



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2019

PRONOUNCED ON: 25.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.67 of 2016

and

C.M.P.No.1799 of 2016

Ponnusamy

... Appellant/
Appellant/Defendant

Vs.

K.Kandasamy

... Respondent/
Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the Subordinate Judge's Court at Bhavani, dated 09.12.2014 in A.S.No. 25 of 2010 confirming the judgment and decree of the Principal District Munsif Court at Bhavani, dated 27.11.2009 in O.S. No.654 of 2004.

For Appellant : Mr.P.Valliappan

For Respondent : Mr.P.Parthikumaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 09.12.2014, passed in A.S.No. 25 of 2010, on the file of the Subordinate Court, Bhavani, confirming the judgment and decree dated 27.11.2009, passed in O.S. No.654 of 2004, on the file of the Principal District Munsif Court, Bhavani.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. Suit for recovery of money.

4. The case of the plaintiff is that the defendant, on 18.04.1994, borrowed a sum of Rs.55,000/- from him and executed the suit promissory note promising to repay the same with interest at 12% per annum and thereafter, despite repeated



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demands and the issuance of notice, the defendant failed to pay the amount and on the other hand, sent a reply containing false allegations and hence, according to the plaintiff, he has been necessitated to lay the suit for the amount due to him from the defendant.

5. The defendant resisted the plaintiff's suit by contending that he had not borrowed the suit amount from the plaintiff as claimed in the plaint and the suit promissory note is a fabricated record and he has not executed the same and hence, the defendant is not liable to pay the alleged borrowed sum as put forth in the plaint and on inspection of the suit promissory note in the Court, it is the case of the defendant that he had not affixed his thumb impression in the suit promissory note nor signed in the same and also pleaded that the plaintiff has no means to advance the amount and according to the defendant, the plaintiff's brother one Shanmugasundaram has borrowed money from one A.C.Muthusamy from Bhavani and the defendant was the attester to the said promissory note and the said A.C.Muthusamy had levied the suit against the plaintiff's brother and the plaintiff and his brother approached and requested him to give evidence in their favour in the suit filed by A.C.Muthusamy and the same has been refused by the defendant and therefore according to the defendant, Shanmugasundaram has set up the plaintiff to file the vexatious suit on the basis of the fabricated promissory note and according to the defendant, the plaintiff has no cause of action to institute the suit and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 to 3 were examined, Exs.A1 to A4 were marked. On the side of the defendant, DW1 was examined, Exs.B1 to B7 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit in favour of the plaintiff with interest as determined by it. Impugning the same, the defendant had preferred present first appeal.

8. In the first appellate Court, the expert has come to be examined as CW1 and Exs.C1 to C3 were also marked. The first appellate Court, on a consideration of the materials placed on record and the submissions made, was pleased to dismiss the appeal preferred by the defendant and thereby, confirmed the judgment and decree of the trial Court. Impugning the same, the present second appeal has been laid.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:



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1. Whether the Courts below are correct in law in concluding that the signature in Exhibit A.1 - promissory note is that of the appellant by invoking the provisions of Section 73 of the Evidence Act, 1872, particularly, when comparisons of signatures by the naked eye, can be deceptive?

2. Whether the lower Appellate Court is correct in law in relying on Exhibit C3 - Opinion of the finger print expert and her oral testimony, particularly, when there are several deficiencies in the report?

10. The suit has been laid by the plaintiff against the defendant for recovery of money based on the suit promissory note. According to the plaintiff, the defendant had borrowed a sum of Rs.55,000/- from him on 18.04.1994 and executed the suit promissory note to repay the same with interest as recited in the suit promissory note. The suit promissory note has been marked as Ex.A1. Further, according to the plaintiff, despite the issuance of the notice calling upon the defendant to repay the borrowed sum, but the defendant failed to comply with the demand and instead sent a reply containing false allegations and the notice sent by the plaintiff and the reply notice by the defendant have been marked as Exs.A2 and A4. Hence, according to the plaintiff, he has been necessitated to institute the suit against the defendant.

