

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.1215 of 2019
and
C.M.P.No.26469 of 2019

1.Valarmathi
2.Rajmohan
3.Sowmiya @ Soundariya ... Appellants/Defendants

Vs
A.Palanisamy ... Respondent/Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree dated 01.12.2018 made in A.S.No.36 of 2017 on the file of the III Additional District and Sessions Court, Gobichettipalayam confirming the judgment and decree dated 15.6.2017 made in O.S.No.101 of 2014 on the file of the Sub Court, Sathyamangalam.

For Appellants : Mr.R.Abdul Mubeen
for Mr.A.Mohamed Ismail

JUDGMENT

The unsuccessful defendants are the appellants in this appeal. The respondent herein instituted a suit in O.S.No.101 of 2014 against the appellants, for recovery of a sum of Rs.2,53,918/- along with interest on the basis of Ex.A1 promissory note dated 25.5.2012.

2.It is the case of the plaintiff, that the husband of the first defendant and the father of the defendants 2 and 3 Late P.K.Subramaniam borrowed a sum of Rs.2,00,000/- from the plaintiff on 25.5.2012 and executed Ex.A1 promissory note in this regard. It is the further case of the plaintiff that despite of his repeated reminders, the said P.K.Subramaniam failed to repay the loan amount either principle or interest, but, in the meanwhile, he died on 26.3.2014. After his demise, the defendants have been enjoying the property as his legal heirs and hence, they are liable to pay the loan amount. It is also stated that the borrower P.K.Subramaniam is the relative of the plaintiff.

3.The suit was contested by the defendants disputing the allegations made against them. In the written statement it was stated that the husband of the first defendant and the father of the defendants 2 and 3 had not borrowed any loan amount from the plaintiff. Had he borrowed the loan, he would have informed the same to the defendants. It is further stated that the defendants sent a reply notice to the suit notice dated 13.5.2014 requesting the plaintiff to show the promissory note, however, no reply was sent by the plaintiff and prayed for dismissal of the suit.

4. To fortify the case of the plaintiff, he examined himself as P.W.1 and examined three other witnesses as P.Ws.2 to 4 and marked Exs.A1 to A4. On the side of the defendants, the second defendant was examined as D.W.1 and Ex.B1 was produced. The trial Court after considering both the oral and documentary evidence, decreed the suit. Aggrieved over the same the defendants preferred an appeal. The Appellate Court confirmed the findings of the trial Court. Challenging the same, the present appeal is filed.

5. Mr.R.Abdul Mubeen, learned counsel for the appellants would urge that the onus to prove the execution of promissory note is always on the plaintiff. In the evidence, P.Ws.3 and 4 have stated that the signature of the executant in the Ex.A1 promissory note is varying, but, the Courts below without answering the issue has decreed the suit. It is the submission of the learned counsel that the Courts below ought to have drawn the adverse inference with regard to the signature of the executant in the promissory note and dismissed the suit.

6. A perusal of the records would reveal that the plaintiff gave evidence in tune with the averments made in the plaint and marked Ex.A1 promissory note. P.W.2 has deposed that he signed in the Ex.A1 on the request made by the plaintiff. P.W.3 has signed in the Ex.A1 promissory note as requested by the borrower P.K.Subramaniam. P.W.4 the scribe deposed that as per the request of P.K.Subramaniam, he prepared Ex.A1. Though, P.Ws.2, 3 and 4 have consistently stated before the Court in respect of execution of the promissory note, P.W.4 has stated that he has not seen passing of consideration under Ex.A1. P.W.3 has stated that the signature of P.K.Subramaniam defers in Ex.A1.

7. It is relevant to note that the plaintiff issued a pre suit notice dated 13.5.2014 under Ex.A2. Ex.A3 is the acknowledgement of the notice by the defendants 1 and 2. Ex.A4 is the return cover sent to the third defendant. Though, the defendants contended that they have sent reply under Ex.B1 on 13.05.2014, no proof was submitted in support thereof. Both the

Courts after seeing the Ex.A1 promissory note found that the borrower P.K.Subramaniam in his signature on the revenue stamp, an underline was made below his signature but, the underline was missing in the signature made beneath revenue stamp. The Courts below have also observed that the defendants had not taken any steps to prove their defence that the signature is not that of P.K.Subramaniam. In the light of the abundant evidence available on record, the minor difference, loses significance. But, taking advantage of the difference, the learned counsel for the appellants has argued that the Court should have drawn adverse inference against the plaintiff.

