

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 15.12.2017
PRONOUNCED ON: 03.01.2018
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A. No.624 of 2002

R.Kumarasamy

...Appellant/Plaintiff

Vs.

K.Marimuthu

...Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed by the II Additional District Court, Erode, in A.S.No.234 of 2000 dated 27-03-2001, reversing the judgment and decree passed by the Sub Court, Dharapuram, in O.S.No.253 of 1997, dated 10-08-2000.

For Appellant : Mr.S.Saravanan
for M/s.K.S.Jeyaganeshan

For Respondent :Mr.S.K.Chandrakumar

J U D G M E N T

This second appeal is directed against the judgment and decree dated 27.03.2001 passed in A.S.No.234 of 2000 on the file of the II Additional District Court, Erode reversing the judgment and decree dated 10.08.2000 passed in O.S.No.253 of 1997 on the file of the Sub Court, Dharapuram.

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.1,00,000/- from the plaintiff on 20.12.1994 and in evidence there of executed the suit promissory note in favour of the plaintiff agreeing to repay the borrowed sum with interest there on as recited in the promissory note and thereafter despite several demands and issuance of legal notice

as such, the defendant sent a reply setting out a false case repudiating the entitlement of the plaintiff to recover the amount under the promissory note., hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendant in brief is that the suit is not maintainable either in law or on facts and he had not received a sum of Rs.1,00,000/- from the plaintiff on 20.12.1994 and did not execute the promissory note in favour of the plaintiff in evidence there of, as the defendant has no necessity to borrow the amount from the plaintiff for business purposes, since the defendant was working as Headmaster in Padapalli village, Oothangarai Taluk and the defendant does not know the plaintiff and there is no monetary transaction between the defendant and the plaintiff at any point of time and therefore the plaintiff would not have advanced the sum of Rs.1,00,000/- to the defendant without any acquaintance on the basis of the promissory note and to the notice sent by the plaintiff, the defendant sent a reply containing true facts and on verification, the defendant has come to know that the plaintiff is an associate of one K.Muthusamy, partner of Sri.Venkateshwara Auto Finance and the said Muthusamy had laid the suit against the defendant's son in O.S.No.66 of 1996 in the name of Chinnasamy and the said suit had been settled and a compromise decree has been passed and at the time of the settlement, it had been agreed that they would return the blank and stamp papers in which, defendant's signatures had been obtained and however the same had not been returned, despite several requests and therefore, according to the defendant, the said Muthusamy had instigated the plaintiff to institute the false suit against the defendant as if he had borrowed the suit amount from the plaintiff and executed the promissory note. The suit promissory note is a fabricated document and not executed by the defendant and hence the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A6 were marked. On the side of the defendant, D.Ws.1 and 2 were examined. Exs.B1 to B8 were 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 accept the plaintiff's case and decreed the suit as prayed for. On appeal, the first appellate court was pleased to set aside the judgment and decree of the trial court and by way of laying the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Challenging the same, the present second appeal has been preferred.

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

(1)Whether the lower appellate Court is correct in holding that under Section 73 of the Evidence Act, Expert opinion is compulsorily to be obtained before reaching conclusions and deciding the issue?

(2)Whether the lower appellate Court has misdirected itself by solely relying on projecting a false plea by the defendant on the basis of Exhibits B-1 to B-7 which are totally unconnected with the case as those documents are between the third parties?

(3)Whether the judgment of the lower appellate Court was influenced by inconsequential and irrelevant materials and reasonings regarding the capacity to pay, no necessity to borrow by the defendant, no security was obtained for lending money and there is link between Auto Finance Muthusamy and plaintiff; defendant was not known to plaintiff, are all based on surmise hypothetical basis are all unrealistic?

9.The plaintiff has laid the suit for recovery of money based on a promissory note. According to the plaintiff, the defendant borrowed a sum of Rs.1,00,000/- from him towards business purposes and other needs on 20.12.1994 and in evidence there on executed the suit promissory note Ex.A1 and despite several requests and issuance of notice, as the defendant did not pay the amount, according to the plaintiff, he has been constrained to institute the suit.

10.Per contra, the defendant has taken a plea that he has not received any amount from the plaintiff as claimed and executed the suit promissory note Ex.A1 and Ex.A1 is a fabricated document created by the plaintiff with his associates and hence the plaintiff is not entitled to recover the amount as claimed.

11.Inasmuch as the defendant has taken a plea that Ex.A1 is a fabricated document, it is for the plaintiff to establish that the defendant had borrowed the sum of Rs.1,00,000/- from him on 20.12.1994 and executed the suit promissory note. In this connection, the plaintiff examined as P.W.1 has admitted that Ex.A1 promissory note does not contain any reference about the defendant's father and also not enquired as to the name of his father at the time of execution of Ex.A1 and according to P.W.1,

the defendant had requested the amount fifteen days prior to the execution of promissory note and he had agreed to pay the amount after securing the same and he is not an income tax assessee and also admitted that he had not withdrawn any amount from the Bank for paying to the plaintiff and according to P.W.1, it is only the defendant, who had brought the witnesses and the scribe at the time of the execution of suit promissory note and from the evidence adduced by P.W.1, it is seen that the defendant is not well acquainted with the plaintiff prior to the suit transaction as such.