11. The defendant has taken the defence that the suit promissory note is a fabricated record created by the plaintiff at the instance of his brother Shanmugasundaram and according to the defendant, he had never borrowed any amount from the plaintiff much less the suit amount and not executed the suit promissory note as claimed by the plaintiff and in particular, disputed that he has not affixed his thumb impression and put signature in the suit promissory note. According to the defendant, the plaintiff's brother Shanmugasundaram had borrowed amount from one Muthusamy and Muthusamy in turn levied the suit for recovery of amount based on the said promissory note and as the defendant failed to accede to the request of the plaintiff and his brother to tender evidence in their favour in the abovesaid suit laid by Muthusamy, according to the defendant, the suit has been laid by the plaintiff based on the fabricated record at the instance of his brother Shanmugasundaram and hence, it is stated by the defendant that the plaintiff's suit is liable to be dismissed.



12. In the light of the abovesaid version projected by the defendant, challenging the truth and validity of the suit promissory note, in toto, it is for the plaintiff to establish that the suit promissory note is a genuine document. To sustain his case, the plaintiff has examined himself as PW1 as well as examined the attessor of the suit promissory note, Thiruvengadam, as PW2 and the scribe of the suit promissory note, Angamuthu, as PW3. Considering the evidence tendered by PWs 1 to 3, in toto, particularly, the evidence of PWs 2 and 3 who are independent witnesses, it is found that they have clearly deposed about the borrowal of the amount from the plaintiff and the execution of the suit promissory note in favour of the plaintiff by the defendant as put forth in the plaint. The plaintiff has also tendered evidence on the abovesaid lines as PW1. Despite cross examination, nothing has been culled out from PWs 1 to 3 to discredit their evidence in any manner. Considering the consistent and corroborative evidence of PWs 1 to 3, in toto, and particularly, when PWs 2 and 3 have no motive to depose against the defendant and furthermore, when the defendant has also not attributed enmity against PWs 2 and 3 to tender evidence against him, in all, the Courts below are fully justified in placing reliance upon the evidence of PWs 1 to 3 and accepting the plaintiff's case as put forth by him.

13. Considering the materials placed on record, it is found that as determined by the trial Court, the defendant had been successful in dragging on the suit proceedings laid by the plaintiff one way or the other and it is seen that the defendant had suffered ex-parte decree thrice and on the application filed by him, the same has been set-aside. That apart, the defendant had also preferred various applications, nearly four applications for subjecting the suit promissory note for expert's scrutiny. However, the defendant had not prosecuted the applications to their logical conclusion, despite the entertainment of the application one way or the other. Inasmuch as the defendant had failed to comply with the conditional order while allowing the applications as well as not endeavored to forward his admitted signature for comparison by the expert one way or the other, the abovesaid applications had come to be dismissed. Accordingly, it is found that the trial Court, in addition to the acceptance of the evidence of PWs 1 to 3, had also endeavored to compare the disputed signature of the defendant in the suit promissory note with his admitted signature in the available records and on comparison, found them to be similar. No doubt, the trial Court should not have embarked on such a course and should have refrained from doing so, as the comparison of the signatures is the domain of the experts. No doubt, the Courts are empowered to scrutinize the signatures as provided under Section 73 of the Indian evidence



Act. Be that as it may, considering the judgment of the trial Court, it is found that the trial Court has not based its reasonings and conclusions only based on its comparison of the signatures of the defendant in the suit promissory note and his admitted signatures in the records placed in the matter. On the other hand, the trial Court has accepted the plaintiff's case based on the appreciation of the evidence of PW1 to PW3 in toto and in addition to the same, also relied upon its comparison and therefore, the arguments put forth by the defendant's counsel that the trial Court has suo motu relied upon the comparison of the signature by naked eye for upholding the plaintiff's case, as such, cannot be accepted. The trial Court has also taken into consideration the comparison made by it of the suit promissory note and the admitted signatures of the defendant as an additional factor for upholding the plaintiff's case and in such view of the matter, it is found that there is no serious flaw or mistake on the part of the trial Court in accepting the plaintiff's case also based on the comparison made by it.

