

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2018

Coram

The Hon'ble Mr. Justice N.KIRUBAKARAN  
and  
The Hon'ble Mr. Justice P.RAJAMANICKAM

O.S.A.No.261 of 2018

Mr.M.Arulsamy ... Appellant/Defendant

Vs

S.Jesuraj ... Respondent/plaintiff

Appeal preferred under Order XXXVI Rule 1 of O.S. Rules r/w Clause 15 of the Letters Patent against the order dated 12.03.2018 made in Application No.5610 of 2017 in C.S.No.552 of 2014.

For Appellant ... Mr.D.Simon

For Respondent ... Mr.G.Saravanan

JUDGMENT

(Judgment of the Court was delivered by N.KIRUBAKARAN,J.)

This Original Side Appeal has been directed against the order dated 12.03.2018, passed in Application No.5610 of 2017 in C.S.No.552 of 2014, by the learned single Judge of this Court.

2.The respondent herein, as plaintiff, has filed the suit for recovery of money, in C.S.No.552 of 2014, seeking to direct the appellant/defendant to pay a sum of Rs.36,90,000/- together with interest at 24% per annum over the principal amount of Rs.30,00,000/- from the date of the plaint till realisation. In the said suit, the appellant herein/defendant has projected an application in A.No.5610 of 2017, seeking to send the Promissory Note in question, dated 10.09.2012 and Memorandum of Deposit of Title Deeds, dated 12.09.2012, marked as Exhibit Nos.P1 and P2, in the suit, along with the written statement containing his admitted signature, to the opinion of the handwriting expert.

3.The learned single Judge, after considering the divergent contentions raised on either side, referred the signature found in the suit pro-note, dated 10.09.2012, alone to be compared with the admitted signature of the appellant/defendant found in the account opening Form of the appellant/defendant, available with the Syndicate Bank, to the Forensic Department, and directed the handwriting expert to give his opinion as to whether the signature found in the suit promissory note is that of the appellant/defendant or not.

4.The learned counsel for the appellant/defendant would submit that in the suit itself, two documents, viz., Promissory Note, dated 10.09.2012 as well as Memorandum of Deposit of Title Deeds, dated 12.09.2012, allegedly executed by the appellant/defendant, have been filed by the respondent/plaintiff. The signatures found in the Promissory Note as well as the Memorandum of Deposit of Title Deeds, are fabricated and therefore, both the documents should have been referred to the handwriting expert, whereas, the learned Single Judge, has referred only the signature found in the Promissory Note to the handwriting expert for comparison. Therefore, the appellant/defendant sought to refer both the documents to the handwriting expert, by way of filing the application, and his request was negatived by the order impugned in the present Original Side Appeal. Hence, the appeal.

5.On the other hand, the learned counsel for the respondent/plaintiff would submit that the suit is based only on the Promissory Note and therefore, the issue regarding Promissory Note alone has to be settled. Hence, the learned single Judge was right in referring the signature found in the promissory note alone to the handwriting expert and therefore, the order passed by the learned Single Judge need not be interfered with.

6.A perusal of the records would show that the suit is for recovery of Rs.36,90,000/- against the appellant/defendant. In support of his claim, the respondent/plaintiff filed promissory note dated 10.09.2012. The appellant/defendant, in paragraph Nos.2 and 4 of the affidavit filed in A.No.5610 of 2017, has categorically stated that he never borrowed money and he never executed any documents, especially, the suit promissory note and therefore, he sought to refer the said documents to an handwriting expert, so as to compare the signatures found in the promissory note as well as the Memorandum of Deposit of Title Deeds, with his admitted signature.

7.The learned Single Judge referred the signature of the appellant/defendant found in the suit promissory note alone to the handwriting expert for comparison. The grievance of the appellant/defendant is that the signatures found in the Memorandum of Deposit Title Deeds also should have been referred to the handwriting expert, to find out as to whether the signature of the appellant/defendant is fabricated or forged.

8.As already mentioned, the suit itself is only for recovery of money, based on promissory note. If the signature found in the promissory note is decided that would be enough for deciding the suit. Therefore, the learned Single Judge has rightly sent the signature of the appellant/defendant found in the promissory note alone to be compared with his admitted signature found in the bank account opening Form, available with the Syndicate Bank, to the handwriting expert. Based on the opinion given by the handwriting expert, the issue will be decided and therefore, the order passed by the learned single Judge is perfectly correct.

9.In fine, this Original Side Appeal is dismissed. The order dated 12.03.2018, passed in A.No.5610 of 2017 in C.S.No.552 of 2014, is confirmed. No costs.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Sub Assistant Registrar,  
Original Side, High Court, Madras.

+1cc to Mr.D.Simon, Advocate, S.R.No.68090

O.S.A.No.261 of 2018

RR(CO)  
GSP(24/10/2018)

WEB COPY