500/- towards the borrowed sum and made an endorsement on the reverse side of the promissory note and in spite of repeated demands and the issuance of notice dated 12.03.1997, the defendant having failed to repay the borrowed

the sum with interest, according to the plaintiff, he has to be necessitated to lay the suit for appropriate reliefs.

2.The case of the defendant in brief is that the suit is not maintainable either in law or on facts and the defendant did not borrow the suit amount from the plaintiff on 05.01.1993 and executed the promissory note in evidence thereof as alleged in the plaint and the defendant did not pay any sum much less Rs.1,500/- on 07.11.1995 towards the alleged borrowed sum and made an endorsement with reference to the same on the reverse side of the promissory note and on the other hand, according to the defendant , the suit promissory note has been forged by the plaintiff with ulterior motives and hence not valid and there is no need or necessity on the part of the defendant to borrow the suit amount from the plaintiff and hence the suit without any merits and cause of action, is liable to be dismissed.

7.In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A6 were marked. On the side of the defendant, D.W.1 was examined. No document has been marked.

8.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the suit. On appeal, the first appellate court, on an appreciation of the materials placed was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Challenging the same, the present second appeal has been preferred.

9.At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

(i)Whether in the absence of examining any independent witness to prove the varied signatures of defendant/appellant, the lower appellate Court is right in allowing the appeal, holding that the defendant had signed the pronote?

(ii)Whether the lower appellate Court is right in shifting the burden of proof on the appellant/defendant, to explain the signature found in the Vakalat and the pronote?

10. In brief, according to the plaintiff, the defendant borrowed a sum of Rs.12,000/- from him on 05.01.1993 and executed a suit promissory note, which has been marked as Ex.A1, agreeing to repay the sum with interest as recited in the note and further according to the plaintiff, the defendant paid a sum

of Rs.1,500/- towards the borrowed sum on 07.01.1995 and made an endorsement with reference to the same on the reverse side of the suit promissory note, which endorsement has been marked as Ex.A2 and according to the plaintiff, inasmuch as the defendant did not repay the borrowed sum as promised, despite several reminders and the issuance of notice marked dated 12.03.1997, the copy of which has been marked as Ex.A3, according to the plaintiff, he has been constrained to lay the suit against the defendant for the recovery of money.

11.The defendant has disputed the case of the plaintiff in toto and according to the defendant, he did not borrow any sum from the plaintiff at any point of time, much less Rs.12,000/- on 05.01.1993 as alleged in the plaint and did not execute the suit promissory note in favour of the plaintiff as claimed and also not paid any sum towards the alleged borrowed sum on 07.11.1995 as put forth in the plaint and according to the defendant, out of vengeance and enmity, the suit promissory note has been created with ulterior motives and hence the suit without merits is liable to be dismissed.

12.In the light of the defence set out by the defendant as above narrated, it is seen that the burden is heavy upon the plaintiff to establish that the defendant borrowed the suit amount from him and executed the promissory note Ex.A1 as put forth in the plaint and similarly, the burden is also heavy upon the plaintiff to establish that the defendant on 07.11.1995 paid a sum of Rs.1,500/- towards the alleged borrowed sum and made an endorsement marked as Ex.A2 on the reverse side of the promissory note. From the materials placed, it is found that the suit transaction admittedly has not been witnessed by any third parties. Therefore, it is seen that there is no independent witness for sustaining the suit claim i.e., in support of the plaintiff's case, and as rightly determined by the trial court, when according to the plaintiff, no one has attested the suit transaction as such and when the defendant has disputed the execution of the promissory note contending that it is a forged document, the plaintiff should have endeavoured to compare the signatures found in Exs.A1 and A2 with that of the admitted signatures of the defendant to sustain his claim. However, for the reasons best known to the plaintiff he has not endeavoured to compare the signatures of the defendant with the disputed signatures through an expert. Accordingly, it is found that the trial court has rightly disbelieved the plaintiff's version. It is found that according to the defendant he used to sign only in Tamil and put his initial in English, while drawing the salary from his department and on the basis of the above testimony of the defendant, it is found that the pay disbursing authority of the defendant has been summoned and examined as P.W.3 and the pay bills for the months of March and April 1997 have come to be marked as Ex.A5 and Ex.A6. P.W.3 has admitted

that the signatures of the defendant found in Ex.A5 and A6 are not similar to the signatures found in Ex.A1 and that are different. It is further found by the trial court as well as the appellate court that the signatures available in Exs.A1 and A2 are completely different from the signatures of the defendant available in Ex.A5 and A6 and they also found that the signatures of the defendant contained in the Vakalat and written statement also differ from the signatures found in the suit promissory note Ex.A1 as well as the signatures found in Ex.A2. It is further found that there is absolutely no acceptable and reliable evidence on the part of the plaintiff to fortify his claim that it is only the defendant, who had executed the suit promissory note as well as made the endorsement Ex.A2 in evidence of the receipt of the suit amount from him as put forth by him. When it is found that the admitted signatures of the defendant available in the documents produced as above discussed are completely different from the signatures available in Ex.A1 and A2, in such view of the matter, in the absence of any evidence pointing any nexus or link with the abovesaid two sets of documents, it has to be held that the plaintiff has miserably failed to establish that the suit promissory note is a true and valid document. As above seen, the plaintiff, had not endeavoured to subject the signatures available in Exs.A1 and A2 for experts scrutiny. The plaintiff having not resorted to the above said course and when there is no other material placed on record to safely conclude that the signatures found in Exs.A1 and A2 are only that of the defendant and when it is found that the said signatures are completely and totally different from the admitted signatures of the defendant as above pointed out, as rightly determined by the trial court, the plaintiff's suit should fail for want of proof and material.

