

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2018

PRONOUNCED ON : 17.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2035 of 2003

B.RadhamaniAppellant/Respondent/Plaintiff

Vs.

S.CharubalaRespondent/Appellant/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 18.09.2002 passed in A.S.No.101 of 2001 on the file of the II Additional District Court, Coimbatore, reversing the Judgment and Decree dated 25.10.1999 passed in O.S.No.329 of 1994 on the file of the Principal Subordinate Court, Coimbatore.

For Appellant : Mr.P.Valliappan

For Respondents : Mr.T.Balaji

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 18.09.2002 passed in A.S.No.101 of 2001 on the file of the II Additional District Court, Coimbatore, reversing the Judgment and Decree dated 25.10.1999 passed in O.S.No.329 of 1994 on the file of the Principal Subordinate Court, Coimbatore.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of money.

4. The case of the plaintiff, in brief, is that on 20.03.1991, the defendant executed a promissory note for Rs.30,000/- for valuable consideration at Perur Village, Coimbatore Taluk in favour of the plaintiff promising to repay

the same with interest at 24% per annum on demand and on 20.09.1991, the defendant paid a sum of Rs.3,600/- towards interest for 6 months ending 20.09.1991 and failed to pay the amount thereafter in spite of repeated requests and demands and the plaintiff has learnt that the defendant had entered into an agreement with one Ayyasamy S/o Subbayya Naidu of Perur village to execute a sale in his favour in respect of her immovable properties with intent to obstruct or delay the execution of any decree that may be passed against her. On 13.01.1994, the plaintiff issued a lawyer's notice calling upon her to discharge the debt and despite the same, the defendant refused to receive the said notice and also not evinced any interest to repay the borrowed sum and hence, according to the plaintiff, she has been necessitated to lay the suit for recovery of money.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts and the averments in paras 1 to 5 of the plaint are false and the defendant never borrowed any amount from the plaintiff and never executed any promissory note in favour of the plaintiff and the promissory note referred to in the plaint is a rank forgery and the alleged payment as claimed in para - 2 of the plaint is also false and misleading and there is no legal necessity for the defendant to pay any amount to the plaintiff, as she had not borrowed any sum from the plaintiff. The defendant never received any notice as claimed in the plaint and the plaintiff is a total stranger to the defendant and at the instigation of one Ayyasamy, the plaintiff has come forward with the suit to harass the defendant and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to A5 were marked. On the side of the defendant, DW1 was examined and no document has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On appeal, the first appellate Court, on an appreciation of the materials placed on record and hearing the submissions, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has been laid.

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

" (i) Whether any Court of law, when a signature in document is disputed, can compare the signature in the disputed document with a document containing admitted signature that has come into existence subsequent to that document and come to a conclusion that the signature in the disputed document differs from the admitted document referred to above?

(ii) In other words are not the Courts of law bound to compare, when there is a dispute regarding the signature in a document, the signature in the disputed document only with reference to admitted documents containing signature which has come into existence anterior in point of time of the disputed documents?"

9. In brief, according to the plaintiff, the defendant borrowed a sum of Rs.30,000/- from her on 20.03.1991 and in evidence thereof, executed the suit promissory note marked as Ex.A1 promising to repay the borrowed sum with interest as recited in the promissory note and further, according to the plaintiff, the defendant paid a sum of Rs.3,600/- only towards interest for 6 months ending 20.09.1991 and thereafter, did not pay the borrowed sum, despite the several requests and demands and also the issuance of the legal notice and the defendant refused to receive the legal notice and failed to pay the borrowed amount and hence, according to the plaintiff, she has been necessitated to institute the suit for recovery of money.

10. Per contra, the defendant has in toto denied the receipt of any sum from the plaintiff as claimed in the plaint and also denied the execution of the suit promissory note in favour of the plaintiff for the alleged borrowed sum as claimed in the plaint and according to the defendant, the plaintiff is a total stranger to her and she had not received any amount much less the suit amount from the plaintiff and did not execute the suit promissory note and thus, according to the defendant, the suit promissory note is a fabricated document created by the plaintiff and further, according to the defendant, she had not paid any sum on 20.09.1991 towards the alleged borrowed sum as claimed in the plaint and the same is averred to mislead the case and further, according to the defendant, she has not received any legal notice from the plaintiff and hence, it is

stated that the suit laid by the plaintiff is liable to be dismissed.