12. Ex.A1 recites as if the defendant had borrowed the sum recited therein inter alia for business purpose and however, it is seen that the defendant is admittedly working only as a Headmaster at Padapalli village and it is also admitted by P.W.1 that Padapalli village is situated about 280Km away from his residence. According to P.W.1 the defendant came to his house and borrowed the suit sum. It is the further case of P.W.1 that Ex.A1 has come to be executed at about 7 a.m on 20.12.1994. There is no material placed by the plaintiff to show that the defendant was carrying on any business at the relevant point of time. When it is found that the defendant was employed as a Headmaster in a school, it does not stand to reason, as regards the plaintiff's case that the defendant had borrowed the suit amount for the business activity. Therefore on the face of it, Ex.A1 raises a suspicion as to whether at all the defendant would have borrowed the amount mentioned there in. Further, when it is admitted that the defendant's village is situated 280Km away from the plaintiff's house and when the defendant was employed as a Headmaster at the relevant point of time from the evidence of D.W.2 and the document marked as Ex.B8, it is seen that the defendant attended the school on 20.12.1994 at 9.00 a.m and therefore to say that the defendant had went to the plaintiff's residence situated 280Km away from the school and borrowed the amount from him and executed the promissory note in his favour as such cannot be readily believed and accepted. When it is found that the defendant had attended the school on 20.12.1994, the case of the plaintiff is that the defendant had received the suit amount from him on the morning of the said date as such cannot be readily believed and it is thus found that the first appellate court had rightly disbelieved the plaintiff's case on the above reasonings.

13. Normally, the person who advances the amount would keep the persons acquainted with him at the time of lending the amount to a third party. However, according to the plaintiff, the defendant himself brought the attestor and scribe along with him for the borrowal of the suit amount on 20.12.1994. It is further found that the attestor examined as P.W.2 also claims that he had been brought by the defendant. However, when it is found that the defendant has attended the school on 20.12.1994,

the evidence of P.W2 that he had accompanied the defendant to the plaintiff's house as such cannot be accepted. Further, as per the evidence of P.W.2, it is seen that the defendant has put a signature on the stamp affixed on the said note and also put another signature in the promissory note and also written his name in the note. Therefore, according to P.W.2, the defendant has put two signatures in the promissory note and also written his name and on the other hand a perusal of Ex.A1 promissory note would only go to show that there is only one signature on the stamp affixed therein and below that, the name of the defendant has been written. That apart, the address of P.W.2 has not been clearly mentioned in Ex.A1 and similarly the address of the scribe is not clearly spelt out in Ex.A1. It is therefore highly doubtful, whether P.W.2 would have been present at the time of the execution of Ex.A1.

14.As rightly found by the first appellate court, the plaintiff seems to have disbursed a huge sum to the defendant, even though the defendant was not closely acquainted with the plaintiff. It is thus found that it is highly improbable that the plaintiff would have paid such a huge sum without securing an additional security from the defendant merely on the basis of a promissory note. When the plaintiff has not placed any material to show that the defendant was actually carrying on any business at the relevant point of time, the case of the plaintiff that he had advanced a huge amount for the business purposes of the defendant as such cannot be believed. Further, it has also not been established by the plaintiff that he was possessed of sufficient means to give the huge sum under Ex.A1. This is also found to be a vital factor which improbablise the case of the plaintiff that he has advanced the said sum to the defendant merely on the basis of a promissory note.

15.The defendant has taken a plea that he had not borrowed any sum from the plaintiff and executed the promissory note in his favour. Such being the defence, when the defendant has placed reliable evidence that he was present only at the school on the said date, it is seen that the case of the plaintiff that he had paid the suit amount to the defendant cannot be easily digested. The reasoning given the trial court that inasmuch as the defendant, being the Headmaster, would have been in a position to enter the time in Ex.B8 as he chooses, as such cannot be accepted, when there is not material on record with reference to the same. Therefore, as rightly held by the first appellate court, Ex.B8 belies the case of the plaintiff that the defendant had borrowed the suit amount from him on 20.12.1994.

