

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.No.1514 of 2008

&

M.P.No.1 of 2008

V.Soundararajan Appellant/Appellant/Respondent

Vs

K.Rajamanickam Respondent/Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgement and decree made in A.S.No.102 of 2007 dated 01.07.2008 on the file of the I Additional Sub Judge, Erode, confirming the Judgment and decree made in O.S.No.1212 of 2004 dated 18.10.2004 on the file of the II Additional District Munsif, Erode.

For Appellant : Mr.R.Marudhachalamoorthy
M.Guruprasad

For Respondent : Mr.N.Manokaran

J U D G E M E N T

This second appeal has been filed challenging the concurrent findings of the courts below.

Brief facts leading to the filing of this second appeal:

2. The Appellant is the defendant in the suit O.S.No.1212 of 2004 on the file of the II Additional District Munsif, Erode and the respondent is the plaintiff.

3. For the purpose of convenience, the parties are referred to as per their ranking before the Trial Court.

4. The suit was filed by the plaintiff against the defendant seeking for recovery of a sum of Rs.46,720/- together with interest and costs. The case of the plaintiff is that the defendant borrowed a sum of Rs.15,000/- from the plaintiff on

03.01.1998 for his urgent family expenses and he executed a promissory note dated 03.01.1998 in favour of the plaintiff for a sum of Rs.15,000/- and he agreed to repay the said loan with interest at the rate of 24% per annum. According to the plaintiff, the defendant also borrowed another sum of Rs.20,000/- from the plaintiff on 13.05.1998 and for the said sum, the defendant executed another promissory note dated 13.05.1998 in favour of the plaintiff and he agreed to repay the said loan also with interest at 24% per annum. According to the plaintiff, since the defendant failed to repay the loan, he issued a pre-suit notice dated 22.12.2000 calling upon the defendant to repay the loan under two promissory notes. According to the plaintiff, since the defendant failed to repay the loan, the plaintiff filed the suit seeking recovery of the loan amount with interest from the defendant.

5. The defendant has filed a written statement denying the allegations contained in the plaint. But he has not pleaded in his written statement as to why he is not liable to repay the loan to the plaintiff.

6. The Trial Court by its Judgement and decree dated 18.10.2004 decreed the suit in favour of the plaintiff. Aggrieved by the Judgement and decree dated 18.10.2004 passed by the Trial Court in O.S.No.1212 of 2004, the defendant filed an appeal before the lower appellate court namely the First Additional Sub Court, Erode in A.S.No.102 of 2007. The lower appellate court confirmed the findings of the Trial Court by dismissing the appeal A.S.No.102 of 2007 filed by the defendant. Aggrieved by the same, this second appeal has been filed by the defendant in the suit.

7. Heard Mr.R.Marudhachalam, learned counsel appearing for the Appellant/defendant and Mr.N.Manokaran, learned counsel appearing for the respondent/plaintiff.

8. According to the learned counsel for the Appellant, the plaintiff has not discharged his initial burden to prove the execution of demand promissory notes by the defendant. According to him, there are alterations in one of the demand promissory notes Ex.A2. It is also his submission that the defendant has not borrowed money from the plaintiff.

9. Per contra, learned counsel for the respondent would submit by drawing attention of this Court to the written statement filed by the defendant in the suit that excepting for bald denial of allegations in the plaint, the defendant in his written statement has not stated as to why he is not liable to

repay the loan to the plaintiff. Further, it is contended by the learned counsel for the respondent that the plaintiff has discharged his burden of establishing that the suit promissory notes were in fact executed only by the defendant as the signatures found therein have not been disputed by the defendant.

Discussion:

10. This Court has perused the pleadings and the evidence available on record.

11. As rightly contended by the learned counsel for the respondent and as seen from the written statement, the defendant excepting for making bald denials of the averments contained in the plaint, has not made any statement as to why he is not liable to repay the loan to the plaintiff.