11. In the light of the above defence set out by the defendant, particularly, alleging that the suit promissory note is a fabricated document, it is evident that the burden is heavy upon the plaintiff to establish that the defendant had borrowed the suit amount of Rs.30,000/- from her on 20.03.1991 and in evidence thereof, executed the suit promissory note marked as Ex.A1 in her favour. In this connection, the plaintiff has come to be examined herself as PW1 and PW1, in her evidence, has deposed that the defendant, for the purpose of renewing her house, approached her and borrowed a sum of Rs.30,000/- on 20.03.1991 and in evidence thereof, executed the suit promissory Ex.A1 and thereafter, did not pay any sum excepting a sum of Rs.3,600/- towards interest for 6 months ending 20.09.1991 and therefore, according to PW1, demanding the amount, she had also issued the legal notice marked as Ex.A3 and it is further stated by her that the defendant had refused to receive the said notice and hence, she had been forced to lay the suit and the endorsement had been obtained in the suit promissory note for the receipt of Rs.3,600/- and the same has come to be marked as Ex.A2. Despite the cross examination of PW1, nothing has been culled out from her in support of the defence version as such. A perusal of the suit promissory note as such would go to show that therein a clear description of the defendant and her residence has been mentioned and the reason for the borrowal has also been mentioned. Now, according to the defendant, she has been examined as DW1, she has no contact whatsoever with the plaintiff and further, according to the defendant, during the course of her evidence, she would state that only during the Court proceedings, she had seen the plaintiff and had no acquaintance whatsoever with the plaintiff in any manner. If that be so, it does not stand to reason as to how come the plaintiff would be aware of the particulars of the defendant and incorporated the same in the promissory note. The particulars of the defendant and her residential address mentioned in the promissory note Ex.A1 had not been controverted by the defendant as such. It is thus found that accordingly, the defendant, for the purpose of renewing her residence, had borrowed the suit amount from the plaintiff and executed the promissory note Ex.A1 in favour of the plaintiff agreeing to repay the borrowed sum with interest as recited therein. Accordingly, it is found that when the plaintiff has tendered evidence with reference to the same as PW1, despite the cross examination, the defendant is unable to pinpoint any infirmity or lacuna in the evidence of PW1, which would discredit her testimony in any aspect. On the other hand, the evidence of PW1 seems natural, cogent, convincing and trustworthy.

12. In support of the evidence of PW1, the plaintiff has also chosen to examine the scribe of the suit promissory note Velumani as PW2. PW2, in his evidence, has testified that it is he, who had the scribed the suit promissory note Ex.A1 and also stated that the defendant borrowed the consideration recited therein and executed the suit promissory note and the suit promissory note was executed in the residence of the defendant's father-in-law. Though PW2 was cross examined by the defendant, nothing has been elucidated from him in support of the defence version. PW2, even during the course of cross examination, has stressed that it is only the defendant, who had executed the suit promissory note and accordingly, denied the contra suggestions put to him by the defendant with reference to the same. That apart, it is found that no motive as such has been attributed as against PW2 for deposing in favour of the plaintiff and against the defendant. It is thus found that by way of the evidence of PW2, the scribe of the suit promissory note, the plaintiff has also lent support to her case, in showing that it is only the defendant, who had borrowed the suit amount from her and executed the suit promissory note Ex.A1 in her favour. No doubt PW2 is unable to give the particulars of the attestors of the suit promissory note and would state that only on seeing the note, he could divulge their particulars and the same would not, in any manner, in my considered opinion, undermine the evidence of PW2. PW2 has deposed about the suit promissory note scribed by him nearly 6 years after the execution of the suit promissory note. Such being the position, PW2 cannot be expected to remember the names of the attestors, who had signed in the suit promissory note when the same had been scribed by him 6 years before. In such view of the matter, the abovesaid piece of evidence of PW2 would not in any manner render his evidence unacceptable or unreliable.

