

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2018

PRONOUNCED ON : 27.06.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.937 of 2004

Anbazhagan ... Appellant/Defendant

Vs.

Chakrapani ... Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed by the learned subordinate Judge, Kallakurichi in A.S.No.64/2000 dated 21.07.2003 confirming the decree and judgment passed by the learned Principal District Munsif, Kallakurichi in O.S.No.490/1997 dated 03.01.2000.

For Appellant : Mr.A.G.Rajan

For Respondent : Mrs. Mythili Suresh
M/s. Sarvabhauman Associates

JUDGMENT

In this second appeal challenge is made to the judgment and decree dated 21.07.2003, passed in A.S.No.64/2000, on the file of the Subordinate Court, Kallakurichi, confirming the judgment and decree dated 03.01.2000, passed in O.S.No.490/1997, on the file of the Principal District Munsif Court, Kallakurichi.

2. The second appeal has been admitted on the following substantial questions of law:

- "i) Whether the appellant is bound to prove the genuineness of Ex.A1, when once the signature found in Ex.A1 is categorically denied by the Appellant? And
ii) Whether the findings of the lower appellate Court is based on the evidence and such findings have been arrived in accordance with law?"

3. The defendant, who has lost in both Courts, is the appellant. The suit has been laid by the plaintiff for recovery of money on the basis of a promissory note. In brief, according to the plaintiff, the defendant borrowed a sum of Rs.20,000/- from him on 05.09.1994 and in evidence thereof, executed the suit promissory note promising to repay the said sum with interest as agreed and inasmuch as the defendant failed to pay the borrowed sum as agreed, despite the issuance of notice, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

4. The defendant has taken the plea that he had not borrowed the suit sum as claimed in the plaint nor executed the suit promissory note in evidence of the alleged borrowal and according to the defendant, the defendant and others, including the plaintiff, jointly conducted a finance business and in respect of the same, the plaintiff did not maintain the books of accounts properly and as the defendant questioned the same, according to the defendant, developing enmity against him, the plaintiff has concocted the suit promissory note and laid a false suit and hence, the suit is liable to be dismissed.

5. Inasmuch as the defendant has disputed the borrowal as well as the execution of the suit promissory note, it is found that the burden is heavy upon the plaintiff to establish his case. To sustain his case, the plaintiff has examined himself as PW1 and also examined the scribe of the promissory note Ex.A1 as PW2. Both PWs 1 and 2 have clearly testified that the defendant had borrowed the suit sum from the plaintiff and in evidence thereof, executed the suit promissory note in favour of the plaintiff and accordingly, it is found that the evidence of PWs 1 and 2 could not be assailed in any manner by the defendant during the course of cross examination and when their evidence are found to be reliable, cogent, convincing and trust worthy, the Courts below had placed complete reliance upon their evidence and accordingly accepted the plaintiff's case.

6. As regards the claim of the defendant that the parties involved and others had indulged in the finance business and on account of the misunderstanding in respect of the said business, the plaintiff had created the promissory note, as rightly found, the defendant has not taken any endeavour to place acceptable material before the trial Court to sustain the abovesaid version. However, it is found that two documents have come to be marked by the defendant in the first appellate Court as Ex.B1 and B2. However, as rightly determined by the first appellate Court, the abovesaid documents would not in any manner be helpful to sustain that on account of the financial business alleged to be conducted by the parties involved, we cannot

presume that following the same, misunderstanding arose between the parties and the plaintiff had created the suit promissory note. Thus, it is found that as rightly held by the first appellate Court, Exs.B1 and B2, as such, would not in any manner advance the defence version.

7. It is mainly contended by the defendant's counsel that the defendant having denied the borrowal of the suit sum as well as the execution of the suit promissory note, it is for the plaintiff to establish the same and according to him, the plaintiff's case should fail on account of his failure to examine the attestors of the suit promissory note. However, the abovesaid contention cannot be accepted. The suit promissory note is not a document which requires compulsory attestation. That being the position, the proof of the execution of the suit promissory note need not be necessarily established by examining the attestors to the same. It can be established by other modes available in law. Accordingly, it is found that the plaintiff has chosen to examine the scribe of the promissory note as PW2 and as aboveseen, PW2's evidence is acceptable and convincing in all aspects regarding the borrowal of the suit sum by the defendant and the execution of the suit promissory note in evidence thereof. Thus, it is found that the plaintiff has established his burden through the evidence of PWs 1 and 2 and thus, it is crystal clear that the defendant had borrowed the suit sum and executed the suit promissory note in favour of the plaintiff.

