

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.02.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.370 of 2008 &
M.P.No.1 of 2008

Mr.V.Vadivel Padayachi ...Appellant/Plaintiff

Vs

Mr.Dhatchinamurthy Padayachi ... Respondent/Defendant

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 24.01.2008 in A.S.No.28 of 2007 on the file of the Subordinate Judge, Panruti reversing the judgment and decree passed in the in O.S.No.24 of 2005 dated 23.04.2007 on the file of the District Musif, Panruti.

For Appellant : Ms.K.Anusarala
for Mr.R.Gururaj

For Respondent : Mr.R.Sunilkumar

JUDGMENT

This Second Appeal has been filed as against the judgment and decree dated 24.01.2008 in A.S.No.28 of 2007 on the file of the Subordinate Judge, Panruti reversing the judgment and decree passed in O.S.No.24 of 2005 dated 23.04.2007 on the file of the District Musif, Panruti.

2. The brief facts leading to filing of the suit is as follows :

The defendant borrowed a sum of Rs.38,400/- from the plaintiff on 19.01.2002. and executed a promissory note agreeing to pay interest at the rate of 12% per annum. As the defendant failed to pay the amount with interest, the plaintiff has filed the suit.

3. It is the defence of the defendant that he has received only a sum of Rs.5000/- on 19.01.1999 and executed a promissory

note. Thereafter, he discharged the entire amount on 13.01.2002. At the time of discharge, the plaintiff has not returned the promissory note and it was retained by the plaintiff himself. Hence, it is the contention of the defendant that the promissory note Ex.A.1 is a fabricated one.

4. The trial Court decreed the suit. But the first appellate Court reversed the finding of the trial Court. As against which, the present appeal came to be filed.

5. The following substantial questions of law have been framed in this Second Appeal :

1. Whether the first appellate Court has committed grave error in relying upon Ex.B.1 which was neither pleaded nor proved?

2. Whether the judgment of the lower Appellate Court is vitiated by non-appreciation of the materials on record?

6. Heard the learned counsel for the appellant and the learned counsel for the respondent. I have perused the entire materials available on record.

7. The main defence of the defendant is that he has not executed the suit promissory note. Whereas he had borrowed only Rs.5000/- on 19.01.1999. Thereafter, he discharged the amount. It is well settled that in order to establish the discharge, the burden lies on the person who pleads discharge. Ex.B.1 will not prove the discharge as pleaded by the defendant. It is further to be noted that it is the contention of the defendant that the promissory note is a fabricated one. Such a general denial is not sufficient. Having admitted the relationship between the parties and having pleaded discharge, the fabrication and forgery has to be established by the defendant by concrete materials. The lower appellate Court had reversed the finding of the trial Court by holding that as the defendant had pleaded forgery of his signature in the suit promissory note and the plaintiff had failed to discharge his initial burden of proving the execution of the suit promissory note by the defendant, reversed the finding of the trial Court. Though, the defendant has pleaded that the suit promissory note has been fabricated and his signature has been forged, he has not taken any steps to prove the same with the aid of the expert opinion. Mere plea that the promissory note has been fabricated will not prove the case of the defendant. Hence, this Court is of the view that the trial Court properly analysed the entire facts and decreed the suit and the substantial questions of law are answered in favour of the appellant.

8. Accordingly, this Second Appeal is allowed and the

judgment and decree of the first appellate Court in A.S.No.28 of 2007 is set aside and the judgment and decree of the trial Court in O.S.No.24 of 2005 is confirmed. Consequently, the connected miscellaneous petition is closed. No cost.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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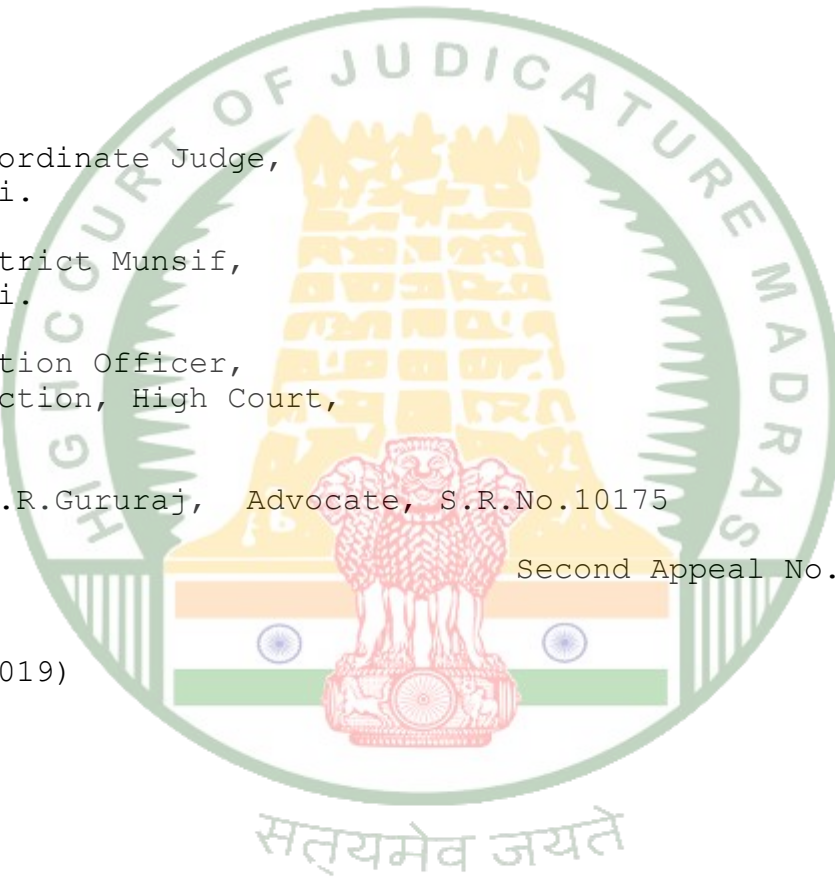
To

1. The Subordinate Judge,
Panruti.
2. The District Munsif,
Panruti.
3. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.R.Gururaj, Advocate, S.R.No.10175

Second Appeal No.370 of 2008

SKV(CO)
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