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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

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THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1188 of 2008

Parvathy ...Appellant / Defendant

Vs.

Kumaravel ...Respondent / Plaintiff

Prayer : The second appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 22.06.2007 passed in A.S.No.157 of 2006 on the file of the Principal Sub-Court, Virudhachalam, confirming the judgment and decree dated 12.09.2006 passed in O.S.No.211 of 2006 on the file of the Principal District Munsif Court, Virudhachalam.

For Appellant : Mr.T.Saikrishnan
for M/s.Sai, Bharath

Respondent : Mr.R.Sunil Kumar

JUDGMENT

Challenge in this second appeal is made to the Judgment and decree dated 22.06.2007 passed in A.S.No.157 of 2006 on the file of the Principal Subordinate Court, Virudhachalam, confirming the judgment and decree dated 12.09.2006 passed in O.S.No.211 of 2006 on the file of the Principal District Munsif Court, Virudhachalam.

2.The defendant in O.S.No.211 of 2006 is the appellant in this second appeal.

3.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

4.Suit for recovery of money.

5.Briefly stated, according to the plaintiff, the defendant borrowed a sum of Rs.75,000/- from him on 12.08.2005 and in evidence thereof, executed a promissory note in favour of the plaintiff agreeing to repay a borrowed sum with interest as recited in the promissory note. Subsequent thereto, despite repeated demands and the issuance of the legal notice, the defendant has failed to repay the borrowed sum with interest to the plaintiff as promised by her and hence, according to the



plaintiff, the suit has been laid by him against the defendant.

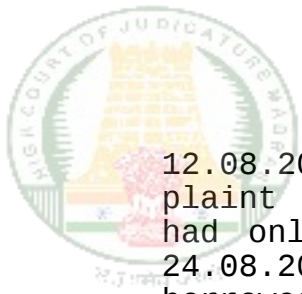
6.The defendant resisted the plaintiff's suit contending that she has not borrowed a sum of Rs.75,000/- from the plaintiff on 12.08.2005 and executed a promissory note in favour of the plaintiff as put forth in the plaint. According to the defendant, the plaintiff is running a money lending business and the defendant approached the plaintiff through M.Ramasamy Gounder in need of money to meet her urgent needs and accordingly, received a sum of Rs.40,000/- from the plaintiff on 24.08.2003 and agreed to repay the borrowed sum with interest and thereafter, the defendant had discharged the abovesaid borrowed sum with interest on 16.08.2005 and the plaintiff has recorded the abovesaid borrowal in the kutchayat note book maintained by him containing the signature of the defendant and however, to make unlawful gain, the plaintiff has fabricated the suit promissory note by making use of the defendant's signature available in the kutchayat note book and in respect of the legal notice issued by the plaintiff, she issued a suitable reply and therefore, according to the defendant, the promissory note dated 12.08.2005 is a rank forgery document and the defendant is not liable to pay any sum to the plaintiff and therefore, the suit is liable to be dismissed.

7.In support of the plaintiff's case, PWS1 & 2 were examined and Exs.A1 to A4 were marked. On the side of the defendant, DW1 was examined and no document has been marked.

8.On an appreciation of the oral and documentary evidence adduced by the respective parties and the submissions put forth by them, the Courts below were pleased to decree the suit in favour of the plaintiff. Impugning the judgment and decree of the Courts below, the present second appeal has been preferred by the defendant.

9.The suit has been laid by the plaintiff on the basis of the promissory note. According to the plaintiff, the defendant borrowed a sum of Rs.75,000/- on 12.08.2005 and in evidence thereof, executed the suit promissory note in favour of the plaintiff promising to repay the borrowed sum with interest as recited in the suit promissory note and according to the plaintiff, thereafter, despite several demands and the issuance of the legal notice, the defendant has not repaid the borrowed sum as promised by her and hence, the need for the suit. The suit promissory note has been marked as Ex.A1, the legal notice has been marked as Ex.A2, the acknowledgment card received from the defendant has been marked as Ex.A3 and the reply notice sent by the defendant has been marked as Ex.A4.

10.The plea has been taken by the defendant that she had not borrowed a sum of Rs.75,000/- from the plaintiff on



12.08.2005 and executed Ex.A1 promissory note as alleged in the plaint and on the other hand, according to the defendant, she had only borrowed a sum of Rs.40,000/- from the plaintiff on 24.08.2003 and subsequent thereto, discharged the abovesaid borrowed sum and thus, according to the defendant, the plaintiff has fabricated the suit promissory note Ex.A1 by making use of the defendant's signature available in the Kutchayat Note Book maintained by him evidencing the earlier money transaction between the plaintiff and the defendant and therefore, the suit is liable to be dismissed.

11.In the light of the abovesaid factors, as rightly held by the Courts below, the burden is upon the plaintiff to establish that the defendant had borrowed a sum of Rs.75,000/- from the plaintiff and executed the suit promissory note in favour of the plaintiff promising to repay the borrowed sum with interest as recited in the suit promissory note. To establish the abovesaid case of the plaintiff, the plaintiff has examined himself as PW1 and one of the attestors in the suit promissory note viz., Kandasamy has been examined as PW2. Both PWs1 & 2 have clearly deposed that the defendant has borrowed a sum of Rs.75,000/- from the plaintiff and thereafter, executed the promissory note in favour of the plaintiff. Despite the cross-examination, as rightly held by the Courts below, nothing has been culled out from them by the defendant to disbelieve their abovesaid version and the evidence of PWs1& 2 seems natural, cogent and convincing. Merely because, PW2 is the tenant under the plaintiff, it cannot be held that he is deposing falsely in favour of the plaintiff and as rightly held by the Courts below, the defendant has not pleaded any enmity with PW2 and as rightly contended by the plaintiff's counsel, only known person would be asked to subscribe as a witness to a document and in such circumstances, the obtainment of PW2's signature as an attestor in the suit promissory note by the plaintiff, as such, cannot be held to be unacceptable. More so, when the evidence of PW2 is found to be appealing and trustworthy, the Courts below are found to be justified in upholding the case of the plaintiff based on the evidence of PW2 as well as the evidence of the plaintiff examined as PW1.