13. In this matter, materials placed on record go to show that claiming the suit amount, the plaintiff has issued a legal notice, which has been marked as Ex.A3. In the legal notice, the plaintiff has clearly averred about the execution of the suit promissory note for the receipt of the consideration recited therein by the defendant as well as the payment of Rs.3,600/- paid ending on 20.09.1991 towards the interest and accordingly, also apprehending that the defendant is attempting to alienate her property with a view to frustrate the decree, that may be passed against her in respect of the suit transaction, the plaintiff had called upon the defendant to pay the borrowed sum and it is thus found that the said notice had been issued to the defendant as well as the proposed purchaser of the defendant's property. On a perusal of Exs.A3 to A5, it is found that the said notice has been refused by the defendant. It is further found that the said notice has been addressed only to the address of the defendant and it is thus seen that in the normal

course, the same would have been received by the defendant and on account of his refusal to receive the same, it is found that the postal authority making the said endorsement of the said refusal returned the same to the sender. It is thus found that the pre suit notice sent by the plaintiff marked as Ex.A3 demanding the borrowed sum had been deliberately refused to be received by the defendant. Though the defendant would claim that she had not received any such notice from the plaintiff, however, the materials placed on record prove otherwise and it is thus found that inasmuch as the defendant had borrowed the suit sum from the plaintiff and accordingly, executed the suit promissory note in favour of the plaintiff unable to resist the claim of the plaintiff made with reference to the same under Ex.A3 legal notice, she had chosen to avoid the same by refusing to receive it and in such view of the matter, the present case projected by the defendant, as if she had not received any such notice from the plaintiff cannot be believed. It is not the case of the defendant that the postal authority had made the endorsement of refusal deliberately with a view to wreak any vengeance against her and further the defendant had not attributed any motive against the postal authority to make such an endorsement of refusal. The above facts, seen cumulatively, would go to show that inasmuch as the defendant had borrowed the suit sum from the plaintiff and executed the suit promissory note, unable to controvert the claim of the plaintiff, in order to evade the payment, has chosen to refuse to receive the notice and the above factor would go a long way in establishing the plaintiff's legal claim of the recovery of the suit amount from the defendant. In such view of the matter, the first appellate Court seems to have brushed aside the abovesaid facts casually as if the refusal of the notice by the defendant by itself would render the case of the plaintiff as not genuine. However, the abovesaid approach of the first appellate Court seems to be erroneous, particularly, when it is found that there is no plausible explanation offered by the defendant as to why she had chosen to refuse to receive the notice sent by the plaintiff. It is thus found that the above factor assumes significance, particularly, when it is found that the plaintiff has narrated all the facts of the present case in the notice itself, thereby, demanding the defendant to repay the sum borrowed by her from the plaintiff.

14. On a perusal of the judgment of the first appellate Court, it is found that the first appellate Court has endeavoured to compare the signature available in the said promissory note with that of the signature of the defendant available in the affidavit filed by her in I.A.No.638 of 1998 as well as the signature of the defendant available in the written statement, her deposition and accordingly, on a comparison of the said signatures finding that the disputed signature

available in the suit promissory note, does not in any manner tally with the abovesaid signatures of the defendant in the affidavit, written statement, deposition etc., accordingly, proceeded to hold that the defendant would not have executed the said promissory note as claimed by the plaintiff and thereby, came to the conclusion that she would not have received the suit amount from the plaintiff as put forth by the plaintiff. The plaintiff's counsel, during the course of his arguments submitted that the above said approach of the first appellate Court is erroneous in law. In this connection, it is his contention that though the Court has the power to compare the disputed signature with the admitted signatures, that would not empower the Court to compare the disputed signature with the signatures available in the documents which had come into existence after the institution of the suit and the comparison, if at all made, should have been made only with the signatures available in the contemporaneous document with that of the document in which the disputed signatures are found and therefore, it is argued that the approach of the first appellate Court in endeavouring to compare the disputed signatures with the signatures of the defendant, which had come into existence after the institution of the suit, per se, is illegal and unfounded and accordingly, it is further argued that the first appellate Court erred in dismissing the plaintiff's suit on the abovesaid footing and hence, the judgment of the first appellate Court cannot be sustained in the eyes of law. In this connection, he placed reliance upon the decisions reported in 2002-4-L.W.252 (Marappa Gounder (died) and 5 others Vs. Kandasamy), AIR 2000 MADRAS 239 (Somasundaram Vs. Palani) and 2006 (2) CTC 201 (Pattabirama Reddiar and another Vs. Navaneetha Sundaram). On a perusal of the abovesaid decisions, it is noted that the comparison of the disputed signatures should not be made with the admitted signatures available in the document which had come into existence after the institution of the suit such as written statement, Vakalat, etc., and it has been held that the abovesaid approach is erroneous in law and it is thus found that in the light of the above said authorities, when the first appellate court has endeavoured to compare the disputed signature of the defendant with that of his signatures available / made in the documents which had come into existence after the laying of the suit and thereby, rejecting the plaintiff's claim is found to be unsustainable in the eyes of law and had to be deprecated. At the foremost, it is found that the Court should be cautious and hesitant in endeavouring to compare the disputed signature with that of the admitted signatures as the said role is that of an expert. No doubt, the Court has the power to compare the signatures but the same should be seldom adhered to. Further if the Court is endeavouring to compare the disputed signature with the admitted signatures, the same should be done only with the admitted signatures available in the documents which had come into existence prior to the date of the dispute

