

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.429 of 2020
and
C.M.P.No.9124 of 2020

V.Jayaraman ...Appellant/Defendant

Vs.

Pazhani ...Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 07.02.2020 made in A.S.No.63 of 2019 on the file of the learned Principal District Court, Villupuram, confirming the judgment and decree dated 11.10.2018 made in O.S.No.229 of 2016 on the file of the learned Second Additional Sub-Court, Villupuram, by allowing this First Appeal before this Court.

For Appellant : Mr.N.Manoharan

JUDGMENT

The defendant in the suit in O.S.No.299 of 2016, who suffered a decree on the payment of money at the hands of the Trial Court in O.S.No.229 of 2016, upon its confirmation by the Appellate Court in A.S.No.63 of 2019, has come up with this Second Appeal. The suit was filed based on three promissory notes said to have been executed by the defendant in favour of the plaintiff on 10.06.2013, 20.06.2013 and 03.07.2013, each for a sum of Rs.40,000/-. The suit was resisted by the defendant claiming that he never borrowed money from the plaintiff and he did not execute the suit promissory notes. It is also contended that there is no necessity for such borrowal. It is stated that the defendant's son viz., Iyyanar used to borrow money from the plaintiff, his son-in-law Karunakaran and daughter Ammaniyammal.

2. It is also claimed that in the year 2016, the plaintiff approached the defendant claiming that the defendant's son Iyyanar did not repay the money that he borrowed and therefore, the defendant will have to take over the liability. It is also

stated that under threat, the plaintiff obtained the signature of the defendant along with two witnesses in blank promissory notes. Using the said blank signatures, the plaintiff had created the promissory notes.

3. At Trial, the plaintiff examined himself as PW1, one Shanmugam and Sivakumar were examined as P.Ws.2 and 3. Exs.A1 to A4 were marked. The defendant examined himself as DW1 and Exs.B1 to B5 were marked. The Trial Court upon a consideration of the evidence on record concluded that the plaintiff has established the execution of the promissory notes by the defendant and once the execution was established then the presumption under Section 118 would automatically come into play.

4. On the said findings, the learned Trial Judge decreed the suit, aggrieved by which, the defendant preferred an appeal in A.S.No.63 of 2019. The learned Appellate Judge upon a reconsideration of the evidence concluded that the defence case is totally unreliable. The learned appellate Judge, extracted the evidence of the defendant as DW1 in extenso and pointed out that the defendant, who had pleaded that his signature was obtained in a blank promissory note under threat had chosen to depose before the Court saying that there was no threat and he had also signed in a white paper as a attesting witness.

5. The Lower Appellate Court also took note of the fact that the defendant had denied his signature given in the vakalat, written statement and sworn affidavit filed in support of an Interlocutory Application viz., I.A.No.360 of 2016. On overall assessment of the conduct of the defendant as well as the evidence of the defendant, the learned appellate Judge had concluded that the defence itself is illusory. The learned appellate Judge also found that a comparison of the disputed signature and admitted signature would show that they are almost similar. On the above findings the Appellate Court concurred with the findings of the Trial Court and dismissed the Appeal. Aggrieved, the defendant has come up with this Second Appeal. Heard, Mr.N.Manoharan, learned counsel appearing for the appellant.

6. Mr.N.Manoharan, learned counsel appearing for the appellant would vehemently contend that the judgment of the Appellate Court does not satisfy the requirements of Order 41 Rule 31 of the Code of Civil Procedure. He would submit that the Appellate Court, being a final Court of fact, ought to have examined the entire evidence and answered the issues that arose in the Appeal. Mr.N.Manoharan would also fault the Appellate Court for not advertng to the contradictions in the evidence of P.Ws.2 and 3 and taking upon itself to examine and compare the signatures of the defendant.

7. The suit is on three promissory notes. The defence that is taken neither here nor there. In the written statement, it is contended that the signature in the promissory note is that of the defendant, and it is claimed that the signatures were obtained by force and coercion. But in the evidence the entire pleading is given up and the defendant would depose that he was neither threatened nor coerced to execute the promissory note. He would say that he has signed as a witnesses in a white paper. He would also go to the extent of denying his signatures in all the Court records including that vakalat, written statement and sworn affidavit. The plaintiff has examined the attessor to the document who has given an evidence with regard to the execution of the document.

10. The Trial Court had believed the evidence of the attessor. Nothing has been brought before the Appellate Court so as to enable it to disagree with the findings of the Trial Court as to the credibility of the evidence of the attesting witnesses to the promissory notes and the evidence of the defendant, who has chosen to deny his signatures in the written statement as well as the vakalat, is definitely unreliable. Therefore, I do not see any perversity in the findings of the Appellate Court, which concluded that the defence is wholly unbelievable and the plaintiff has established his case. I do not see any question of law much less substantial question of law to enable to me to entertain this appeal. Therefore, this appeal fails and it is accordingly dismissed, without being admitted. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS V)
//True Copy//

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dna

TO

1.The Principal District Judge, Villupuram.

2.The Second Additional Sub-Judge, Villupuram.

+lcc to M/s. N.Manokaran, Advocate, sr no.28796

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and

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GP(CO)

RMP(07/05/2021)