

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.06.2019

DATED: 21.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A. No. 740 of 2015

M.Mallika ...Appellant/Respondent/Plaintiff

Vs.

Kasi Pillai ...Respondent/Appellant/Defendant

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Decree and Judgment of A.S.No. 78 of 2014 dated 27.08.2014 on the file of Subordinate Court, Arakkonam reversing the Decree and Judgment of O.S.No. 206 of 2010 dated 27.06.2011 on the file of the District Munsif Court, Sholingur.

For Appellant : Mr.M.Chidambaram

For Respondent : Mr.S.Sarath Chandran
M/s.K.M.Vijayan Associates

JUDGMENT

The plaintiff in O.S.No. 206 of 2010 on the file of the District Munsif Court, Sholinghur, is the appellant herein.

2. O.S.No. 206 of 2010 had been filed by the plaintiff Mallika against the defendant Kasi Pillai seeking a decree against the defendant for a sum of Rs.60,200/- together with interest at the rate of 24% p.a., on Rs.35,000/- from the date of the suit till date of decree and at the rate of 6% p.a., thereafter till the date of realisation and for costs of the suit.

3. This suit came up for consideration before the District Munsif Court, Sholinghur and by Judgment dated 27.06.2011, the suit was decreed.

4. Thereafter the defendant Kasi Pillai filed A.S.No. 22 of 2012 before the Sub Court, Ranipet, which was subsequently transferred to Sub Court, Arakkonam and renumbered as A.S.No. 78

of 2014. By Judgment dated 27.08.2014, the Appeal Suit was allowed and O.S.No. 206 of 2010 was dismissed.

5. Challenging that Judgment and Decree, the plaintiff had filed the present Second Appeal. The Second Appeal had been admitted on the following two substantial questions of law:-

"1. Whether the First Appellate Court correctly appreciated Sections 72 and 73 of Indian Evidence Act 1872?; and

2. Whether the First Appellate Court has considered Section 120 of Indian Evidence Act, 1827?"

6. Heard arguments advanced by Mr.M.Chidambaram, learned counsel for the appellant and by Mr.S.Sarath Chandran for M/s. K.M.Vijayan Associates.

7. For the sake of convenience, the parties will be referred as plaintiff and defendant. The plaintiff is the appellant herein and the defendant is the respondent herein.

8. The plaintiff had filed O.S.No. 206 of 2010 before the District Munsif Court, Sholinghur, on the strength of a promissory note Ex.A-1, dated 22.11.2007, which, according to the plaintiff, had been executed by the defendant for a sum of Rs.35,000/-, undertaking to repay the same on demand together with interest on 24% p.a. According to the plaintiff, she had issued a notice on 21.06.2010 which had been marked as Ex.A-2 but which had been returned unserved, vide Ex.A-3. The plaintiff sought a decree on the strength of the promissory note.

9. The defendant denied execution of the promissory note in his written statement. It was also stated that the promissory note is a fraudulent document created by the plaintiff.

10. The promissory note had been marked as Ex.A-1 during trial. By Judgment dated 27.06.2011, the learned District Munsif, Sholinghur, decreed the suit, however, reducing the rate of interest from 24% to 9% p.a. The learned District Munsif, in the course of the Judgment compared the signature of the defendant as found in Ex.A-1/promissory note with his signatures as found in the vakalat and suit summons under Section 73 of the Evidence Act 1872 and held that the signatures are the same and therefore, held that the promissory note had been validity executed and consequently decreed the suit.

11. The defendant, as stated above then filed A.S.No. 22 of 2012 before Sub Court, Ranipet, which was then transferred to Sub Court, Arakkonam and renumbered as A.S.No. 78 of 2014. The learned Sub Judge allowed the appeal and dismissed the suit holding that though the promissory note had been executed in favour of the plaintiff Mallika, she did not come forward to give evidence, but on the other hand, her husband, P.S.Mani had tendered evidence as PW-1. The learned Sub Judge also found as a fact that there were material alteration in the promissory note, rendering it void.

12. The plaintiff then filed the present Second Appeal which as aforesaid, had been admitted on the following two substantial questions of law:-

- "1. Whether the First Appellate Court correctly appreciated Sections 72 and 73 of Indian Evidence Act 1872?; and
2. Whether the First Appellate Court has considered Section 120 of Indian Evidence Act, 1827?"

13. The first substantial question of law related to examination of ExA-1 under Section 73 of the Indian Evidence Act by the First Appellate Court. This was necessitated because, the defendant had alleged that there was a material alteration in Ex.A-1, promissory note. Section 73 of the Indian Evidence Act is as follows:-

"73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. 1[This section applies also,

with any necessary modifications, to finger-impressions.] "

14. The effect of material alteration has been provided under Section 87 of the Negotiable Instrument Act, which is as follows:-

"87. Effect of material alteration.—Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties; Alteration by indorsee.—And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof. The provisions of this section are subject to those of sections 20, 49, 86 and 125. "

15. A perusal of Ex.A-1 promissory note reveals that it was a printed note and the names of the defendant Kasi Pillai, his father's name Padavetta Pillai and his residence Vengupattu Villages and the amount of Rs.5,000 and the rate of interest at Rs.2/- have been written in Green ink. However before the digit 5 in the amount column, there is an addition of the digit 3 in blue ink. This has been construed by the learned First Appellate Court as a material alteration going the root of the case. The other writings, namely, the date 22.11.2007 and the names of the witness, P.T.Mani and Paraveendar in Tamil have also been written in blue ink. No explanation had been given in the plaint by the plaintiff as to why the promissory note had been filled up in two separate inks and why particularly the amount, 35,000 had also been filled up in two separate inks with the digit 3 in blue ink and the amount 5000 immediately succeeding the digit 3 in green ink. I concur with the findings of the learned First Appellate Court that this is a material alteration. I hold that this material alteration, renders the instrument void in accordance with Section 87 of the Negotiable Instrument Act.