14. The main argument put forth by the defendant's counsel is that the first appellate Court is not justified in accepting the evidence of the finger print expert, examined as CW1 and failed to consider the objections put forth by the defendant in the right perspective. The finger print expert has been examined as CW1 and his report has come to be marked as Ex.C3 and the enlarged thumb impressions taken by him for the study of thumb impression had been marked as Exs.C1 and C2. Considering the evidence of the expert as well as his report marked as Ex.C3, it is found that the expert had, after comparing the various characteristics found in the disputed thumb impression and the admitted thumb impression on various counts, as detailed in the report, had come to the conclusion that the left thumb impression found in the suit promissory note marked as "D" is identical with the admitted thumb impression of the defendant marked as "A" and for coming to the abovesaid conclusion, the expert had pointed out eight similarities as detailed in his report and considering the features noted by the expert for coming to the abovesaid conclusion as well as the mode of study adopted by the expert for comparing the left thumb impression by taking enlarged photography of the same, as determined by him, in my considered opinion, merits acceptance in toto and the same does not suffer from any infirmity, as such, as determined by the first appellate Court. On the other hand, the defendant's counsel would raise certain objections that the admitted and the disputed thumb impression were not studied by the expert in the same position and also contended that the enlarged photography had been taken in a different position and also further contended that the length between the core and the tip of the impression differs in admitted and the disputed thumb impression and the expert failed to study the finger print while comparing



the same and also contended that the delta portion available in the admitted finger print is not available in the disputed finger print and according to him, the abovesaid factors had not been taken into account by the expert in the right perspective and therefore, contended that the expert's opinion is liable to be rejected. As against the abovesaid objections put forth by the defendant's counsel, it is found that the first appellate Court has in detail pointed out that the expert had indeed considered the same in the correct manner and also spoken about the same during the course of his evidence and accordingly, rightly determined that there is no shortcomings or infirmities in the mode of study of the thumb impression by the expert and the expert had taken into consideration all the available factors and noted eight similarities between the disputed and admitted thumb impressions and given detailed reasons for accepting the same and thereby determined that there is no reason to challenge the report of the expert and on coming to the said conclusion, the first appellate Court has also rejected the application for scrapping the expert's report.

15. Considering the reasons afforded by the first appellate Court for accepting the expert's report as well as the evidence of the expert in toto examined as CW1 and the mode of study adopted by him for comparing the signatures, in my considered opinion, the expert has assessed and analyzed the disputed and admitted thumb impressions as per the scientific methods as required to be done and in such view of the matter, no infirmity is noted, as such, for discrediting the evidence of the expert and his report and the first appellate Court is wholly justified in also placing reliance upon the report of the expert and his evidence for upholding the judgment and decree of the trial Court i.e., the plaintiff's case.

16. As above pointed out, the Courts below had not solely relied upon the comparison made by it for accepting the plaintiff's case. On the other hand, the Courts below had relied upon the total evidence adduced by the plaintiff in the matter through PWs 1 to 3 and also derived support for accepting the plaintiff's case from the comparison made as well as the report and evidence of the expert and in such view of the matter, it is found that the Courts below had assessed and analyzed the materials placed on record in the right perspective and particularly, when the evidence adduced by the defendant through his testimony as well as the documents marked as Exs.B1 to B7 do not in any manner lend support to his version, in all, it is seen that there is no reason at all warranting any interference to the concurrent judgment and decree of the Courts below upholding the plaintiff's case. Accordingly, the substantial questions of law formulated in this second appeal are answered in favour of the plaintiff and against the defendant.



17. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Court,
Bhavani.
2. The Principal District Munsif Court,
Bhavani.
3. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.P.Valliappan, Advocate, S.R.No.52547

+1cc to Mr.A.K.Kumarasamy, Advocate, S.R.No.51920

S.A.No.67 of 2016
and
C.M.P.No.1799 of 2016

RV(CO)
CS/03/01/2020