

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRP NO.3683 of 2013 and

M.P.No.1 of 2013

Govindarajan

... Revision Petitioner/Defendant

Vs.

Ponnusamy Gounder

... Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India against the decree and judgment dated 26.04.2013 passed by the Principal Subordinate Judge, Villupuram in A.S.No.60 of 2005 upholding the decree and judgment dated 28.07.2004 passed by the I Additional District Munsif, Tirukoilur in O.S.No.414 of 2003.

For Revision Petitioner : Mr.V.Raghavachari

For Respondent : Mr.N.Suresh

ORDER

Aggrieved over the concurrent findings of the courts below, decreeing the suit in O.S.No.414 of 2013, this revision petition has been filed.

2. The revision petitioner is the defendant in the suit in O.S.No.414 of 2003. For the sake of convenience, the parties are referred to as per their original rank in the suit.

3. The brief facts of the plaint is as follows. The defendant borrowed a sum of Rs.10,000/- from the plaintiff and executed a promissory note agreeing to repay the same on demand. As the defendant failed to repay the amount, the suit has been filed.

4. The contention of the defendant, the revision petitioner herein is that he and one Nizam, who was the scribe of the promissory note were working as advocate clerks and that as there was enmity between Nizam and himself, the promissory note has been forged by Nizam and with the connivance of the plaintiff, the suit has been filed.

5. The trial court framed the following issues.

1. Whether the suit promissory note is true?

2. Whether the plaintiff is entitled to the relief claimed?

3. To what other relief?

6. On the side of the plaintiff, the plaintiff and one another witness were examined as PW1 and PW2 and Ex.A1 to Ex.A3 were marked. On the side of the defendant, the defendant examined himself as DW1 and no documentary evidence was adduced.

7. After analysing the evidence on record, the trial court decreed the suit. The first appellate court has also upheld the findings of the trial court. Aggrieved over the same, the present revision has been filed.

8. While admitting the revision petition, the following substantial questions of law were framed.

1. Whether the courts below are justified in decreeing the suit, when the plaintiff has failed to establish the execution of the promissory note by the defendant.

2. Whether the courts below are justified in decreeing the suit, especially when the signature in Ex.A1 and the documents filed before the court are at variance?

3. Whether the courts below are right in not placing the onus on the plaintiff to prove Ex.A1, when the defendant had denied his signature on the documents?

4. Whether the courts below are justified in placing reliance on the evidence of PW1 and PW2, who are interested witnesses and even otherwise, whether the evidence is not shaky and slender and falls to establish the genuineness?

9. The learned counsel appearing for the revision petitioner would submit that the trial court has placed the entire burden on the defendant to prove the case. In fact, best evidence has not been produced by the plaintiff. Similarly, the courts below have also not compared the signature of the defendant found in the promissory note with the signature found in vakalath. When the forgery itself has been pleaded and the evidence has been adduced to show that PW2 has a motive to falsely implicate the defendant, the courts below ought not to have relied upon the evidence of PW2. Hence he would submit that the decree and judgment of the courts below are liable to be interfered with.

10. The learned counsel appearing for the respondent (plaintiff) would submit that the courts below factually and legally held that the promissory note is valid one and hence the

findings of the court below does not warrant any interference by this court.

11. I have perused the judgments of the courts below and pleadings of the revision petitioner. In a suit of promissory note, initial burden is always lies on the plaintiff to establish and prove the execution of the promissory note. Once the execution of promissory note is proved, Section 118 of Negotiable Instruments Act comes into operation in favour of the plaintiff and the initial burden of the plaintiff is discharged and then, shifted on the defendant to disprove the same. The presumption is not only applies to execution but also to date, time, consideration etc. PW1 and PW2 in their evidence have spoken in a manner in which the promissory note came to be executed. PW2, one of the witnesses to the promissory note has spoken about the execution of the promissory note (Ex.A1) in his presence. Merely because a suggestion put to PW2 that there was enmity between himself and defendant, that itself cannot be a ground to disbelieve the evidence of one of the attested witnesses. To make his evidence unbelievable, there must be an evidence to show that PW2 has a motive to falsely implicate the defendant. In the absence of the same, mere suggestion or denial is not sufficient to disbelieve the evidence of PW2.

