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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.606 OF 2009

A.M.Nallasamy

... Appellant/Respondent/Plaintiff

Vs

K.N.Periasamy

... Respondent/Appellant/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.12 of 2008 dated 31.10.2008 on the file of the Subordinate Court, Bhavani reversing the Judgement and Decree passed in O.S.No.194 of 2006 dated 20.02.2007 on the file of the Principal District Munsif, Bhavani.

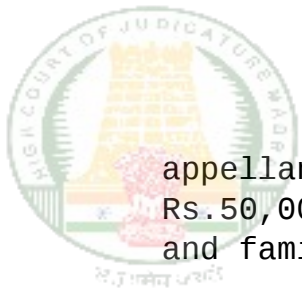
For Appellant : Ms.J.Prithvi for
Mr.S.Kaithamalai Kumaran

For Respondent : Ms.Zenith Begam

JUDGEMENT

The above Second Appeal arises against the reversing Judgement and Decree in A.S.No.12 of 2008 on the file of the Subordinate Court, Bhavani, in and by which the learned Subordinate Judge had reversed the Judgement and Decree of the Principal District Munsif, Bhavani in O.S.No.194 of 2006.

2. The appellant herein had filed a suit in O.S.No.194 of 2006 on the file of the Principal District Munsif, Bhavani for recovery of a sum of Rs.62,320/- together with subsequent interest. The said amounts were due under a promissory note dated 18.09.2003 executed by the respondent in favour of the



appellant. On 18.09.2003, the respondent had borrowed a sum of Rs.50,000/- from the appellant for meeting his urgent business and family needs.

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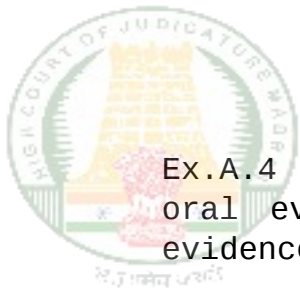
3. It is the case of the appellant that despite repeated demands in person there was no attempt on the part of the respondent to clear his dues which has constrained the appellant to issue a legal notice dated 29.05.2006 demanding the repayment of the amounts due under the promissory note. Despite receipt of the notice, the payment had not been made and therefore the appellant had filed the suit in question.

4. On entering appearance in the suit, the respondent had filed a written statement inter alia denying the execution of the promissory note as well as the receipt of the money. The respondent would further submit that in the legal notice dated 29.05.2006 the description of the appellant had been wrongly given and the description of the person who was stated to have given the loan was one A.M.Nallasamy the son of Marappa Gounder and the village was shown as Koundhambadi Village.

5. The respondent would submit that though they had sent a reply notice refuting the allegations contained therein and the fact that they did not know the person who has been described in the notice there is no reference to the said reply notice in the plaint and therefore the appellant has come forward with the false case and the suit deserves to be dismissed.

6. The respondent would submit that he has not received any amount from the appellant or the person named in the legal notice dated 18.09.2003 and has not executed the promissory note as security for the loan. The respondent would submit that after receipt of the notice he had made enquiry about the appellant and he came to know that he was a money lender by avocation and that he was in the habit of cheating persons and usurping their properties. Therefore, he sought for the dismissal of the suit.

7. The appellant has examined himself as P.W.1 and has examined one Dhuraiyappan who was the Scribe of the suit promissory note, Ex.A.1 as P.W.2 and Murugaraj one of the witness in Ex.A.1 as P.W.3. The appellant had marked Ex.A.1 to



Ex.A.4 in support of his case. The respondent had only adduced oral evidence as D.W.1 and had not let in any documentary evidence.

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8. The learned Judge after considering the evidence on record decreed the suit. The Principal District Munsif, Bhavani has relied upon the evidence of P.W.3 to come to the conclusion that the respondent has executed the promissory note and borrowed money from the appellant. However, by an oversight the name of P.W.3 has been shown as Shakthivel and not Murugaraj. The learned Judge has also considered discrepancy in the evidence of D.W.1 who would state that he knew nothing about the appellant and only after enquiry he had come to know who the appellant was. However, he has not let in any evidence to show when the enquiry had been conducted and the learned Judge also took note of the fact that both the parties were from the very same village.

9. This Judgement and Decree was challenged by the respondent in A.S.No.12 of 2008 on the file of the Subordinate Court, Bhavani. The Appellate Court by its Judgement and Decree dated 31.10.2008 has reversed the Judgement and Decree of the Principal District Munsif, Bhavani. The Appellate Court had disbelieved the evidence of P.W.3 on the ground that the signature found in Ex.A.1 appears to have been inserted latter since the font appears to be made smaller to fit it into the empty space between the signatures of Shakthivel and the Scribe, Dhuraiyappan.