16.Despite the defence of the denial of execution taken by the defendant and when the evidence of P.W.2 is found to be far from satisfactory as above stated, it is seen that the

plaintiff should have taken further steps to establish the genuineness of Ex.A1. As rightly put forth, the plaintiff should have called for an expert to state firmly that the signature available in Ex.A1 is only the signature of the defendant by a comparison of the admitted signature of the defendant. However, for the reasons best known to the defendant he has not chosen to opt for the said course. When the evidence of the attesor P.W.2 is found to be highly artificial and unacceptable and also when it is seen that he could not have accompanied the defendant to the plaintiff's residence on 20.12.1994, it is seen that the plaintiff had miserably false to establish the truth of Ex.A1 on the basis of the evidence of P.W.2. In view of the above discussions, it is seen that though there is no compulsory requirement on the part of the plaintiff to seek the opinion of an expert in all cases, however when it is noted that the plaintiff's case has been improbablised by the defence theory and when the defense theory has been established by the preponderance of probabilities, the failure of the plaintiff in resorting to the establishment of his case particularly through an expert would only expose the falsity of the case as determined by the first appellate court. The first appellate court has taken into consideration the oral evidence adduced by P.Ws.1 and 2 in the right perceptive and also the connected documents and accordingly, rightly come to the conclusion that the plaintiff has failed to establish that the defendant had borrowed the suit amount and executed the promissory note in his favour. As rightly found by the first appellate court, clearly no one would venture to disburse a huge sum to an unknown person, when in this case it is seen that the plaintiff has not established that he is closely associated with the defendant and accordingly when the defendant's father name is not even reflected in Ex.A.1 and when the defendant is not shown to be engaged any in any business at the relevant point of time, to say that the plaintiff had readily come forward to pay the huge sum of Rs.1,00,000/- to the defendant on the mere asking of it, is found to be quite artificial and unacceptable and particulary when it is found that the defendant's presence at the plaintiff's residence on 20.12.1994 is no way possible in the light of Ex.B2 and the evidence of D.W.2.

17. It is seen that the first appellate court has rightly held that the plaintiff has failed to establish the genuineness of Ex.A1 promissory note. The substantial questions of law formulated in second appeal are accordingly answered against the plaintiff and in favour of the defendant.

18. In conclusion the second appeal fails and is accordingly dismissed with costs. Connected miscellaneous petition if any is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mfa
To

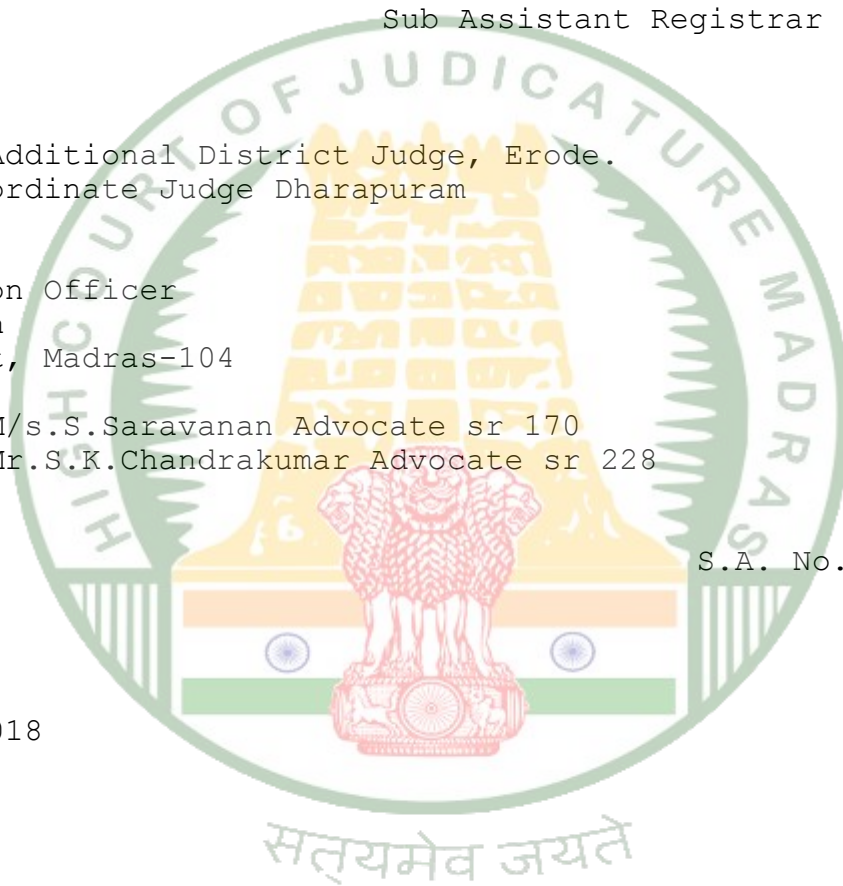
- 1.The II Additional District Judge, Erode.
- 2.The Subordinate Judge Dharapuram

copy to
The Section Officer
VR Section
High Court, Madras-104

- +1 cc to M/s.S.Saravanan Advocate sr 170
+1 cc to Mr.S.K.Chandrakumar Advocate sr 228

S.A. No.624 of 2002

nmi (co)
aa29/01/2018



WEB COPY