IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-02-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.608 of 2019

Krishnan

..Appellant/Defendant

vs.

Dhanraj

..Respondent/Plaintiff

Appeal under Section 96 of the Code of Civil Procedure, 1908, read with Order 41, Rule 1 of the Code of Civil Procedure, 1908 against the judgment and decree made in O.S.No.16 of 2017 on the file of the III Additional District Judge, Kallakurichi dated 11.01.2019.

For Appellant : Mr.A.V.B.Krishnakanth
For Respondent: Mr.R.Jayaprakash

J U D G M E N T

The Appeal Suit is directed against the judgment and decree passed in O.S.No.16 of 2017 dated 11.01.2019. The defendant is the appellant in the appeal suit and the respondent / plaintiff instituted a suit for recovery of money passed on the promissory note.

2. The facts in brief set out in the plaint by the respondent before the Trial Court are that the defendant requested the plaintiff to grant a loan of Rs.10 lakhs. The defendant requested the plaintiff to grant a loan for Rs. 10,00,000/- to his business capital. The plaintiff granted the loan to the defendant upon the execution of promissory note by the defendant in favour of the plaintiff, promising to repay the same with interest on 02.08.2015. The defendant agreed to repay the loan amount with interest at the rate of 12% per annum. The defendant committed default in payment of the loan amount, the plaintiff requested and demanded the defendant to pay it; but the defendant did not do the same. Hence the plaintiff was issued a notice to defendant through his counsel on 31.07.2017. The defendant did not receive the notice and returned the same. Hence the plaintiff filed the suit against the defendant. The defendant liable to pay a sum of Rs.12,61,333/- together with

interest at the rate of 12% per annum for the principal amount of Rs. 10,00,000/- from the date of plaint till the date of realization. Hence this suit.

3. The appellant defendant disputed the allegations and averments set out in the plaint and filed the written statement stating that the defendant does not know the plaintiff at all. The defendant humbly submits that he never executed any promissory note in favour of the plaintiff on 02.08.2015 by getting a consideration of Rs. 10,00,000/- as contented by the plaintiff in the plaint. The suit promissory note is not supported by any passage of consideration and the suit promissory note is a fabricated and concocted one which has no legal sanctity. The signature and the thumb impression in the suit promissory note are fabricated by the plaintiff. The burden of proving the thump impression and signature in the suit promissory note rest with the plaintiff. There is no cause of action for the suit promissory note. The defendant invested in unregistered finance chit company with one pannerselvam, Manikkam and Krishnan. One Senthilkumar worked as a cashier and collection agent. Due to family circumstances and loss of the company the defendant and other could not able to pursue it further winded up finance business. The said Senthilkumar demanded for money. But the defendant and the partners declined to give the same. Taking this as a grudge and said Senthilkumar instigated the plaintiff to file this vexatious suit. The act of the plaintiff is against the established principles of law and natural justice. The defendant neither knows the witnesses nor the scribe in the suit promissory note. The place of execution of the suit promissory note is specifically denied by the defendant and the place of execution of the suit promissory note is not at all been mentioned in the notice sent by the plaint. The defendant never receive any notice and the source of income of the plaintiff to give exorbitant amount as loan is specifically questioned by the defendant. The burden of proving the same rest with the plaintiff only. So, the suit has to be dismissed with costs.

4. The Trial Court framed the issues as to whether the promissory note dated 02.08.2015 is true, valid and is for consideration and to what other relief the plaintiff is entitled.

5. With reference to issue No.1, the Trial Court considered the Chief affidavit filed by PW1 which states that the defendant borrowed a loan amount of Rs. 10 Lakhs and executed a promissory note and to pay the interest of Rs.1 per Rs.1000 per month and based on the promissory note, the suit was instituted. The PW2 in his chief affidavit also has reiterated the said contention of the PW1 and PW3 also has confirmed the said transaction between the plaintiff and the defendant. The

Trial Court has considered the chief affidavits filed by PW1,PW2 and PW3 and all the three witnesses have cogently deposed that the defendants claiming the sum of Rs.10 lakhs and agreed to repay the principle with interest and executed a promissory note.

6. On the side of the defendant, the cross examination of the PW1 was also considered by the Trial Court wherein, the defendant raised the ground that the plaintiff had no source of income for the purpose of lending Rs.10 Lakhs to the defendant. When the plaintiff was not having any source of income for paying such a huge amount of loan, there is no reason to believe the evidence of the plaintiff and accordingly, the suit is liable to be dismissed.

7. The learned counsel appearing on behalf of the appellant mainly contended that the thumb impression in the promissory note is not clear. However, the Trial Court categorically held that no steps had been taken to verify the thumb impression or the hand writing and in the absence of any such verification by the hand writing expert, the defence taken cannot be entertained.

8. The Trial Court further considered the cross examination of the PW1 and arrived a conclusion that, regarding the LTI of the defendant in Ex.A1 promissory note, no steps had been taken on the side of the defendant to seek expert opinion so as to disprove the claim of the plaintiff. When no steps had been taken to verify the defects and no other proof has been filed, the Trial Court had declined to accept the contentions of the defendant and held that the plaintiff has proved the suit by oral and documentary evidence and accordingly decreed the same.

9. This Court is of the considered opinion that in a suit for recovery of money instituted based on the promissory note when the LTI or the signature is disputed, then the party who is disputing the signature or LTI has to establish the same by obtaining an opinion from the hand writing expert or to prove some other acceptable evidence. In the absence of any such proof or evidence, the contentions that the signature is forged cannot be accepted at all. Thus the Trial Court is rightly arrived a conclusion that the defendant had not established his case with reference to the doubt raised regarding the LTI in the promissory note. When the said point raised has not been established, then the Trial Court is right in concluding that the plaintiff is entitled for a relief as such sought for in the plaint.

10. This Court do not find any infirmity or perversity in respect of the decision arrived. The Trial Court has arrived a decision based on the documents and evidences produced by the

respective parties and therefore the judgment and decree passed in O.S.No.16 of 2017 dated 11.01.2019 is confirmed and A.S.No.608 of 2019 stands dismissed. No Costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The III Additional District Judge,
   Kallakurichi

2. The Section officer
   VR Section
   High Court, Madras 104.

+1 CC to Mr.A.V.B.Krishnakanth, Advocate sr 9654
+1 Cc to Mr.R.Jayaprakash, Advocate sr 9570.

A.S. No.608 of 2019

AK(CO)
SP(21/08/2020)