

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.190 of 2008
and MP.No.2 of 2008

S.Nachimuthu GounderAppellant/Respondent/Defendant

Vs

C.Vimaladevi Respondent/Appellant/Plaintiff

Prayer :- Second Appeal filed under Section 100 of the Civil Procedure Code, preferred against the judgment and decree dated 15.06.2007 made in A.S.No.92 of 2006 on the file of the Principal District Court, Erode, reversing the judgment and decree dated 10.07.2006 made in O.S.No.658 of 1998 on the file of the First Additional Sub Court, Erode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.V.Lakshminarayanan
for Mr.A.Thiyagarajan

JUDGMENT

The defendant who was successful before the trial court but suffered a decree for repayment of money passed by the first appellate Court, in a money suit on Ext.A1, Promissory Note, has come before this Court in the Second Appeal. Parties would be referred to by their rank before the trial court.

2. The case of the plaintiff is that on 20.04.1996, the appellant/defendant borrowed a sum of Rs.2,50,000/- from the respondent/plaintiff, promising to repay the same at 24% per annum. As the amount was not repaid, the plaintiff issued a suit notice on 08.04.1998, a copy of which is marked Ext.A2. Denying the liability, the defendant issued Ext.A3, reply notice dated 18.04.1998. Hence the plaintiff has laid the present suit.

3. In the written statement, the defendant has taken two defences: (a) That the signature in the promissory note does not belong to him; and (b) that no amount was borrowed from the plaintiff.

4.1 The dispute went for trial, and before the trial court, the plaintiff examined herself as P.W.1, and also examined two attesting witnesses to Ext.A-1 as P.W.2 and P.W.3. On the side of the defendant, the defendant examined himself as D.W.1. Before the trial Court, the defendant had filed a petition to compare his signature in Ext.A1. The trial Court ordered for an expert opinion in the matter and accordingly, the expert opinion was received, wherein, the Expert had opined that the signature belongs to the defendant.

4.2 During trial P.W.1 in her cross-examination had made a statement that only her husband knew every details of the transactions pertaining to Ext.A1. The trial Court drew adverse inference for non-examination of the husband of the plaintiff and also found some inconsistency in the evidence of all the three witnesses. Accordingly, the trial Court dismissed the suit.

5. On appeal, the first appellate Court Vide judgment dated 15.06.2007 in A.S.No.92 of 2006, reversed the judgment and decree passed by the trial Court in O.S.No.658 of 1998. Aggrieved by the same, the defendant has come up with the second appeal.

6. When the second appeal came up for admission, this Court framed the following substantial questions of law :-

"1. Whether the lower appellate Court has committed an error in holding that the suit promissory note has been proved to be genuine, relying on the expert opinion alone, to say that such a finding is perverse?

2. Whether the lower appellate Court has committed an error in drawing a presumption under Section 118 of the Negotiable Instruments Act, regarding passing of consideration?"

7. The learned counsel for the appellant argued that P.W.1 in her cross-examination would admit that only her husband knew entire details about the loan transaction founded on Ext.A1, promissory note, and hence adverse inference ought to be drawn against her. Consequently, her evidence on any aspects attending the promissory note is incompetent. In this regard, the first appellate Court was wrong in relying on the expert's opinion, as per which the impugned signature in Ext.A1 was that of the defendant. The Courts below ought to have taken all the evidences together and ought to have appreciated the same.

8. Per contra, the learned counsel for the respondent argued that the only defence taken in the written statement is that, Ext.A1 is a fabricated document and that the signature of the defendant was forged. In the written statement, the defendant reserved his right to file an additional written statement after inspection of Ext.A1 available in the Court. Post such inspection, he filed an additional written statement, where he reiterated his earlier defence. When in law, the burden is on the plaintiff to prove that the executant of Ext.A1 was the defendant, the defendant himself undertook the responsibility of having an expert appointed by the Court to examine the signature that he impugns, and give his opinion. The expert has given the opinion and it is against the defendant. The defendant has not offered any second line of defence to the effect that the opinion of the expert is not reliable. Therefore, the conclusion of the Courts below that the promissory note was executed by the defendant cannot be assailed. When once the execution is proved, necessarily the presumption under Section 118(a) of the Negotiable Instruments Act comes to play.

