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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

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THE HONOURABLE Ms.JUSTICE P.T. ASHA

S.A.No.971 of 2010
and
C.M.P.No.912 of 2021

Savithri ... Appellant/2nd Defendant in Trial Court
Vs.

1.Manimegalai
W/o.Venkatachalam Padayachi
Rep by power agent Venkatachalam Padayachi

2.Kaliyaperumal ... Respondents/Plaintiff and First
Defendant in Trial court

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 31.03.2009 in A.S.No.53 of 2008 on the file of the learned Subordinate Judge, Virudhachalam in confirming the Judgment and Decree dated 17.03.2005 made in O.S.No.500 of 2004 on the file of the learned Additional District Munsif, Virudhachalam.

For Appellant : Ms.P.Veena Suresh

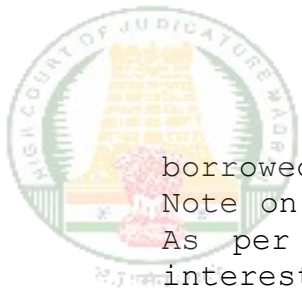
For Respondents : Mr.Joseph Stalin
for Mr.V.Raghavachari for R1
R2 - served - No appearance

JUDGMENT

The unsuccessful 2nd defendant in the Courts below in a suit for Promissory Note is the appellant before this Court. The parties are referred to in their litigative status as in the trial Court.

2.The facts in brief which are necessary for disposing of the above Second Appeal are as follows:

It is the case of the plaintiff that the defendants had



borrowed a sum of Rs.40,000/- from her and executed a Promissory Note on the same day, i.e., on 05.05.1995 at E.Keeranur Village. As per the Agreement, the defendants were to pay a monthly interest of Rs.1 per every hundred rupees and to repay the Principal on demand. It is also the case of the plaintiff that despite several demands, the defendants had not come forward to repay the loan constraining the plaintiff to issue a Legal Notice to the defendants. The 2nd defendant had refused to receive the said notice. The defendants had engaged a different Counsel and had filed two separate written statements. Both the defendants would deny the borrowal and execution of the Promissory Note.

3.It is the case of the defendants that one Venkatachalam Padayachi against whom the 1st defendant and his family members had filed a case in O.S.No.496 of 1995 had developed enmity towards them and he had set up the 2nd defendant's husband to fabricate the Promissory Note which is the subject matter of the suit.

4.In addition to the above defence, the 2nd defendant had stated that she and the 1st defendant are living separately and she has been deserted by the 1st defendant and that even prior to 1993, she has been living away from the 1st defendant. Therefore, there was no necessity for them to borrow jointly and such a joint borrowal was also impossible.

5.The learned I additional District Munsif, Virudhachalam by Judgment and Decree dated 17.03.2005 was pleased to decree the suit as prayed for holding that the 2nd defendant had not proved the case of living away from her husband as well as the fact that the suit Promissory Note was a forged one.

6.Challenging the said Judgment and Decree, it was only the 2nd defendant who had filed A.S.No.53 of 2008 on the file of the learned Principal Sub Judge, Virudhachalam. The learned Principal Sub Judge, Virudhachalam has also confirmed the Judgment and Decree of the trial Court. The learned Judge has also compared the signatures found in the Promissory Note with the signatures in the Written Statement and found them to be identical. Challenging the same, the 2nd defendant has approached this Court.