16. The learned counsel for the appellant/plaintiff advanced an argument that this aspect had not been stated in the written statement. However, a duty is cast on the plaintiff, to prove her case. She was in possession of the promissory note which was filled up evidently with two separate pens, one having

green and the another having blue ink. The plaintiff, in the first instance in the plaint should have disclosed the reason behind this aspect. Suppressing that fact and thereafter, stating that the defendant has to deny the same cannot be accepted by this Court.

17. Section 73 of the Indian Evidence Act provides that any writing can be compared by the Court. In the present case, the writing of the amount 35,000 has been compared and examined by the Court particularly because they were in two distinct inks. The First Appellate Court had a duty and only discharged that solemn duty, namely, to examine the records of every case. The First Appellate Court is a final Court to settle the facts and I hold that the Subordinate Judge had every right to examine the documents and exercise the power vested under Section 73 of the Indian Evidence Act. I find no reason to defer from the findings of the learned First Appellate Court.

18. The material alteration is visible to the naked eye and the very fact that the amount which is the basis for the claim had been written in two different inks, raises a strong suspicion regarding the circumstances surrounding the execution of the promissory note. It also gives rise to a doubt whether the digit 3 had been subsequently appended after the defendant had signed the promissory note. This would render the document void as against the plaintiff/appellant herein. I therefore answer the first substantial question of law that the First Appellate Court had correctly appreciated Section 73 of the Indian Evidence Act 1872. In view of this categorical finding, the second substantial question of law pails into insignificance.

19. For the reasons stated, I find no ground to interfere with the Judgement delivered by the First Appellate Court and accordingly, the Second Appeal is dismissed with costs.

Sd/-

Assistant Registrar

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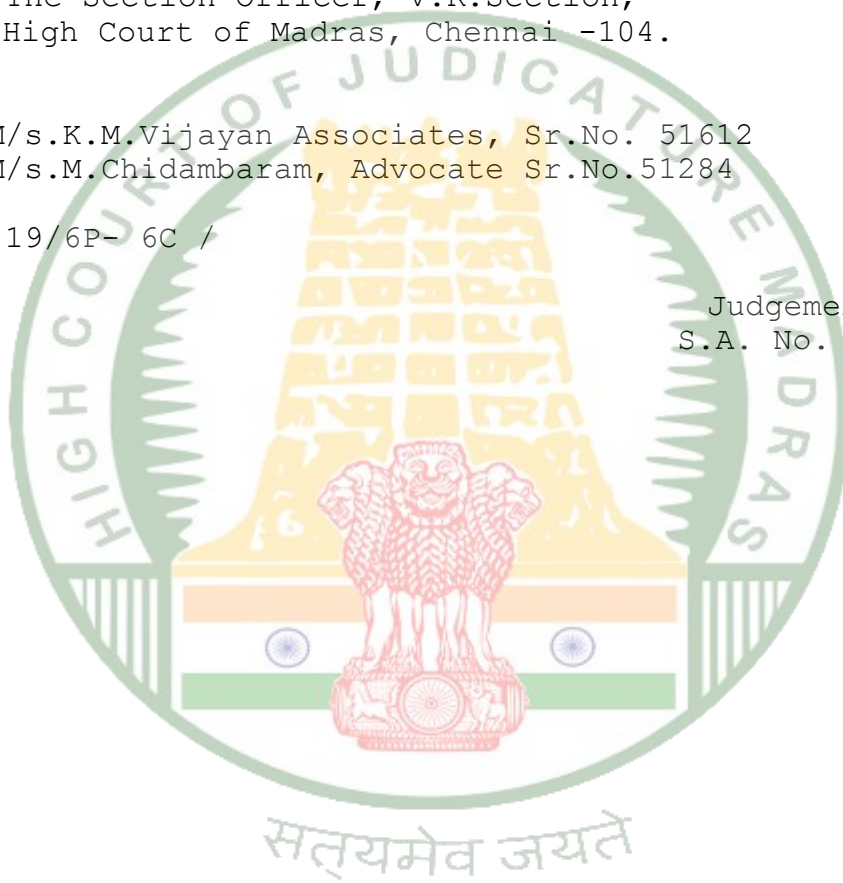
1. The Subordinate Judge,
Arakkonam.
2. The District Munsif,
Sholingar.

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High Court of Madras, Chennai -104.

+1 cc to M/s.K.M.Vijayan Associates, Sr.No. 51612
+1 cc to M/s.M.Chidambaram, Advocate Sr.No.51284

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Judgement made in
S.A. No. 740 of 2015



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