

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.09.2020	Pronounced on: 29.09.2020
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CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

S.A.No.1065 of 2010
& M.P.No.1 of 2010

Kuppathal,
W/o.Krishnamoorthy,
Ellappalayam,
Ponnivadi Village,
Dharapuram Taluk,
Erode District.

... Appellant/Plaintiff in Trial Court

/versus/

M. Sivaji,
S/o.M.Suriyanarayana,
No.26-C, Type JJJ,
Block No.20, Neyveli Town,
Panruti Taluk, Cuddalore Taluk.

... Respondent/Defendant
in Trial Court

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code, praying against the judgment and decree passed in A.S.No.148 of 2009 on the file of Principal District Court, Erode, dated 22.04.2010 reversing the judgment and decree of the Trial court in O.S.No.25 of 2002, on the file of Sub Court, Dharapuram dated 29.09.2008 is liable to be set aside.

For Appellant : Mr.Shiva Prakash,
for Ms.P.T.Ramadevi

For Respondent : No appearance

J U D G M E N T
(The case has been heard through video conference)

The Second Appeal is against the judgment and decree passed by the Lower Appellate Court, which has reversed the finding of the Trial Court and dismissed the pro-note claim of the appellant.

2. The points involved in the suit is that, on 22.01.2000, M.Shivaji, the respondent herein borrowed a sum of Rs.1,00,000/- from Kuppathal, the appellant herein with promise to repay it on demand with Rs.1/- per month per hundred as interest. On 18.12.2001, the plaintiff issued demand notice to the respondent and same was received by the respondent on 24.01.2012. Despite receipt on the demand, the respondent failed to repay the money borrowed. Hence, the suit for recovery of money with interest based on the pro-note.

3. The respondent has filed counter denying the execution on the pro-note. Attributing motive to file the suit based on the fabricated pro-note, the respondent has categorically stated that, he has no necessity to borrow the money from the appellant and plaintiff has been set-up by one Mr.C.Duraisamy, a staff working under him. To wreak vengeance for taking action against him for misconduct and indiscipline.

4. The suit went for trial, the plaintiff relied upon 3 Exhibits marked as Ex.A.1 to Ex.A.3. The defendant relied upon 7 Exhibits marked as Ex.B.1 to Ex.B.7. On the side of the plaintiff 3 witnesses and on the side of defendant 2 witnesses were examined.

5. The Trial Court allowed the suit as prayed for. On appeal, it was reversed by the 1st Appellate Court on the ground that, when the defendant has pleaded the pro-note as forged and fictitious one, the burden shifts on the plaintiff to prove its genuineness. Having failed to prove the genuineness of the signature found in the pro-note by testing it scientifically through an Expert, the Lower Appellate Court held that the comparison of signature with necked eye by the trial Court in exercise of the power under Section 73 of the Indian Evidence Act is not correct, when the documents compared were not contemporaneous document but document which came into existence after the filing of the suit. The Lower Appellate Court has taken exception of comparing signature found in the pro-note alleged to have executed in the year 2000, with the signatures found in the vakalat and written statement filed on 14.03.2003 in the present suit on 14.03.2003.

6. In this appeal, the reasoning given by the 1st Appellate Court for rejecting the trial Court finding is questioned.

7. The short point involved in this Second Appeal is that, (i). Whether the comparison of signature by the Trial Court to test the genuineness of the signature of the defendant found in Ex.A1 is proper?

(ii). Whether the signature found in the pro-note alleged to have executed on 22.01.2000 can be compared with the signatures found in vakalat and written statement filed on 14.03.2003?

Section 73 of the Indian Evidence Act read as below:-

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.

8. Plain reading of this Section clearly goes to show that the Court is empowered to compare the signature. However, the judicial pronouncement of the Apex Court has cautioned that, Court should sparingly exercise the power comparing the disputed document with admitted document. Although Section 73 of the Indian Evidence Act, empowers the Court to compare the document, court should be extremely slow in venturing an opinion on the basis of mere comparison.

9. On receipt of the written statement, plaintiff who laid the suit made known that the very execution of the document is denied. Therefore, the presumption under Section 118 of the Negotiable Instrument Act is not available to the plaintiff. The plaintiff should have taken steps to prove the genuineness of the signature through experts. The Trial Court which has ventured to the exercise the power under Section 73 of Indian Evidence Act, ought to have atleast compared the document executed by the defendants contemporaneously during the period, when the alleged pro-note was executed. Comparing the signature found in the document which has come into existence after filing the suit is to be avoided since there is every possibility of manipulation.

10. This Court is of the opinion that the observation of the Lower Appellate Court that the Trial Court ought to have send the pro-note Ex.A.1 and reply notice of the defendant Ex.A.4 for comparison by a hand writing expert instead of comparing the signatures in vakalat and written statement with naked eye is appropriate to the fact of the case.

11. The Hon'ble Supreme Court in Ajit Savant Majagavi Vs. State of Karnataka reported in 1997 7 SCC 110, has held as below:-

"As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature of handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not power to compare the disputed signature with admitted signature as this power is clearly available under Section 73 of the Act."

12. Therefore, there is no bar for comparing the signature under Section 73 of the Indian Evidence Act, at the same time, the comparison must be with contemporaneous document and not with document of different period or age. In this case, the comparison is made with the document executed in the year 2003 with that of the disputed document of the year 2000. As pointed by the Lower Appellate Court, the trial Court ought to have got the opinion of the expert rather than taking up the task by himself. Hence, the Appellant herein who failed to send the disputed signature with any admitted contemporaneous document for comparison by expert for his opinion had to suffer the consequence. Hence, the Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bsm

To,

1.The Principal District Judge,
Erode.

2.The Subordinate Judge,
Sub Court, Dharapuram.

CC to:
The Section Officer,
VR Section, High Court,
Madras-104.

+lcc to Ms.P.T.Ramadevi, Advocate, S.R.No.32341

S.A.No.1065 of 2010
& M.P.No.1 of 2010

GJ(CO)
CB(28/04/2021)



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