13.It is also found that the trial court has relied upon the admission made by the plaintiff, while admitting the suggestions put to him that the suit promissory note has been created on account of enmity and accordingly no attesting signatures had been obtained from independent persons in the same and when no infirmity could be attached to the above reliance placed by the trial court as such and particularly, when it is found that the plaintiff has not established his case by placing acceptable and reliable materials and when the materials placed do not in any manner substantiate the plaintiff's claim, it is seen that the trial court has rightly negated the suit claim.

14.However, the appellate court also noting that the admitted signatures of the defendant found in Exs.A5 and A6, vakalat and written statement etc., are completely different in all aspects from the signatures available in Exs.A1 and A2, erred in throwing the burden upon the defendant to explain as to how the signatures found in the above said documents are

different from the signatures available in Exs.A1 and A2. As rightly put forth by the defendant's counsel, when the defendant is disputing the plaintiff's suit by contending that the suit promissory note is a fabricated document, the burden is only upon the plaintiff to establish his claim by proving that the defendant had signed the suit promissory note on the receipt of the sum borrowed as claimed. Such being the position, when it is seen that the materials placed, disclose that the admitted signatures are all different and completely do not tally with the signatures available in Exs.A1 and A2, the first appellate court on illogical and perverse reasonings shifted the burden on the defendant to explain the same and accordingly erroneously proceed to hold that the plaintiff has established the case. The above reasonings and conclusions of trial court as rightly put forth by the defendant's counsel are nothing but perverse and illogical without any basis and also totally against the well established principles of law pertaining to the placement of proof on the proper party on whom the burden lies. It is thus found that the judgment and decree of the first appellate court based on the above said reasonings and conclusions and thereby its acceptance of the plaintiff's case as such cannot be allowed to sustain any further and liable to be set aside.

15. In the light of the above discussions, in the absence of any independent witnesses, particularly, the expert's testimony to establish and explain the varied signatures of the defendant as above discussed, it is seen that the first appellate court has erred in allowing the appeal by holding that it is only the defendant who had signed the promissory note on account of his failure to explain the difference in the signatures on the materials placed on record. Accordingly, it is seen that the first appellate court has erred in shifting the burden on the defendant to explain and establish how the signatures in the vakalat and written statement differ with that of the signatures found in the promissory note as well as in the endorsement on the reverse side of the promissory note marked as Exs.A1 and A2 respectively. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the defendant and against the plaintiff.

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16. In conclusion, the judgment and decree dated 11.03.2003 passed in A.S.No.1 of 2003 on the file of Principal District

Court, Vellore are set aside and the decree and judgment dated 18.07.2002 passed in O.S.No.626 of 1997 on the file of the Additional District Munsif Court, Vellore are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

To

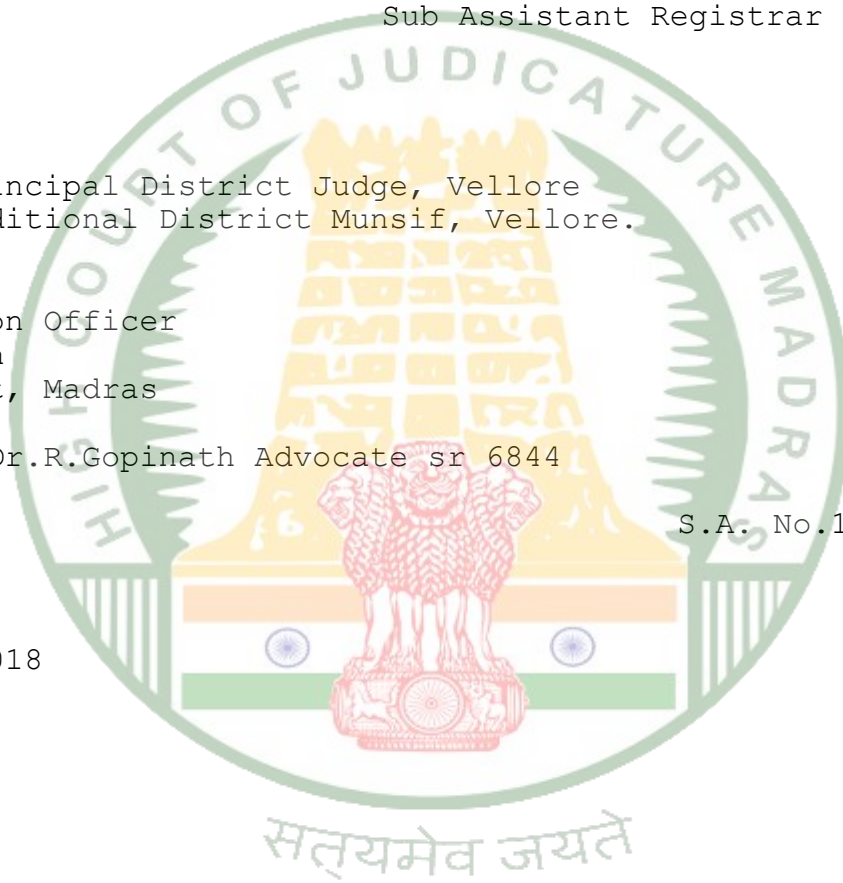
- 1.The Principal District Judge, Vellore
- 2.The Additional District Munsif, Vellore.

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The Section Officer
VR Section
High Court, Madras

+1 cc to Dr.R.Gopinath Advocate sr 6844

S.A. No.1260 of 2003

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