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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2021
PRONOUNCED ON : 14.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A. No.1112 of 2010
and M.P. No.1 of 2010

1.K.Rajendran
2.R.Mohana

...

Appellants/Defendants

versus

M.Packirisamy

...

Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 05.09.2008 made in A.S.No.17 of 2007 on the file of the learned Additional District Judge, Puducherry at Karaikal, reversing the judgment and decree dated 14.11.2007 made in O.S.No.342 of 2006 on the file of the learned Principal District Munsif, Karaikal.

For Appellants : Mr.V.V.Sathya
for Mr.M.V.Venkataseshan

For Respondent : Mr.K.Kumaraguru
for Mr.Sai

J U D G M E N T

The present appeal is directed against the judgment and decree dated 05.09.2008 passed in A.S.No.17 of 2007 by the learned Additional District Judge, Puducherry at Karaikal, reversing the judgment and decree dated 14.11.2007 passed in O.S.No.342 of 2006 by the learned Principal District Munsif, Karaikal.

2. The respondent / plaintiff has filed the suit before the learned Principal District Munsif, Karaikal, in O.S.No.342 of 2006, seeking the relief of direction, directing the defendants to repay the loan amount of Rs.37,800/- along with



interest @ 6% per annum, till realisation. The learned Principal District Munsif, Karaikal, by judgment and decree dated 14.11.2007, had dismissed the suit in its entirety.

3. Being dissatisfied with the said findings, the plaintiff preferred an appeal in A.S.No.17 of 2007 on the file of the learned Additional District Judge, Puducherry at Karaikal. By judgment and decree dated 05.09.2008, the learned Additional District Judge, Puducherry at Karaikal, had allowed the appeal and dismissed the suit filed by the plaintiff. Hence, the defendants are before this Court with the present Second Appeal.

4. For the sake of convenience, hereinafter, the parties, are referred to, as per their litigative status before the trial Court.

5. The laconic averments made in the plaint, are as follows:

(i) On 01.07.2005, the defendants had borrowed a sum of Rs.35,000/- from the plaintiff to meet out their expenses and to discharge their sundry debts, for which, they executed a promissory note, in favour of the plaintiff, agreeing to repay the loan amount with interest @ 12% per annum. In spite of several demands, the defendants prolonged the repayment of loan. Hence, the plaintiff issued a lawyer notice on 13.12.2005 and the same was suitably replied by the defendants. Hence, the suit.

6. The case of the first defendant, as averred in the written statement, is as follows:

(i) The plaintiff is not a permanent resident of Karaikal District and he is working at Karaikal. The first defendant borrowed a sum of Rs.12,000/- alone from the plaintiff at Koranguputhur Village after agreeing to repay the same along with interest @ 36% per annum. On 01.07.2005 at 9.30p.m., the plaintiff came along with 6 persons has obtained the defendants' signature on a revenue stamp affixed in a paper with force and undue influence. The defendants are not aware of the witnesses, who are all signed in the alleged pronote. The alleged suit transaction done at Koranguputhur Village, Tranquebar Taluk in Nagai District. Hence, the suit filed by the plaintiff, is liable to be dismissed.

7. Based on the above said pleadings, the learned Principal District Munsif, Karaikal, framed necessary issues and tried the suit. On the side of the plaintiff,



plaintiff examined himself as P.W.1. He examined one more witness as P.W.2 and marked 4 documents, as Ex.A.1 to Ex.A.4. Similarly, on the side of the defendants, first defendant himself was examined as D.W.1.

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8. Having considered the materials placed before him, the learned Principal District Munsif, Karaikal, vide judgment and decree dated 14.11.2007, dismissed the suit, stating that, the suit is not maintainable before the Court of law at Karaikal. In the appeal filed by the plaintiff in A.S.No.17 of 2007, the learned Additional District Judge, Puducherry at Karaikal, reversed the findings arrived at by the trial Court and ultimately, decreed the suit in favour of the plaintiff.

9. Feeling aggrieved over the said findings of the Court below, the defendants, are before this Court with the present Second Appeal. The Second Appeal was admitted on file after formulating the following substantial question of law;

" Whether the Lower Appellate Court is right in holding that Ex.A1 Promissory Note is valid as per Section 36 of the Indian Stamp Act ?

10. Heard Mr.V.V.Sathya, learned counsel for Mr.M.V.Venkataseshan appearing for the appellants and Mr.K.Kumaraguru, learned counsel for Mr.Sai appearing for the respondent and also perused the materials available on record.

11. It is the submission of the learned counsel for the appellants / defendants that, the alleged transaction had happened between the plaintiff and the respondents at Kuranguputhur Village, Tranquebar Taluk in Nagai District and hence, the Court at Pondicherry, is not having any jurisdiction to try the present suit filed by the respondent / plaintiff. It is the further submission that, the defendants are residing at Kuranguputhur and accordingly, under Section 20 of the Civil Procedure Code, the suit is maintainable only before the Court situated at Tamil Nadu.

12. On the other hand, it is the submission of the learned counsel for the respondent / plaintiff that the defendants had borrowed the loan amount and executed a promissory note at Thiruvettakudy, Karaikal and therefore, the Court at Karaikal, is having jurisdiction.

13. I have considered the rival submissions made by the learned counsel appearing on either side.



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14. Here, it is a case, the trial Court framed the issue in respect to the territorial jurisdiction and after due enquiry, answered as the learned Principal District Munsif, Karaikal, is having jurisdiction to try the suit.

