

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-02-2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.293 of 2015
and M.P.No.1 of 2015

M.Pavayee .. Appellant/Defendant

-vs-

N.Devaraj .. Respondent/plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.4 of 2013 on the file of the Principal District Court, Namakkal, dated 28.11.2014 confirming the judgment and decree in O.S.No.331 of 2001 dated 21.12.2011 on the file of the Subordinate Court, Namakkal.

For Appellant : Mr.C.Jagadish

For Respondent : Mr.R.Bharanidharan

J U D G M E N T

Aggrieved by the unanimous decisions of the Courts below, the defendant in a suit, based on a promissory note, has filed the above Second Appeal.

2. The relevant facts for proper adjudication of the case is as follows:-

According to the plaintiff, on 07.04.1999, the defendant borrowed a sum of Rs.74,000/- from the plaintiff for her family expenses and agreed to re-pay the same with interest @ Rs.2.5 per month per hundred on demand and executed a promissory note on the same day (i.e) 07.04.1999. In spite of the repeated demands, the defendant had not paid the sum. Hence, the suit had been filed.

3. Denying the averments stated in the written statement, the defendant had contended that the signature and the thumb impression found on the promissory note is not that of hers and it is a forged one. Further, it is stated that one Palanisamy borrowed a sum of Rs.10,000/- as hand loan from the defendant for his daughter's marriage and there was an enmity in view of

the same between him and the defendant. It is the said Palanisamy, who is also a friend of the plaintiff, had caused the plaintiff to file a suit with false allegations. It is further contended that the appellant /defendant is working in Namakkal Co-operative Bank and her husband is also a retired staff of the Highways Department. Hence, there is no necessity for them to borrow the money. Hence, the defendant prayed for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and two more witnesses were examined as P.W.2 and P.W.3 and Ex.A1 was marked. On the side of the defendant, the defendant examined herself as D.W.1 and no documents were marked. Apart from these documents, Ex.C1 was marked as Court document.

5. Upon the oral and documentary evidence produced on either side, the trial Court had decreed the suit. On appeal being filed by the defendant in A.S.No.4 of 2013, the judgment and decree of the trial Court was confirmed by dismissing the appeal. Aggrieved by the same, the defendant has preferred the above Second Appeal.

6. At the time of admission, by order dated 23.04.2015, the following substantial questions of law are formulated:-

a) Whether the Courts below are right in law in decreeing the suit particularly when the plaintiff has not discharged the burden of proving that the suit promissory note contained the signature of the defendant particularly when the defendant has denied her signature in the alleged promissory note and pleaded forgery and fabrication of false evidence, ignoring the provisions of Section 101 to 103 of the Indian Evidence Act?

b) Whether the Courts below are right in law in decreeing the suit without properly appreciating the law relating to burden of proof particularly sections 100 to 103 of the Evidence Act?

7. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

8. According to P.W-1-the plaintiff, the defendant had borrowed the suit sum for the purpose of her family expenses and promised to re-pay the same with interest agreed. In the process of proving the execution of the suit promissory note, the plaintiff had examined P.W-2 and P.W-3, who are the scribe

and witness to the suit promissory note respectively. Both the witnesses have uniformly deposed that the suit promissory note was executed by the defendant and a sum of Rs.74,000/- was received by her. The witnesses P.W-2 and P.W-3 have also stated that they had seen the defendant's signature affixed on the suit promissory note.

9. A reading of the evidence of P.W-2 would go to show that the details for writing the promissory note were gathered from the plaintiff as well as the defendant. After writing the promissory note, the defendant had received a sum of Rs.74,000/- from the plaintiff and signed on the promissory note in addition to affixing her thumb impression, which was witnessed by the plaintiff and the witnesses, namely, Jagadeesan and Balakrishnan. It is further stated that only in the presence of the plaintiff and the defendant, the witnesses had signed on the suit promissory note. This is the uniform evidence of P.Ws 2 and 3.

10. The learned counsel for the appellant / defendant further denied the execution of the promissory note and also the borrowal of the said amount. It is the contention of the appellant that she, being employed in Namakkal Co-operative Bank and her husband being a retired Government Official, had no necessity to borrow the said sum from the plaintiff and that the suit promissory note is one created for the purpose of the suit at the instance of her cousin Palanisamy. Further, the defendant took steps even to send the thumb impression found on the suit promissory note to the Finger Print Expert. The report of the Finger Print Expert, which is marked as Ex.C-1, had revealed that though the Finger Print Expert wanted a fresh, clear and fully rolled left thumb impression of the defendant for further examination, the defendant had not given the same. However, as per the independent opinion of the expert, the plaintiff had proved the execution of the suit promissory note through P.W1 to P.W.3, which had led the Courts below to hold concurrently that the defendant is liable to pay the suit amount to the plaintiff. Though the suit promissory note is of the year 1999 and the suit was also filed in the year 2001, the witnesses were examined only in the year 2011, after more than a decade. Despite the same, the witnesses had uniformly deposed that the signature and thumb impression found on Ex.A-1 is that of the defendant.

11. As the plaintiff had established the execution of the suit promissory note through direct evidence, though the defendant had abandoned the steps taken by him to send the document to the expert, as contemplated under Sections 45 and 47 of the Indian Evidence Act, the Courts below have rightly decreed the suit. Though the scientific comparison is not

available before the Court, the Court has satisfied itself based on the evidence of witnesses. Once the execution of pro-note stood proved, the statutory presumption under Section 118(a) of the Negotiable Instruments Act could be drawn that the same was for valid consideration. In the instance case, the concurrent findings of facts recorded by Courts below that the defendant / appellant executed the pro-note against the amount borrowed from plaintiff and that the appellant failed to prove that the pro-note and receipt were result of fraud, based on correct appreciation of evidence and law suffered from no illegality. Therefore, no interference was required with the decree passed by the Courts below. Accordingly, the substantial questions of law are answered in the negative.

12. In fine, the Second Appeal is dismissed by confirming the judgment and decree of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Principal District Court, Namakkal,
2. The Subordinate Court, Namakkal.
3. The Section Officer, V.R.Section,
High Court, Madras.

+ 1 cc to MR. C. Jagadish, Advocate Sr.11513
+ 1 cc to Mr. R. Karthikeya, Advocate sr.11415

S.A.No.293 of 2015
and M.P.No.1 of 2015

TM(CO)
EU(14/03/2018)

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