

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.01.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.438 of 2012
and
M.P.No.1 of 2012

Narayanasamy

...Appellant/Appellant
/Defendant

Vs

Ramamoorthy

... Respondent/Respondent
/Plaintiff

PRAYER:- Second Appeal has been filed under Section 100 of C.P.C. against the judgment and decree in A.S.No.48 of 2010, on the file of the Additional Sub-court, Virudhachalam, dated 14-07-2011 in confirming the judgment and decree in O.S.No.448 of 2008, on the file of the I Additional District Munsif Court, Virudhachalam, dated 01-03-2010.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.G.Surya Narayanan

JUDGMENT

Aggrieved over the findings of the courts below in decreeing the suit filed for recovery of money with interest and for cost the present Second Appeal has filed.

2. It is the case of the plaintiff/respondent that the defendant/appellant has borrowed a sum of Rs.35,000/- and executed a pro-note, dated 14.09.2005 and agreed to pay the interest and thereafter failed to pay the amount. Hence, the suit.

3. It is the contention of the defendant/appellant that he has never borrowed money nor executed the pro-note in favour of the plaintiff and the suit has been filed taking advantage of the signature found in the Lease deed executed by the defendant in favour of the plaintiff and he had forged defendant's signature and created pro-note. The trial court framed the following issues.

(i) Whether the plaintiff is entitled to the money decree as prayed for?

(ii) Whether the suit pro-note is forged one?

(iii) Whether the suit pro-note is supported by consideration?

(iv) To what other reliefs the plaintiff is entitled to?

4. On the side of the plaintiff, P.W.1 and P.W.2 were examined and Ex.A1 was marked and on the side of the defendant, he himself examined as D.W.1 and Exs.B1 to B4 were marked. The trial court decreed the suit. The first Appellate Court confirmed the suit decree and judgment of the trial court. Aggrieved over the same, the Second Appeal was filed.

5. The Second Appeal was filed raising the following substantial questions of law:

A. Whether courts below are right in shifting the onus on the defendant, when the initial burden rest on the plaintiff remains to be discharged?

B. Whether the courts below are right in merely accepting Ex.A1, pro-note, in discarding the documents under Ex.B1- B4 to show the forename of the defendant?

C. Whether the courts below are justified in concluding that the defendant has failed to discharge his burden of proof, when it is the specific case of disputing the signature and execution of the suit pro-note?

D. When there is a dispute as regards the signature found in the document under such circumstances, the courts below ought to have sought for expert opinion?

E. When the plaintiff has failed to establish the passing of consideration and signature of the defendant, under such circumstances, the courts below ought not to have dismissed the suit?

6. The learned counsel appearing for the appellant would vehemently contend that the courts below have not taken into consideration Exs.B1 to Ex.B4 documents and without appreciation, the trial court has simply accepted the case of the plaintiff and shifted the burden on the defendant/appellant and the approach of the trial court is not in accordance with law. Hence pray for allowing the appeal.

7. The learned counsel appearing for the respondent submitted that the trial court took note of the fact that the appellant contested the suit as well in the name of Narayanan. Only for the first time he disputed his identity in the appeal and both the courts below have elaborately dealt with the oral and documentary evidence and arrived at the correct conclusion to decree the suit.

8. I have perused the evidence and entire materials available on record. Admittedly, the suit has been filed for recovery of money on the basis of Ex.A1 executed by the defendant. Ex.A1 is the pro-note dated 14.09.2005. It is the contention of the plaintiff, that the defendant has borrowed a sum of Rs.35,000/- and executed the pro-note and also agreed to pay the interest as agreed in the pro-note. In order to prove the execution of pro-note one of the witness had been examined. It is the main contention of the defendant that he never borrowed the amount nor executed the pro-note and the pro-note has been fabricated with his forged signature, taking advantage of this signature as well as use of mortgage deed that the entire written statement, plaint allegation as to the Execution of the pro-note has not been specifically denied.

9. Further, the plaintiff has discharged his initial onus by examining one of the witness P.W.2 to prove the execution of the pro-note Ex.A1. It is the case of the appellant that Ex.A1 pro-note was not executed in the manner known to law and the said execution was also not established by the plaintiff. It is well settled that once the plaintiff discharges his initial burden of proving execution of pro-note then burden shifts on the defendant to disprove the above fact.

10. Further, statutory presumption available under Section 118 of evidence comes in to operation in favour of plaintiff. Such presumption not only apply to the execution but also to the time, date and consideration etc., Once execution is proved by the plaintiff the burden is on the defendant to disprove the legal presumption attached to the pro-note. But no material whatsoever has been brought on record to rebut the legal presumption available to Ex.A1 pro-note in this case. However, it is the contention of the defendant that he is not Narayanan but his name is Narayanasamy. Such defence will not work in his favour as the identity of the defendant has not been disputed, infact that summons have been served in the same address til the first appellate court which also decided the suit in the name of Narayanan. This fact also has been taken note of by the courts below.

11. On consideration of the entire evidence, this Court do not find any substantial question of law to admit this appeal and the appeal is liable to be dismissed.

12. In the result, the Second Appeal is dismissed and the judgment and decree of the first appellate Court is confirmed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional Subordinate Court,
Virudhachalam,
2. The I Additional District
Munsif Court, Virudhachalam.

+1cc to Mr.G.Suryanarayanan, Advocate, SR.No. 6803/19
+1cc to Mr.V.Raghavachari, Advocate, SR.No.6791/19

Second Appeal No.438 of 2012

Kak (22/05/2019)

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