



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

Second Appeal (MD) No.147 of 2017

and

C.M.P. (MD) No.2327 of 2017

K.Maheshwari : Appellant / Appellant / Defendant

-Vs-

A.Muthukumaran : Respondent /Appellant / Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of the Civil Procedure, against the Judgment and Decree dated 22.01.2016 in A.S.No.7 of 2015 on the file of the II Additional District Sessions Judge, Tuticorin, confirming the judgment and decree dated 30.07.2014 made in O.S.No.101 of 2011 on the file of the Sub Court, Kovilpatti.

For Appellant :Mr.K.Govindarajan

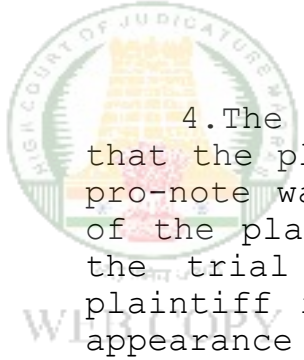
For Respondent :Mr.G.Prabhu Rajadurai

JUDGMENT

This Second Appeal has been filed against the Judgment and Decree dated 22.01.2016 in A.S.No.7 of 2015 on the file of the II Additional District Sessions Judge, Tuticorin, confirming the judgment and decree dated 30.07.2014 made in O.S.No.101 of 2011 on the file of the Sub Court, Kovilpatti.

2.This second appeal has been filed by the defendant in the suit in O.S.No.101 of 2011, on the file of the Sub Court, Kovilpatti. The suit in O.S.No.101 of 2011, was filed for recovery of a sum of Rs.2,63,466/- from the appellant / defendant in the suit along with interest at the rate of 12% from the date of plaint.

3.The case of the respondent is that the defendant has borrowed a sum of Rs.2,00,000/- on 11.03.2009 for medical expenses and agreed to pay interest at 12%. It is also stated that a pro-note was executed by the defendant. The lower court holding that the pro-note was executed by the defendant in favour of the plaintiff for a sum of Rs.2,00,000/- agreeing to pay 12% interest per annum, decreed the suit as prayed for. The trial Court also found that the plaintiff / respondent is entitled for recovery of a sum of Rs.2,63,466/- along with the interest of 12% from the date of plaint to the date of judgment and at the rate of 6% from the date of the judgment till date of recovery. The judgment of the lower Court was confirmed by the lower appellate Court by dismissing the appeal in A.S.No.7 of 2015. Challenging the same, the defendant has preferred this second appeal.



4.The learned Counsel appearing for the appellant submitted that the plaintiff was residing abroad at the time when the alleged pro-note was said to have been executed by the defendant in favour of the plaintiff. Though the defendant filed an application before the trial Court, raising a doubt as to the signature of the plaintiff in the plaint on the relevant date, the Court after the appearance of the plaintiff, found that the plaint was signed by the plaintiff. However, the learned Counsel for the appellant raised an issue that the plaintiff was not in India at the time when the suit pro-note came into existence and that the plaintiff did not produce the best evidence in his possession, namely, his passport. The learned Counsel for the appellant also raised a doubt earlier as to the presence of the plaintiff on the date of presentation of plaint and disputed his signature in the plaint. The plaintiff, thereafter, appeared before Court and established that the suit plaint was signed by him. Now the learned Counsel for the appellant submitted that the lower Court ought to have dismissed the suit, as the plaintiff has not produced the passport to prove that he was in India at the time when the pro-note was executed.

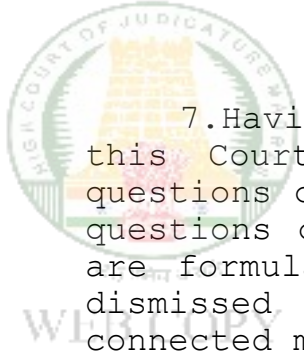
5.It is stated in the plaint that the pro-note was executed on 11.03.2009. The learned Counsel for the respondent herein was directed to produce the passport of the plaintiff. The passport of the plaintiff was also produced before this Court, showing that the plaintiff was very much available in India from 20.02.2008 to 28.03.2009. Since pro-note was executed on 11.03.2009, this Court has no reason to interfere with the findings of the trial Court on the question of genuineness of the pro-note executed by the defendant in favour of the plaintiff on 11.03.2009. When the passport of plaintiff was produced, learned Counsel for the appellant did not press this argument. Since the Courts below have given a categorical finding with regard to the genuineness of the pro-note and its due execution, this Court is not able to appreciate any of the factual contentions raised by the learned Counsel appearing for the appellant.

6.The learned Counsel for the appellant raised the following substantial questions of law:

(1)Have not the Courts below committed in error in dismissing the suit especially due to the family enmity between the appellant and the in-law's of the respondent?

(2)Whether the Courts below right in holding that the evidence of PW1 and PW2 has proved the contents of the pro-note and the appellant has not proved the pro-note is forgery created?

(3)Whether the Courts are right in not considering the fact that at the time of execution of pro-note, the plaintiff was in foreign country and defendant is not a record clerk ?



7. Having regard to the factual findings of the Courts below, this Court is not able to appreciate any of the substantial questions of law, raised in this second appeal. Even the substantial questions of law are factual and the grounds raised in this appeal are formulated as questions of law. Hence, this second appeal is dismissed as devoid of any merits. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The II Additional District Sessions Judge, Tuticorin
2. The Subordinate Judge, Kovilpatti

Copy to:- The Section Officer, (2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.K.Govindarajan, Advocate, SR.No.43046

+One cc to Mr.G.Prabhu Rajadurai, Advocate, SR.No.43188

cmr
RL/7C/3P/SKN/RSK/SAR4/28/2/2018

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