

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.2210 of 2002

Kasthuri

..Appellant/Plaintiff

Vs

Sampath

...Respondent/Defendant

Prayer : Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 30.09.2002 made in A.S.No.10 of 2001 on the file of the II Additional Subordinate Judge, Villupuram reversing the Judgment and Decree dated 29.11.2000 made in O.S.No.511 of 1996 on the file of the Additional District Munsif, Villupuram.

For Appellant : Mr.T. Dhanya Kumar

For Respondent : Mr.S. Sathish Rajan

J U D G M E N T

The appellant/plaintiff filed a suit for recovery of money for a sum of Rs.19,500/- before the lower court. The suit is decreed in his favour. As against the order of the lower court, the defendant filed the appeal before the lower appellate court. The lower appellate court reversed the order of the lower court against which the present second appeal is filed.

2. The case of the appellant/plaintiff is as follows:

The respondent/defendant borrowed a sum of Rs.19,500/- on 01.10.1993 from appellant/plaintiff and executed the promissory note on condition that the respondent/defendant has to pay 12% interest per annum on the borrowed amount. The said promissory note was executed at Villupuram. Since the respondent/defendant has not repaid the said amount, the appellant/plaintiff filed a suit for recovery of a sum of Rs.19,500/-.

3. The case of the respondent/defendant is as follows:

The respondent/defendant denied the signature in the promissory note. However, the signature in the promissory note appears as that of the signature of the respondent/defendant. At

no point of time, he went to Villupuram and borrowed the said sum in order to execute a promissory note in favour of the plaintiff. In fact, the defendant's father name is Iyyappan. However, the defendant's father has admitted that his name is Iyyandurai. That itself shows that the appellant/plaintiff forged the signature of the defendant. The real fact involved in between the plaintiff and the defendant is that the plaintiff was cheated by the defendant's friend who is working in All India Radio, Chennai. The friend of the respondent/defendant promised the plaintiff to get a job for his son in All India Radio, Chennai. Accordingly, the plaintiff paid a sum of Rs.1,00,000/- in favour of the defendant/friend. The defendant / friend not repaid the amount. In order to wreck vengeance, the plaintiff filed a suit with forged documents before the lower court.

4. After elaborate trial, the lower court has arrived at a conclusion and decreed the suit in favour of the plaintiff. As against the same, the respondent filed an appeal before the lower appellate court.

5. At the time of entertaining the admission, this court framed the separate questions of law as follows:

1. Whether the lower appellate court failed to invoke Section 73 of the Indian Evidence Act particularly para 2 of the Act?
2. Whether Ex.A1 proved according to law?

6. Learned counsel for the appellant submitted that the lower court refused to compare the signature based on the Judgment of this court reported in 1999 (III) CTC 156. After detailed analysis of Section 73 of the Indian Evidence Act, the comparison of disputed signature of a person is because on the ground of vakalat and other affidavits were filed subsequent to the execution of promissory note.

7. Learned counsel appearing for the respondent/defendant would submit that the execution of promissory note contained the forged signature of the respondent/defendant and at no point of time, he went to Villupuram and borrowed a sum of Rs.19,500/- in order to execute a promissory note in favour of the plaintiff and he fairly conceded that no application was filed before the lower court requesting to send for expert's opinion for comparison of the signature. The lower court granted decree in favour of the appellant/plaintiff based on the available materials and on merits.

8. In view of the abovesaid decision rendered by this court and based on the available materials, the lower court had arrived at a conclusion. The respondent executed the promissory note. The respondent has not filed petition for making a request to send for comparison of the signature. In the absence of such a request, the decision of the lower appellate court in arriving at a conclusion, as if the lower court compared the signature, is totally perverse.

9. Perusal of the lower court Judgment clearly reveals that the lower court refused to compare the signature based on the decision rendered by this court. Without analysing the facts properly, the lower appellate court, believing the words of the respondent/defendant had set aside the well considered order passed by the lower court.

10. The lower appellate court failed to consider Section 73 of the Indian Evidence Act. Section 73 of the Indian Evidence Act can be invoked when a petition is filed before the lower court for comparison of signatures at the relevant point of time or any contemporary documents filed to enable the court to compare the signature in the promissory note. In the absence of contemporary documents filed by the respondent/defendant before the lower court as well as the lower appellate court, the lower appellate court order is against the utmost principles of Section 73 of the Evidence Act and against the decision of this court reported in 1999 (III) CTC 156 which reads as follows:

"Evidence Act 1872, Section 73 = Comparison of disputed signature of a person with his admitted signature - Property of Comparison with signature in Vakalath and Written Statement - Suit was instituted based on promissory note - Defendant denied execution of promissory note and alleged that plaintiff has forged his signature - No document with admitted signature of plaintiff filed in court - Trial court on comparison of signature in the promissory note with the signature in the written statement and vakalath filed by defendant rendering finding that there was no forgery and defendant had executed promissory note and decreed suit - Even though court may have power to compare the signature, such comparison is to be made with some admitted signatures of the defendant and court cannot act as expert - Comparison with the signature affixed in vakalath and Written statement which had come into existence after the dispute arose is not in accordance with law - On facts it was held that trial court based its conclusion on irrelevant materials - Decree of trial court set aside in revision."

11. Admittedly, the appellant and the respondent are the relatives. The said amount was given in the house of the respondent/defendant and the plaintiff established that there

was a money transaction entered into between the appellant and the respondent. The defendant cross examined and not categorically denied the signature in the promissory note. He is not aware of the signature in the promissory note. He is not clear whether the signature found in the promissory note is his signature or not. When a defendant has not categorically denied the signature, the presumption goes in favour of the plaintiff and it is for the defendant to disprove the plaintiff's case.

12. On consideration of the facts and circumstances of the case, the learned District Munsif has rightly decreed the suit in favour of the appellant/plaintiff. However, the lower appellate court, has arrived at an erroneous conclusion as if the lower court compared the signatures.

13. For the above said reasons, the lower appellate court has totally misconstrued the oral and documentary evidence available on record and has not properly considered the scope of Section 73 of the Indian Evidence Act and accordingly, the lower appellate court order is set aside and the appeal is allowed and decreed the suit as prayed for by confirming the lower court order.

14. In view of the above, the substantial questions of law are answered in favour of the appellant.

In the result, the Second Appeal is allowed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-VII)

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सत्यमेव जयते
Sub Assistant Registrar

gv
To

1. The II Additional Subordinate Judge, Villupuram.
 2. The Additional District Munsif, Villupuram.
 3. The Section Officer, VR Section,
High Court, Madras. (2-copies)
- + 1 cc to MR. S.Sathish Rajan, Advocate Sr.979
+ 1 cc to Mr. T. Dhanya Kumar, Advocate SR.1061

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KJI (CO)
EU(06/03/2018)