

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.01.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.120 OF 2019

1.Ramasamy

2.Muthulakshmi

3.Muthukumarasamy

..Appellants/Plaintiffs

-Vs-

N.Shanmugasundaram

..Respondent/Defendant

Second Appeal is filed under Section 100 of the Code of Civil Procedure to set aside the decree and judgment dated 20.07.2018 made in A.S.No.10/2017 on the file of the II Additional District and Sessions Court, Tirupur confirming the decree and judgment dated 03.02.2017 made in O.S.No.48/2006 on the file of the Additional Sub-ordinate Judge, Tirupur.

For Appellants : Mr.M.Devendran

J U D G M E N T

The plaintiffs, who had come forward with the Original Suit No.48 of 2006, for recovering a sum of Rs.1,85,440/- together with future interest at the rate of 28.80% per annum on the principal amount of Rs.1,00,000/-, are the appellants before this Court. The suit was filed by the Appellants/Plaintiffs on the following averments:

(i) that on 05.03.2003, the Respondent/Defendant had borrowed a sum of Rs.1,00,000/- (Rupees One Lakh only) from the plaintiffs' mother Ramakkal and that he had executed a receipt in favour of the plaintiffs' mother for the said amount borrowed. The Respondent/Defendant did not care to repay the amount despite several demands made by the plaintiffs' mother and in the meanwhile, the plaintiffs' mother passed away.

(ii) On 16.11.2005, the plaintiffs had issued a legal notice

to the Respondent/Defendant, who had received the same on 29.11.2005. However, the Respondent/Defendant had evaded the repayment to the plaintiffs.

2. The learned counsel for the Appellants/Plaintiffs would contend that the defendant is not entitled to the benefits of the Tamil Nadu Debts Reliefs Acts and that he is liable to repay as said amount.

3. The defence taken by the Respondent/Defendant in the said suit was that he had borrowed a sum of Rs.10,000/- from the plaintiffs' mother in the year 1998 and way back on the said date, the plaintiffs' mother had asked the Respondent/defendant to sign on the empty paper affixed with stamp as surety for the loan taken. The Respondent/Defendant had repaid the entire loan amount within three months thereof and despite several requests to the said Ramakkal/Plaintiffs' mother to return back the signed empty papers, she refused to return back the same stating that it was misplaced and could not be traced.

4. According to the defendant, the plaintiffs must have forged and fabricated the document according to their will. The defendant also contended that the date [05.03.2003] written on the top of the receipt is different from the date written on the bottom. This would show that there is a material alteration in the document.

5. The parties went to trial and the 3rd Appellant/3rd plaintiff was examined as P.W.1 and the documents on plaintiffs' side were marked as Exs.A1 to A6. Further, on the Appellants/plaintiffs' side one witness was examined as P.W.2 to substantiate the claim of the plaintiff. The Respondent/Defendant was alone examined as DW1 and no documents were marked.

6. The learned Judge ultimately decreed the suit.

7. Challenging the said judgment and decree, the appellants have filed A.S.No. 10 of 2017, on the file of the Second Additional District and Sessions Court Judge, Tiruppur. The learned Appellate Authority was also pleased to confirm the judgment and decree of the Court below. Challenging the said judgment and decree passed by the Appellate Authority, the Appellants/plaintiffs have come before this Court.

8. Heard Mr.M.Devendran, learned counsel for the appellants.

9. It is seen from the judgment of the lower appellate Court that P.W.2 was called upon to depose about the execution of Ex.A1 by the defendant. He would depose that the said agreement

was executed on 05.03.2003 and not on 15.08.1998 as stated by the plaintiffs. He would also depose that when the document was signed, it was blank. P.W.2 was examined on the side of the plaintiff to prove the sale deed dated 05.03.2003. Unfortunately, the witness has categorically stated that what he had signed was a promissory note dated 15.08.1998. The Appellate Court has also followed the same reasoning while dismissing the appeal.

10. The grounds raised in the second appeal does not give rise to any question of law. This Courts does not find any infirmity in the judgment and decree warranting interference by this Court.

11. In the result, the Second Appeal is dismissed. The judgment of this Courts below are confirmed. No costs.

ssb

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The II Additional District
and Sessions Judge,
Tiruppur.
2. The Additional Subordinate Judge,
Tiruppur.

+1cc to Mr.M.Devendran, Advocate, SR.No.8049

S.A.No.120 of 2019

Kak(22/05/2019)

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