between the concerned parties i.e. the signatures available in the contemporaneous documents vis-a-vis the disputed document and in such view of the matter, when it is found that the promissory note had been filed along with the plaint, at the time of the institution of the suit, the comparison made by the first appellate Court with the signatures of the defendant obtained thereafter is found to be not in accordance with law and in such view of the matter, the resultant conclusion is that the determination of the first appellate Court thereby rejecting the plaintiff's claim is found to be totally unacceptable in the eyes of law. It is thus found that the abovesaid reason given by the first appellate Court for rejecting the plaintiff's case being not found to merit acceptance as per law, it is found that the judgment and decree of the first appellate Court rendered on the abovesaid erroneous approach are liable to be set aside.

15. The Counsel for the defendant contended that the plaintiff has not chosen to examine the attestors of the suit promissory note and therefore, the non-examination of the attestors by itself would be sufficient to reject the genuineness of the suit promissory note and thus according to him, the plaintiff has failed to establish his case. In this connection, reliance is placed upon the decision reported in 2004 (IV) CTC 675 (Ramiah Vs. Manickavasagam). In the above decision relied upon by the defendant counsel, it is found that neither the attestors nor the scribe has been examined by the concerned plaintiff, accordingly, this Court in the abovesaid decision found that the plaintiff's case could not be accepted straightaway on his failure to examine either the attestors or the scribe. However, insofar as this case is concerned, as abovenoted, the plaintiff has examined the scribe of the suit promissory note. No doubt, she has not examined the attestors of the said promissory note. However, as rightly argued by the plaintiff's counsel, when the promissory note is not a document compulsorily required to be attested as per law, as per Section 72 of the Indian Evidence Act, when it is found that an attested document not required by law to be attested may be proved as if it was not attested and accordingly, when it is found that on the denial of the execution of the suit promissory note by the defendant, the plaintiff has chosen to examine the scribe of the suit promissory note and when it is further seen that the evidence of the scribe examined as PW2, stood the scrutiny of the cross examination made by the defendant and able to come out from the same with flying colours, it is found that the plaintiff has established the truth and veracity of the promissory note by examining the scribe. As above seen, the plaintiff has herself tendered evidence and testified clearly as to the borrowal of the suit amount and the execution of the suit promissory note by the defendant as claimed in the plaint. Even

the evidence of the plaintiff examined as PW1 has not been shown to be unreliable and unacceptable by pointing any defect or infirmity during the course of cross examination. To cap it all, as above seen, the defendant unable to repudiate the claim of the plaintiff made under the legal notice marked as Ex.A3, refused to receive the same deliberately and this would only add further strength to the plaintiff's case that it is only the defendant, who had received the suit amount and executed the suit promissory note in favour of the plaintiff as claimed. In such view of the matter, when reliable, acceptable and convincing evidence had been projected by the plaintiff in this matter as above discussed, accordingly, it is found that the non-examination of the attestors of the suit promissory note by itself would not render the case of the plaintiff as a false one. Each case has to be determined on the facts and circumstances pertaining thereto and accordingly, when it is found that in view of the abovesaid circumstances, the plaintiff has been able to substantiate her case with reliable evidence, the failure of the plaintiff to examine the attestors would not in any manner undermine her case as putforth by the defendant's counsel.