12.The main defence put forth by the defendant is that she borrowed a sum of Rs.40,000/- from the plaintiff on 24.08.2003 and subsequently, had discharged the said borrowed sum. The abovesaid defence version projected by the defendant has been disputed by the plaintiff and no material has been placed by the defendant to evidence that she had borrowed a sum of Rs.40,000/- from the plaintiff on 24.08.2003 in the presence of one Mr.M.Ramasamy Gounder and subsequent thereto, had discharged the said borrowed sum. With reference to the abovesaid defence version, not a scrap of paper has been filed by the defendant to substantiate the same. It is not the case

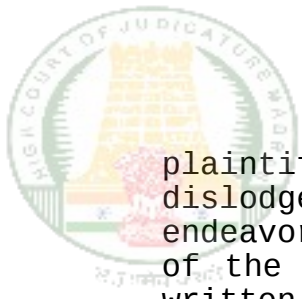


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of the defendant that the abovesaid borrowal had been made based on the promissory note. The defendant would only claim that in respect of the abovesaid borrowal, the plaintiff had been maintaining the Kutchayat Note Book, in which, the defendant's signature had been secured. However, pointing to the abovesaid version put forth by the defendant, no material worth acceptance has been placed by the defendant.

13. Therefore, the contention of the defendant that by making use of her signature found in the so-called Kutchayat Note book said to be maintained by the plaintiff in evidence of the earlier borrowal on 24.08.2003, Ex.A1 promissory note had been fabricated by the plaintiff, as such, cannot be countenanced in any manner sans any proof or material pointing to the same. From the materials available on record, it is found that the defendant had even gone to the extent of denying her signatures in the suit documents. Therefore, the Courts below have rightly come to the conclusion that the defendant has come forward with the predetermination that she should dispute all the signatures shown to her in the witness box, accordingly, it is found that she had chosen to dispute even the admitted signatures found in the suit documents as well as the signature contained in Ex.A1. However, as held by the Courts below, when with reference to the borrowal of the suit sum and the execution of Ex.A1 promissory note, the plaintiff has established his case through the evidence of Pws1 & 2 in an acceptable manner and as rightly concluded by the Courts below, the presumption of under Section 118 of the Negotiable Instrument Act would come into operation and it is for the defendant to rebut the same and establish that the suit promissory note Ex.A1 is devoid of consideration and that, she has not executed the suit promissory note in evidence of the borrowal of a sum of Rs.75,000/- on 12.08.2005 as put forth by the plaintiff.

14. If, according to the defendant, the suit promissory note had not been executed by her and the same does not contain her signature, as rightly concluded by the Courts below, nothing prevented the defendant from subjecting the signature available in Ex.A1 for analysis by an expert. The contention put forth by the defendant's counsel that it is only the plaintiff, who has to establish the case and therefore, the plaintiff only should take steps to subject the comparison of the signature contained in Ex.A1 by an expert. However, when the plaintiff has projected and proved his case through the evidence of Pws1 & 2 and thereby, the presumption having shifted on the shoulder of the defendant, the defendant has to adduce evidence to prove that she had not borrowed the sum of Rs.75,000/- and executed Ex.A1 Promissory note on 12.08.2005. When with reference to the same, there is no material put forth on the part of the defendant, the conclusion of the Courts below that the suit promissory note is a genuine one and the borrowal of the suit sum from the



plaintiff by the defendant is to be accepted, cannot be dislodged in any manner. No doubt, the Courts below had endeavored to compare the signature of the defendant with that of the signature of the defendant found in the Vakalat and the written statement. Though the abovesaid practice is unacceptable, however, the Courts below had chosen to venture into the abovesaid exercise, only after upholding the evidence of PWS1 & 2 with regard to the genuineness of the suit promissory note Ex.A1.

15.In the light of the abovesaid discussions, it is found that the Courts below, on an appreciation of the materials placed on record, both oral and documentary and considering the position of law with reference to the same, had rightly upheld by the plaintiff's case and granted the decree in favour of the plaintiff.

16.In support of his contentions, defendant's counsel relied upon the decisions reported in (2008) 4 Supreme Court Cases 530 (Thiruvengadam Pillai Vs. Navaneethammal and another) and 2017 SCC Online Mad 34812 (Kannamma Vs.P.Sagunthala). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

For the reasons aforesaid, no substantial question of law is found to be involved in the second appeal. In conclusion, the second appeal is found to be devoid of merits and accordingly, the same is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

sms

Copy To

1.The Principal Sub-Court,
Virudhachalam.

2.The Principal District Munsif Court,
Virudhachalam.

+1cc to Mr.T.Saikrishnan, Advocate SR.No.1993

S.A.No.1188 of 2008

BS(CO)
RVM(01/09/2021)