



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2019

CORAM :

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

S.A(MD)No.597 of 2015

and

M.P(MD)No.2 of 2015

Manikam

... Appellant/Appellant/Defendant

Vs.

M.Patttan

... Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 30.03.2015 passed in A.S.No.23 of 2013 on the file of the IV Additional District Court, Tirunelveli confirming the judgment and decree dated 31.03.2013 in O.S.No.190 of 2007 on the file of the Additional Subordinate Court, Tirunelveli.

For Appellant	: Mr.AArumugam
For Respondent	: Mr.A.Chidambaram
	for Mr.R.T.Arivukumar

J U D G M E N T

The defendant in O.S.No.190 of 2007, who suffered a decree for payment of money and being confirmed by the lower Appellate Court in A.S.No.23 of 2013 has come up with this Second Appeal.

2. According to the plaintiff, the defendant borrowed a sum of Rs.1,20,000/- from him on 07.11.2004 agreeing to repay the same with interest at 12 % per annum. As a security for repayment of the said sum, the defendant executed a promissory note. Since the defendant failed to repay the loan, the plaintiff had come with the above suit seeking recovery of money.

3. The defendant resisted the suit contending that he never borrowed any money from the plaintiff. He is not even aware of the plaintiff. The promissory note is rank forgery. At trial, the plaintiff was examined as P.W.1 and Karuppasamy, who is one of the attesting witnesses was examined as P.W.2. Ex.A.1 promissory note was marked on the side of the plaintiff. The sole defendant examined himself as D.W.1. No documentary evidence was produced on the side of the defendant.

4. The trial court on consideration of the oral and documentary evidence had concluded that the plaintiff has proved the execution of the promissory note dated 07.11.2004. On the said conclusion, the court below held the presumption available under Section 118 of the Negotiable Instruments Act would arise and



concluded that the plaintiff is entitled to a decree. Aggrieved, the defendant filed an appeal in A.S.No.23 of 2013 on the file of the IV Additional District Court, Tirunelveli. The lower Appellate Court has also confirmed the judgment of the trial court. Aggrieved, the defendant has come up with this Second Appeal.

WEB COPY

5. Notice of motion was ordered on 09.10.2015 Upon notice, Mr.Arivukumar has entered appearance for the respondent.

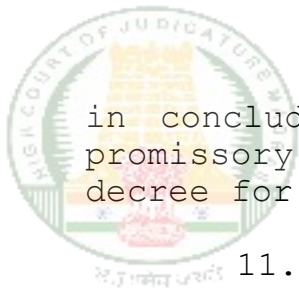
6. I have heard Mr.Arumugam, learned counsel appearing for the appellant and Mr.Chidambaram, learned counsel appearing for Mr.R.T.Arivukumar, learned counsel for the respondent on record.

7. Mr.Arumugam, learned counsel appearing for the appellant would draw my attention to Ex.A.1 promissory note and vehemently contend that a very look at the same would show that the same is not genuine. Ex.A.1 promissory note is partly hand written, partly typed and partly printed. The date of the promissory note and consideration (in words and in numerals) are hand written. The details of the lender and the borrower are typed. The rest of the promissory note is in printed. According to Mr.Arumugam, learned counsel for the appellant a very fact that the document was partly typed, partly hand written and partly printed would show that the document could not have been prepared at the same time. Therefore, according to Mr.Arumugam, the courts below were not right in concluding that the plaintiff has proved execution of Ex.A.1 promissory note by the defendant.

8. Contending contra, Mr.Chidambaram, learned counsel appearing for the respondent would submit that the plaintiff has in the plaint made a specific allegation that the date of the promissory note and the amount borrowed has been written by the defendant in his own hand writing. He would also point out that there is no specific denial that the said statement in the written statement of the defendant. He would also point out that there is no cross examination of P.W.1 on this aspect.

9. Drawing my attention to the evidence of D.W.1, Mr.Chidambaram, learned counsel appearing for the respondent would contend that the contention based on the contents of Ex.A.1 is raised for the first time before this Court. In cross examination of D.W.1, he has stated that he had not seen the promissory note prior to the filing of the written statement. He has admitted the suggestion that he has not denied the statement in paragraph No.3 of the plaint to the effect that the date of execution and the amount borrowed were written by him in his own hand writing. The courts below have also taken note of the fact that P.W.2 has deposed about the execution of promissory note by the defendant.

10. Pointing out the above fact Mr.Chidambaram, learned counsel for the respondent would contend that the courts below were perfectly justified



in concluding that the plaintiff has proved execution of Ex.A.1 promissory note and as such the courts below were right in granting decree for recovery of money.

11. I have considered the rival submissions.

WEB COPY

12. No doubt Ex.A.1 promissory note is partly typed, partly hand written and partly printed. As already pointed out the details of the borrower and the lender are typed, the date of borrowal and amount borrowed are hand written and rest of the promissory note are printed. The existence of such features in promissory note alone would not lead to an inference that it is a forged instrument. The defendant in paragraph No.1 of the written statement made a general denial of the averments in the plaint and has not chosen to take the defense that the date of promissory note and the amount borrowed were not written by him. There is no cross examination of the plaintiff on this aspect by the defendant. P.W.2 has deposed about the execution of the instrument by the defendant. On the other hand, the defendant in his evidence has admitted that he has not seen the promissory note before filing the written statement.

13. Therefore, I find that the denial made by the defendant is only a denial for the sake of denial and the courts below were right in accepting the evidence of the plaintiff as P.W.1 and attesting witness as P.W.2 in coming to the conclusion that promissory note was in fact executed by the defendant. I do not see any perversity in the findings of the courts below or omission to consider any material evidence in the course of the judgment. I do not think that there is any question of law arising for consideration in this appeal.

14. In fine, this Second Appeal is dismissed without being admitted. However, there will be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

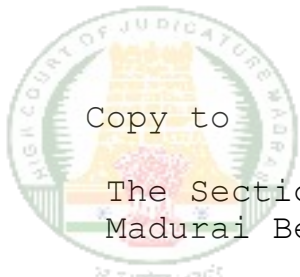
Sub Assistant Registrar(CS)

CM

To,

1. The IV Additional District Judge, Tirunelveli

<https://hcservices.co.in/hcservices/> Subordinate Judge, Tirunelveli.



Copy to

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.R.T.ARIVUKUMAR, Advocate (SR-104858[F]dated
13/12/2019)

+1 CC to Mr.R.GANDHI, Advocate (SR-104796[F] dated 13/12/2019)

S.A(MD)No.597 of 2015
and M.P(MD)No.2 of 2015
12.12.2019

VB(13.01.2020) 4P 7C