12. It is the case of the defendant that the promissory note has been forged, then, the burden of proof is lies on him to establish the forgery. However, he has not taken any steps to establish the forgery of promissory note by producing his admitted and non admitted signatures to the forensic department to obtain experts opinion. Hence, this court is of the view that the defendant has not discharged his burden in proving the forgery. The courts below after considering all these facts, rendered a well found judgments and the same cannot be found fault. For all the reasons above, the substantial questions of law are answered against the revision petitioner.

13. In the result,

(i) The revision petition is dismissed. No costs. The connected civil miscellaneous petition is closed.

(ii) The decree and judgment of the first appellate court as well as the trial court are upheld.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mst

To

1. The I Additional District Munsif, Thirukoilur

2. The Principal Subordinate Judge, Villupuram.

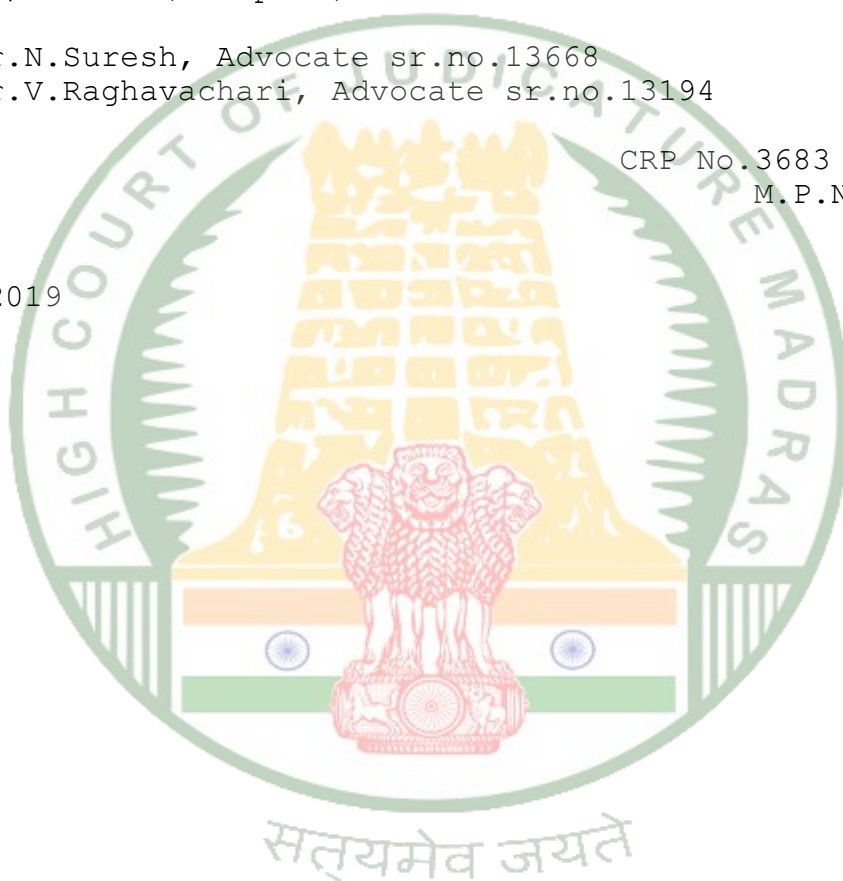
3.The Section Officer,
VR Section,
High Court, Madras(2 copies)

+1cc to Mr.N.Suresh, Advocate sr.no.13668

+1cc to Mr.V.Raghavachari, Advocate sr.no.13194

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nr 29/03/2019



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