9. On a careful evaluation of the rival submissions, this Court finds that there is considerable merit in the submissions of the learned counsel for the respondent. The evidences in this case arrange themselves in a pattern that throws invitation to the applicability of the maxim *res ipsa loquitur*. Necessarily, the appellant has to fail. Having said thus, the lower appellate Court has awarded interest at the rate of 24% per annum, which this Court considers as usurious. Accordingly, the decree of the first appellate Court is modified to the limited extent and accordingly, the defendant would be liable to pay the principal sum with pre-suit interest at the rate of 9% p.a, and post suit interest at the rate of 6% p.a, with costs.

10. In the result, this appeal is partly allowed with costs. The learned counsel for the appellant submitted that pursuant to the order of this Court in M.P.No.2008 in SA.No.190 of 2008, dated 12.03.2008, a sum of Rs.2,50,000/-, which represents the principle amount has already been deposited in the trial Court before 29.03.2010, and therefore, the plaintiff would be at liberty to withdraw the same. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

1.The Principal District Court,
Erode.

2.The I Additional Sub Court
Erode.

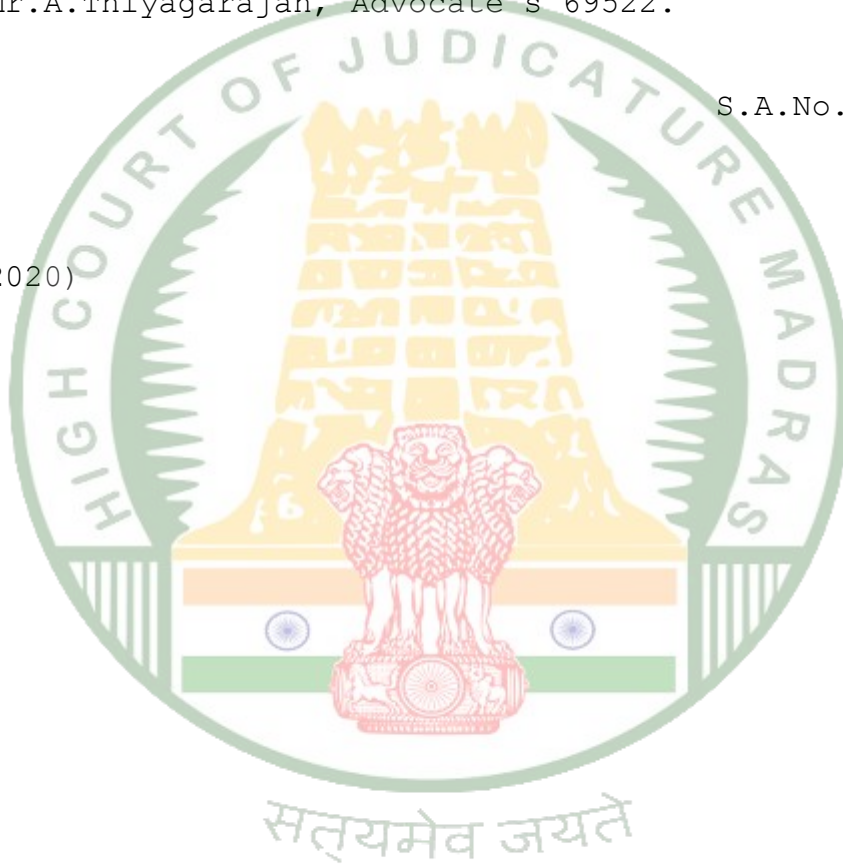
3.The Section Officer
VR Section, High Court, Madras.

+1 CC to Mr.N.Manokaran, Advocate sr 69905.

+1 CC to Mr.A.Thiyagarajan, Advocate s 69522.

S.A.No.190 of 2008

VSNII (CO)
SP(02/09/2020)



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