10. The learned Subordinate Judge had held that the Trial Court has not taken into account the contradiction in Ex.A.1, promissory note and Ex.A.2 legal notice with reference to the father's name and place of residence of the appellant. The appellate Court has also taken into consideration the fact that the Trial Court has described Shakthivel as P.W.3 instead of Murugaraj. The learned Judge has reversed the Judgement and Decree predominantly on account of the contradiction in the description of the appellant in Ex.A.1 and Ex.A.2.

11. Ms.J.Prithvi, learned counsel appearing on behalf of the appellant would submit that the Second Appeal revolves around a narrow compass relating to the mis-description of the appellant and mis-description of P.W.3 by the Trial Court, which



are the two primary grounds on which the lower Appellate Court has reversed the Judgement and Decree of the Trial Court.

12. Mrs.Zeenath Begum, learned counsel appearing on behalf of the respondent would submit that at the very first instance the respondent has denied the execution of Ex.A.1 and therefore the onus was cast upon the appellant to prove the same by sending the promissory note for Forensic test. On the failure to do so an adverse inference has to be drawn. She would submit that there is a discrepancy in the evidence of the appellant as well as P.W.3 with reference to number of signatures that the respondent had affixed on the suit promissory note. In these circumstances, she would contend that the Judgement and Decree should not be disturbed and the Second Appeal dismissed.

13. Heard the learned counsels and perused the records.

14. Ex.A.1 is the suit promissory note. The suit promissory note describes that one K.N.Periyasamy residing at Kulathu Veedhi, Sendhambalayam Village has executed the promissory in favour of one A.M.Nallasamy son of Marappa Mudaliar residing in the same village. A sum of Rs.50,000/- is the consideration shown therein. The promissory note has been signed by the respondent in the English language. One K.P.Shakthivel and S.K.Murugaraj (P.W.3) have signed the same as witnesses and P.W.2, Dhuraiyappan have signed on the reverse of the promissory note. There is yet another signature of the respondent.

15. Ex.A.2 has been correctly addressed to the respondent and there is no quarrel in this regard. What is sought to be highlighted by the learned counsel for the respondent is that the legal notice which has been prepared on the basis of Ex.A.1, promissory note describes the father of the appellant as Marappa Gounder in the place of Marappa Mudaliar and his residence is shown as Koundhambadi village in the place of Salangambalayam Village. The learned counsel for the respondent would submit that it is an error and on receiving this notice the respondent has refuted the knowledge about the person mentioned in the notice as also the execution of the promissory note.

16. However, a perusal of Ex.A.2 would indicate that the



error had been rectified by the appellant's counsel and the corrected version has also been given to the learned counsel for the respondent on 14.06.2006. The suit has been filed thereafter, however, the written statement is totally silent about this corrected version being handed over to the respondent.

17. The appellant and the respondent are residing in the very same village, despite which D.W.1 in his written statement would feign ignorance about the appellant and would go on to state that he had come to know about the appellant only during his enquiry in the village. He would in his cross examination admitted that the appellant is residing in the village for over 50 to 60 years and it is a rather strange that a person living in the same village is not aware about the appellant. It is clear that the statement is made only for the purpose of the suit. That apart, the respondent has himself admitted that he was in the habit of signing in the English language and only now on account of trembling of his hands he has started signing in the vernacular.

18. A perusal of Ex.A.1 would show that the signature affixed is in the English language as K.N.Periyasamy and the signature has been made in two places. Another fact that has to be taken note of is that the appellant is running a cloth shop in the village and therefore the submission of the respondent that he did not know the appellant is hard to believe. The contradiction in the deposition of P.W.1 and P.W.2 with reference to number of signatures and the place of signatures affixed by the respondent is not fatal to the case.

19. A perusal of the Ex.A.1 would show that the first witness's father's name is also Periyasamy. Therefore, there is every chance of the appellant having misunderstood the same. However, the witness P.W.3 has clearly deposed to the fact that the respondent had not only affixed the signature on stamp paper but had also affixed the signature on the reverse of the promissory note as well.

20. Therefore, the appellant has proved the execution of the promissory note as well as the payment of the sum of Rs.50,000/- by examining witness and the scribe as well who have very clearly deposed to that effect.



21. In these circumstances, the Judgement and Decree of the lower Appellate Court ignoring the admission of P.W.1 and the evidence of P.W.2 and P.W.3 is erroneous and accordingly set aside. The Substantial question of law is answered in favour of the appellant. The Second Appeal is allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(SSA)

// True Copy //

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Bhavani.
2. The Principal District Munsif,
Bhavani.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.26293

S.A.No.606 of 2009

RSV(CO)

RLP(25/10/2021)