8. Despite the position being above, the defendant had not endeavoured to let in any acceptable evidence to hold that the signature available in the suit promissory note is not that of his and for subjecting the suit promissory note for expert's scrutiny. Though it is found that in the second appeal stage, some endeavours had been made for the expert's scrutiny, however, due to the non availability of the documents as requested by the expert, the said endeavour did not fructify and therefore, it is found that the fact remains that there is no material worth acceptance placed by the defendant to show that the signature contained in the suit promissory note is not that of his and accordingly, it is found that the defendant has not let in any rebuttal evidence, as such, to disbelieve the evidence of PWs 1 and 2 and the materials placed by the plaintiff in support of his case and accordingly, it is found that the Courts below are justified in upholding the plaintiff's case and it is seen that no valid material is projected by the defendant to dislodge the findings and conclusions of the Courts below in upholding the plaintiff's case.

9. The principles of law outlined in the decisions relied upon by the plaintiff's counsel in support of her contentions reported in 2007 (4) CTC 122 (K.Chinnasamy Vs. Sivagamiammal), (2009) 1 MLJ 979 (Abdul Hameed (deceased by Lrs) and others Vs. Senkottai Gounder (deceased by Lrs) and others), (2008) 4 SCC 530 (Thiruvengadam pillai Vs. Navaneethammal and another) and 2010 SCC Online Mad 6232 (Ramaraj Vs. 1. T.N.V.Durairaj 2. Kumaravel) are taken into consideration and followed as applicable to the case at hand.

10. The plaintiff is found to have established his case by adducing acceptable and reliable evidence and despite the same, the defendant had not taken due endeavours to adduce acceptable rebuttal evidence to establish that he had not executed the suit promissory note or that the signature contained in the suit promissory note is not that of his and accordingly, it is found that the Courts below are justified in accepting the plaintiff's case. The determination of the Courts below in favour of the plaintiff's case is found to be based on the proper appreciation of the materials placed on record, both factually and legally and thus, it is seen that no interference is called for to disturb the findings and conclusions of the Courts below. The substantial questions of law formulated in this second appeal are accordingly answered in favour of the plaintiff and against the defendant.

11. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Kallakurichi

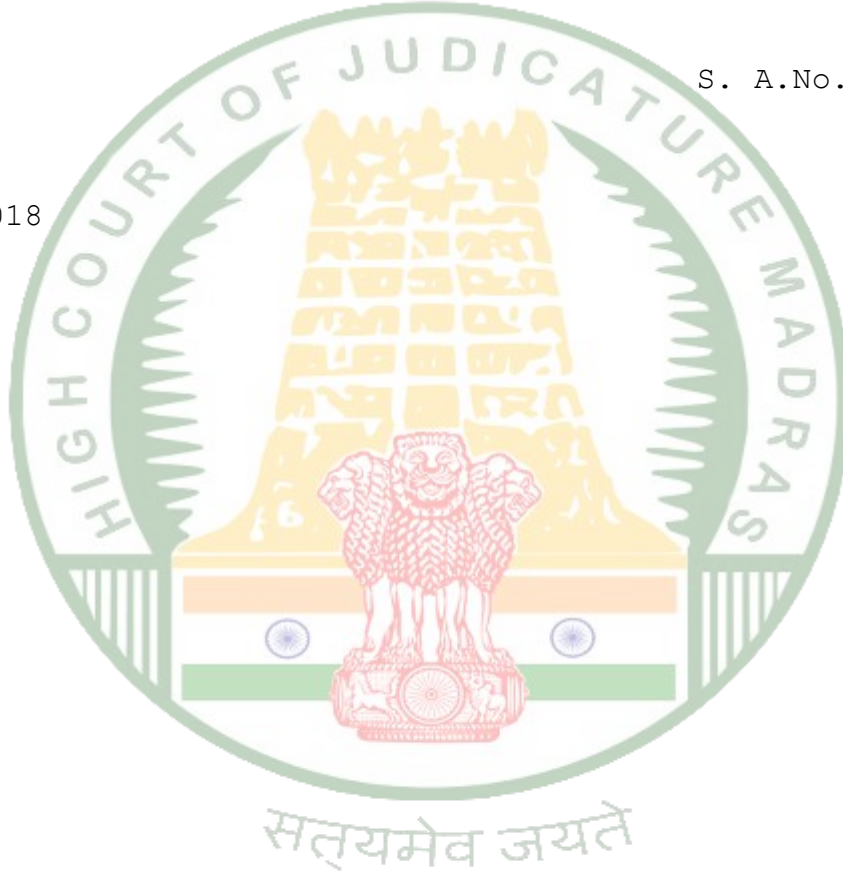
2. The Principal District Munsif,
Kallakurichi.

3. The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to M/S.Sarvabhauman Associates, Advocate Sr.40546

S. A.No.937 of 2004

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