12. As seen from the deposition of the defendant (DW1), he has infact admitted his signature in the suit promissory notes. The contentions of the learned counsel for the defendant is that there are alterations found in one of the promissory notes viz., Ex.A2. If that be so, it is for the defendant to send the disputed promissory note to an expert for his opinion as to whether the signature found in the disputed promissory note is the signature of the defendant or not. In the case on hand, no such attempt was made by the defendant to send the disputed promissory note to the expert for his opinion. Excepting for making bald denials in the written statement, as regards execution of promissory notes, no evidence has been produced by the defendant to establish that promissory notes were never executed by him in favour of the plaintiff. The plaintiff has discharged his initial burden of establishing the execution of promissory notes by the defendant, since the defendant has admitted his signatures found in the promissory notes and the burden to disprove the execution of promissory notes was shifted to the defendant. The defendant has miserably failed to establish that he has not executed the promissory notes in favour of the plaintiff.

13. The Trial Court as well as the lower appellate court has considered the pleadings and the evidence available on record and only thereafter has come to the right conclusion that the plaintiff is entitled to a decree as prayed for in the suit.

14. For the foregoing reasons, there is no substantial questions of law involved in this appeal and the substantial questions of law raised by the defendant/Appellant does not deserve any merits.

Conclusion:

15. This Court does not find any perversity in the findings of the Trial Court and the lower Appellate Court. Hence, the judgement and decree dated 01.07.2008 passed by the learned I Additional Sub Judge, Erode in A.S.No.102 of 2007 is confirmed. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional Sub Judge, Erode

2.The II Additional District Munsif, Erode

Copy to:

The Section Officer,

VR Section, High Court, Madras-104.

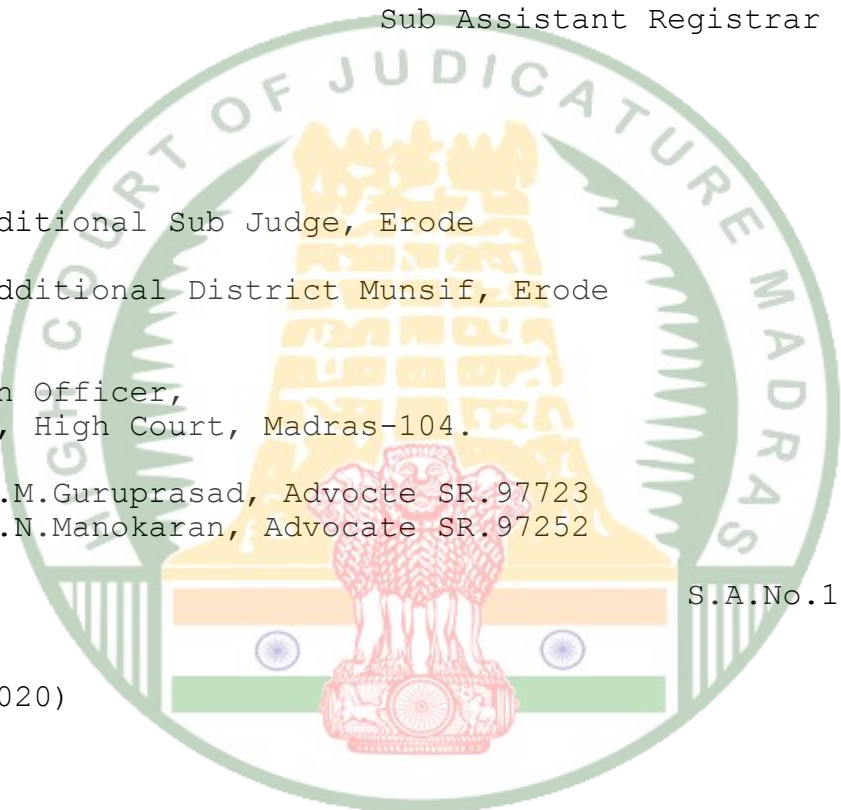
+1cc to Mr.M.Guruprasad, Advocate SR.97723

+1cc to Mr.N.Manokaran, Advocate SR.97252

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SVI (CO)

CB(11/09/2020)

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red eagle (Garuda) perched on top. Below the gopuram is a red lion capital of Ashoka. The entire emblem is set against a background of horizontal stripes in orange, white, and green, with a blue wheel in the center. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a green arc around the top. At the bottom, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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