8. The learned counsel for the appellants by citing a decision of this Court in the case of N.Manokaran Vs. R.T.Doraisamy reported in MANU/TN/4321/2017 would contend that if the defendants have stated that the suit promissory note is a fabricated one, the burden of proof rests only on the plaintiff to establish the genuineness of the same and only on the plaintiff establishing the same satisfactorily, the burden would be shifted to the defendants to establish that no consideration passed under the documents. In that case the plaintiff failed to establish that the suit promissory note is a genuine document by examining the attestors and the scribe of the promissory note. But, in the case on hand the plaintiff examined the attesting witnesses and scribe as P.Ws.2, 3 and 4. Hence, the judgment is factually distinguishable and does not help the case of the appellants.

9. In the matter on hand, both the Courts below on independent analysis of evidence adduced by the parties, came to the conclusion that execution of A1 is proved by the plaintiff. In this appeal, no ground is made out to overturn the concurrent findings on facts.

10. I find no substance in the submission of the learned counsel for the appellants. Hence, I find no merit in this appeal. In fine, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1.The III Additional District and Sessions Judge,
Gobichettipalayam.

2.The Sub Judge,
Sathyamangalam.

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

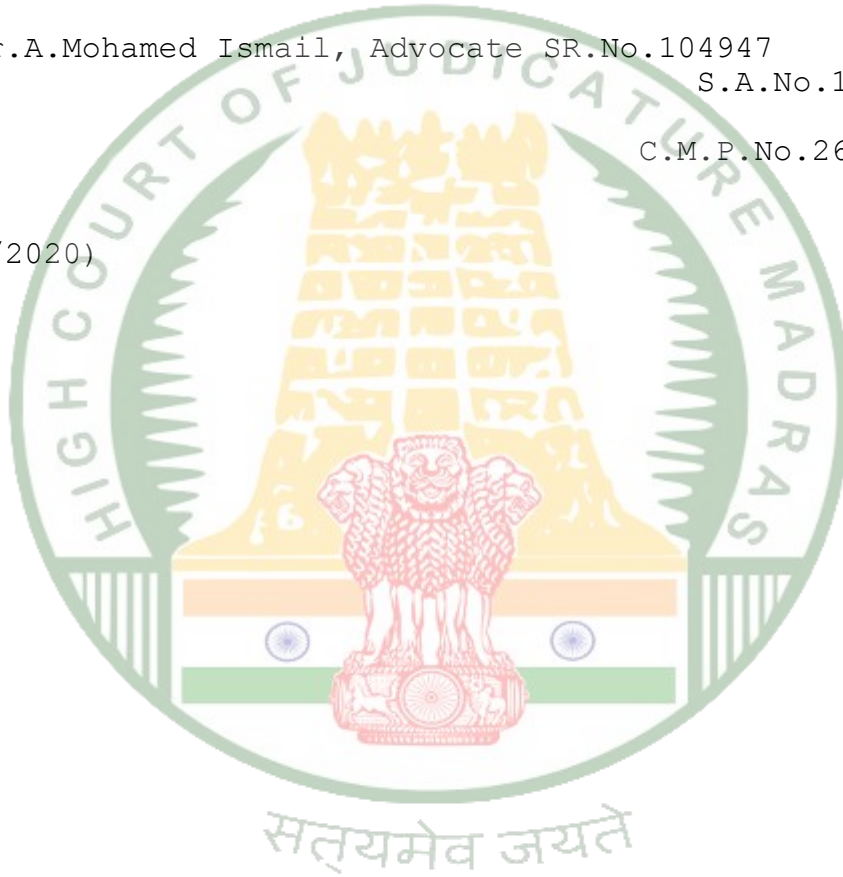
+1cc to Mr.A.Mohamed Ismail, Advocate SR.No.104947

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and

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BR (CO)
GMY (17/08/2020)



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