7.Ms.Veena Suresh, learned counsel appearing on behalf of the appellant/2nd defendant would contend that the Courts below have failed to appreciate the fact that originally, the plaintiff had filed the suit in her individual capacity and

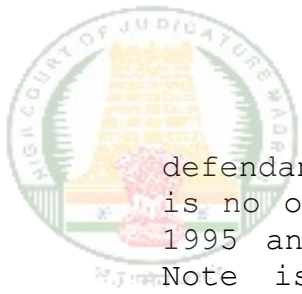


thereafter, all of a sudden, her husband had substituted himself as her Power Agent. Though in the Plaint it has been stated that it was the plaintiff who had advanced a sum of Rs.40,000/- to the defendants, however, the plaintiff had not entered the Box and subjected herself for cross examination. On the other hand, it is her husband who had adduced evidence and he is the friend of Venkatachalam against whom the defendants' family filed the suit. He has also submitted that the defendants are living in another Village and there is no necessity to travel all the way to the plaintiff's Village and borrow the money from her and the same could have been done in her own Village. She would further submit that the Courts below had not taken note of the evidence of D.W.2, who had deposed on behalf of the 2nd defendant with regard to her separation from the 1st defendant. Further, the witness was able to substantiate the defence of the 2nd defendant that she was possessed with means and therefore, she was not in a need of financial assistance.

8.Per contra, Mr.Joseph Stalin, learned counsel for the defendants would submit that the Courts below elaborately considered each and everyone of the defence raised by the defendants and thereafter, decreed the suit. He would draw the attention of this Court to the findings of the trial Court with reference to Ex.B.1 which is the copy of the petition filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure in O.S.No.496 of 1995 and that from a perusal of this document, the 2nd defendant had not been able to establish the nature of the suit or the result of the suit so as to attribute enmity between the said Venkatachala Padayatchi and the defendants. He would also point out that the 2nd defendant as D.W.1 has clearly deposed that there is absolutely no enmity between her and Venkatachala Padayatchi. He would also submit that the Courts below has compared the signatures of the 2nd defendant and the 1st defendant with their signatures in their Written Statements and come to the conclusion that the signatures are identical. He would further argue that the defendants who have come forward with the defence that the Promissory Note is a fabricated one, have not taken any steps to compare the signatures through a Handwriting Expert. He would contend that no exception can be taken to the concurrent Judgment of the Courts below and hence, the Appeal is liable to be dismissed.

9.Heard the learned counsels appearing on either side and perused the papers.

10.The 2nd defendant who has alone challenged the Decree has raised two defences, namely, (1)that she and the 1st



defendant are estranged since the year 1993 and therefore, there is no occasion for them to jointly borrow the money in the year 1995 and (2) that the signatures found in Ex.A.1 - Promissory Note is a forged one and the Promissory Note itself is a fabricated one engineered at the instance of one Venkatachala Padayatchi. The 2nd defendant has not let in any evidence whatsoever to show that she is living away from the 1st defendant since 1993. The 2nd defendant as D.W.1 alleged that she is living in Muthanai Village and in support thereof has marked Ex.B.2 and Ex.B.3. However, the address given in these documents would show that she is living at Thottikuppam Village which is the place of residence of the 1st defendant.

11. That apart, the suit notices have also been sent only to this address and the 2nd defendant had entered appearance in the suit. The 2nd defendant has not examined any independent witness to show that she and the defendants are living away separately since 1993. Therefore, the 2nd defendant has failed to corroborate her claim by evidence. Therefore, the findings of the Courts below cannot be countenanced.

As regards the fabrication of the Promissory Note and the signatures, no step whatsoever has been taken by the defendants to have the disputed signatures in the Promissory Note compared with their admitted signatures. The Appellate Court has taken steps to compare the signatures as provided under Section 73 of the Indian Evidence Act and the learned Judge has clearly opined that the signatures in the two documents, namely, Ex.A.1 and the signatures in the Written Statements are identical. An other factor is that the 1st defendant has not challenged the Judgment and Decree of the trial Court. The defendants have not made out any question of law much less a Substantial Question of Law warranting interference by this Court. The Second Appeal is dismissed, however, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mps



To

1.The Subordinate Judge,
Virudhachalam.

2.The Additional District Munsif,
Virudhachalam.

+1cc to Mr.P.Veena Suresh, Advocate SR.No.28666
+1cc to Mr.V.Raghavachari, Advocate SR.No.28695

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and C.M.P.No.912 of 2021

JPL(CO)
GN(06/01/2022)