15. In this regard, when at the time, the plaintiff gave evidence as P.W.1 stated before the trial Court as the defendants borrowed a sum of Rs.35,000/- at Thiruvettakudy at Karaikal. The said evidence given by P.W.1 was supported through the evidence given by P.W.2, who is a person signed as a witness in the suit promissory note.

16. Accordingly, the evidence given by P.W.1 and P.W.2 is quite clear for accepting the case of the plaintiff that, the alleged transaction had happened within the jurisdiction of the learned Principal District Munsif, Karaikal. Though the defendants take a stand that the suit pronote was obtained by the plaintiff by force, in order to substantiate the same, he has not produced any relevant documents to show that, the suit pronote is a fabricated one.

17. Accordingly, in view of the above, I am of the opinion that the present suit has been filed before the Court, which is having jurisdiction.

18. In this occasion, it would see Rule 3 of the Pondicherry Stamp Rules, reads as follows:

"Rule-3 Description of Stamps:- (1) Except as otherwise provided by the Act or by these rules,-
(i)----- (ii)----- (iii) stamps purchased in the Union territory of Pondicherry shall alone be used for instruments chargeable with Duty Act as in force in that territory. From the above rules, it is clear that in Pondicherry region, the Pondicherry Revenue stamp only to be affixed in the Promissory note."

19. Accordingly, in view of the said Section, if any pronote is executed within the territory of Puducherry, the stamp pertains to the Puducherry alone affixed. But here it is a case, the learned Principal District Munsif held that no such stamp having the name of Puducherry was affixed in the suit pronote and therefore, though the suit pronote was brought on record, the same is not admissible in evidence.

20. Now, on considering the said decision, it is not in dispute that when at the time suit pronote was marked



as Ex.A.1, the defendants have not raised any objection to make the same as exhibit. Taking note of the same, the First Appellate Court by referring Section 36 of the Indian Stamp Act, held that challenging the admission of the document in the subsequent stage, is not at all permissible and resultantly, allowed the suit.

21. In this regard, Section 36 of the Indian Stamp Act, 1899 reads as follows;

"36.Admission of instrument where not to be questioned.—Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not duly stamped."

22. Further, Section 61 of the Indian Stamp Act, 1899 also, reads as follows;

"61.Revision of certain decisions of Courts regarding the sufficiency of stamps.— (1) When any Court in the exercise of its civil or revenue jurisdiction or any criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (2 of 1974), makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such



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Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that—

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purposes of such prosecution, no declaration made under this section shall effect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42."

23. Now, on going through the said provisions, it is true that after admitting the document as evidence, the same cannot be questioned in the subsequent events. The First Appellate Court has also, by relying the same, concluded the suit in favour of the plaintiff that, due to the reason that, the defendants have not raised any objection at the time of marking the document as an exhibit.

24. In this occasion, the learned counsel for the appellants would submit that, here is the case, the suit pronote is not admissible in evidence. The defendants challenges the admissibility of the document itself and therefore, Section 36 of the Indian Stamp Act, cannot come to the aid of the respondent. Merely because of the reason that the document has been marked as exhibit, it cannot be said that, objection raised at a later stage, is not taken into account.

25. Now, on considering the said submission to the case on hand, our Hon'ble Apex Court in a case of R.V.E.VENKATACHALA GOUNDER vs ARULMIGU VISWESARASWAMI in APPEAL (CIVIL)NO. 10585 OF 1996 has observed as follows;

"Order 13 Rule 4 of the CPC provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initialed by the Judge amounts



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to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the Court to the person from whose custody it was produced.

The learned counsel for the defendant-respondent has relied on *The Roman Catholic Mission Vs. The State of Madras & Anr.* AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision."

26. Now, following the above said principle, to the case on hand, here, it is a case, because of the reason that the word "Pondicherry" is not printed in the stamp, which was affixed in the suit pronote, the same is in view of Rule 3 of the Pondicherry Stamp Rules, inadmissible in evidence.

27. As rightly pointed out by the learned counsel for the appellants that, merely because of the reason that the document has been exhibited, it cannot be said that, the same is having the evidentiary value.



28. As already stated, the stamp affixed in the suit pronote, cannot be used in the territory of Pondicherry Union. Therefore, Ex.A.1 pronote is not an admissible document before the trial Court. The trial Court only after concluding above, dismissed the suit. On the other hand, the First Appellate Court by following Section 36 of Indian Stamp Act, precluded the objection raised by the defendants. The view taken by the First Appellate Court, is erroneous one and therefore, I am of the considered view that, the suit filed by the plaintiff, is based upon Ex.A.1, is not maintainable before the learned Principal District Munsif, Karaikal.

29. In fine, the Second Appeal is allowed and the judgment and decree dated 05.09.2008 passed in A.S.No.17 of 2007 on the file of the learned Additional District Judge, Puducherry at Karaikal, is hereby set aside. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The Additional District Judge,
Puducherry, Karaikal.

2.The Principal District Munsif,
Karaikal.

Copy to: The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to Mr.T.Saikrishnan, Advocate SR.No.66397
+1cc to Mr.M.V.Venкатaseshan, Advocate SR.No.66483

S.A. No.1112 of 2010
and M.P. No.1 of 2010

SVI (CO)
CB(28/12/2021)