16. It is found that an attempt has been made by the defendant at a belated stage to submit the scrutiny of the signature available in the suit promissory note through an expert by way of filing an interlocutory application in I.A.No.638 /1998. However, it is found that the said interlocutory application has been dismissed after contest. As against the rejection of the same, the defendant has not preferred any revision or appeal as the case may be. As to why the defendant has not chosen to submit the disputed document for expert's scrutiny at the earliest point of time, there is no explanation forthcoming on the part of the defendant. In the light of the above position, the contention of the defendant's counsel that the plaintiff has failed to establish her case subjecting the suit promissory note for the expert scrutiny as such could not be accepted straightaway, when, as above discussed, the plaintiff has established her case substantially, there is no need on the part of the plaintiff to adduce further evidence in support of her case. On the other hand, it is for the defendant to establish her version as projected by her in the written statement. Consequently, when it is found that the approach of the first appellate Court in endeavouring to compare the signature of the suit promissory note with that of the signature available in the documents which came into existence after the institution of the suit being erroneous in law, it is found that the first appellate Court has committed a manifest error thereby rejecting the plaintiff's case. The position of the facts and circumstances of the present case being as above, however, the defendant counsel placed reliance upon the decision

of this Court dated 24.01.2018 passed in S.A.No.1260 of 2003 (P.Sekar Vs. Srinivasa Naidu). On a perusal of the said decision, it is found that in the said case, as there was no attester to the suit promissory note, none had been examined and other than the plaintiff, no one has been examined to establish the genuineness of the promissory note involved in the said case. Accordingly, in the said decision, it was opined that the plaintiff should have endeavoured to subject the suit promissory note for expert's scrutiny and the failure of the plaintiff to do so would undermine her case seriously. Further in the said decision noting that the first appellate Court has thrown the burden of proof on the defendant of explaining the variation in the signature of the defendant in the available documents as well as in the disputed document, finding the said approach of the Court is untenable in the eyes of law, accordingly, the said decision has come to be rendered holding that the promissory note in the said suit had not been established. In such view of the matter, it is found that the above said decision not being akin to the present case, would not in any manner advance the defence version and as above discussed, each case has to be determined on the facts and circumstances pertaining thereto and in such view of the matter, the abovesaid decision relied upon by the defendants counsel is found to be inapplicable to the present case.

17. In the light of the above discussions, on a perusal of the materials placed on record as above discussed, it is found that the plaintiff has established her case clearly and without any ambiguity and accordingly, it is found that the plaintiff has clearly established that it is only the defendant, who had received the suit amount from her and executed the suit promissory note as claimed in the plaint and accordingly, it is found that the defendant holds a liability to repay the borrowed sum as put forth in the plaint. In the light of the above, it is found that the first appellate Court had erred in comparing the disputed signatures with the signatures available in the documents that has come into existence subsequent to the institution of the suit and the said approach of the First Appellate Court is found to be legally untenable, when as per the authorities pointed out and discussed above, if at all, the Court endeavours to make a comparison, it should be done only with the signatures available in the documents anterior in point of time to the disputed document particularly with the contemporaneous documents. As a matter of caution, it is also reminded that the Court should refrain from making a comparison of the disputed signature with the admitted signatures as the same is not the province and domain of the Court and it the best option would be to leave the matter to the wisdom of the expert. Still, if the Court endeavours to make a comparison, it is reminded that the Court should give valid reasons as to in what

respects, it had found the disputed signatures and the admitted signatures agree or disagree as the case may be in all minute details and if such details are not available, on that score alone, it could be held that the conclusion arrived at on naked comparison is weak and unreliable and unacceptable. The substantial questions of law formulated in this second appeal are accordingly answered.

At the end, the Judgement and Decree dated 18.09.2002 passed in A.S.No.101 of 2001 on the file of the II Additional District Court, Coimbatore, are set aside and the Judgment and Decree dated 25.10.1999 passed in O.S.No.329 of 1994 on the file of the Principal Subordinate Court, Coimbatore, are confirmed and accordingly, the second appeal is allowed with cost. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

sms

To

- 1.The II Additional District Court, Coimbatore.
2. The Principal Subordinate Court, Coimbatore.
- 3.The Section Officer, V.R.Section, High Court, Madras.(2 copies)

+1 CC to Mr.P. Valliappan, Advocate sr 28505.

+1 CC to Mr.A. Thiagarajan, Advocate sr 28338.

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in S.A.No.2035 of 2003

GJ(CO)

SP(11/06/2018)

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