

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.511 of 2015
and M.P.No.1 of 2015

Karthikeyan

... Petitioner/Defendant

Vs

Vinayagam

... Respondent/Plaintiff

Prayer: The Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 22.01.2015 by the learned Subordinate Judge at Arni in A.S.No.51 of 2014 upholding the Judgement and decree dated 12.09.2012 passed by the learned District Munsif cum Judicial Magistrate at Arni in O.S.No.67 of 2011.

For Appellant : Mr.A.K.Rajaraman

For Respondent : Mr.P.Satheesh Kumar

J U D G M E N T

The defendant in O.S.No.67 of 2011, a suit for recovery of money based on a Promissory Note having suffered a decree concurrently at the hands of the Courts below, has come up with this second appeal.

2. The plaintiff sued for recovery of money on the basis of a Promissory Note, dated 24.02.2008, claiming that the defendant had borrowed a sum of Rs.29,000/- from the plaintiff and had failed to repay the said amount despite repeated demands. It was claimed that the defendant had agreed to pay interest at 24% per annum from the date of the Promissory Note.

3. The suit was resisted by the defendant claiming that there was no borrowing, and he did not execute the Promissory Note. It was also claimed that the Promissory Note is materially altered.

4. At trial, the plaintiff was examined as PW1 and his wife Mrs. Rukku was examined as PW2. Exs.A1 to A4 were marked on the side of the plaintiff. The plaintiff's witnesses were not cross examined. The defendant also did not let in any evidence.

5. The trial Court based on the evidence of PWs 1 and 2 concluded that the execution of the Promissory Note has been proved and the claim of material alteration has not been established. On the said conclusion, the trial Court decreed the suit as prayed for, granting pendente lite interest 9% per annum from the date of the suit, till date of decree and at 6% thereafter. Aggrieved by the said Judgment and decree, the defendant preferred an appeal in A.S.No.51 of 2014.

6. The lower appellate Court upon a reconsideration of the evidence on record, concurred with the findings of the trial Court and dismissed the appeal. Hence this Second appeal.

7. I have heard Mr.A.K.Raja Raman, learned counsel appearing for the appellant and Mr.P.Satheesh Kumar, learned counsel appearing for the respondent. Notice of motion was ordered on 23.06.2015.

8. Mr.A.K.Rajaraman, learned counsel appearing for the appellant would contend that the witnesses of the plaintiff were not cross examined, because the counsel was sick and he died immediately after the decree. Therefore, the defendant should have been given an opportunity to contest the suit on merits. It is his further claim that the Promissory Note has been materially altered. I have considered the submissions of the learned counsel for the appellant.

9. The learned trial Judge as well as the learned appellate Judge have given cogent reasons to reject the claim that the Promissory Note has been materially altered. The numerals 199 has been scoured of and 2008 has been written. This cannot amount to a material alteration. The plaintiff in order to discharge the burden of proof, had examined himself and also examined PW2, his wife to prove the execution of the document by the defendant. In the absence of any contra evidence and in the absence of cross examination of the witnesses, the trial Court and the appellate Court cannot be faulted for having believed the evidence of Pws 1 and 2 and concluding that the execution of the Promissory Note has been proved. I do not find any question of law, much less a substantial question of law in order to

enable me to entertain this second appeal. The appeal therefore fails and it is accordingly dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vum
To

- 1.The Subordinate Judge, Arni
- 2.The District Munsif cum Judicial Magistrate
Arni.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.

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SPD(CO)
RMP(19/04/2021)