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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1110 of 2011

Chinnusamy

...Appellant/Appellant/Defendant

Vs.

Chinnathambi

...Respondent/ Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 02.07.2010 passed in A.S. No.28 of 2009, on the file of the Sub Court, Mettur, upholding the decree and judgment dated 09.10.2009 passed in O.S. No.119 of 2006, on the file of the District Munsif Court, Mettur.

For Appellant

: Mr. P. Mani

Respondent

: Mr. P. Mathivanan

JUDGMENT

The unsuccessful defendant before both the courts below has filed the present second appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranking in the present appeal would also be indicated.

3. The case of the plaintiff is that the defendant borrowed a sum of Rs.70,000/- from him on 12.05.2004 and executed a promissory note (Ex.A1) on the same day promising to repay the principal together with interest @ 24% per annum. The further case of the plaintiff is that in spite of repeated demands made by him, the defendant did not repay the loan amount, which forced him to issue a legal notice dated 27.04.2006 (Ex.A2) to the defendant and that though the defendant received the said notice, did not come forward to make good the payment.

4. The defendant, in his written statement, denied the execution of the promissory note and also contended that there was no necessity for him to borrow a sum of Rs.70,000/- from



the plaintiff. His specific contention in the written statement is that his signature and thumb impression have been forged on the suit promissory note.

5. The trial court, on the basis of the above pleadings, framed the following issues.

- (1) Whether the suit pronote is true and valid?
- (2) Whether the plaintiff is entitled to claim the suit amount as prayed for?
- (3) To what relief the plaintiff is entitled?

6. In the trial court plaintiff examined himself and the scribe of the suit promissory note and marked Ex.A1 to Ex.A3. The defendant examined himself and no documentary evidence was marked on his side. Acknowledgement card and the summons served on the defendant were marked as Ex.C1 and Ex.C2.

7. After full contest, the learned District Munsif, Mettur, decreed the suit in favour of the plaintiff and directed the defendant to pay a sum of Rs.70,000/- together with interest @ 6% per annum from the date of plaint till the date of decree and thereafter at 3% from the date of decree till the date of realisation.

8. Aggrieved over the same, the defendant filed an appeal in A.S. No.28 of 2009 before the Subordinate Judge, Mettur. The learned Subordinate Judge, Mettur, after analysing the evidence on record upheld the findings recorded by the trial court.

9. Aggrieved over the same, the present second appeal is filed by the defendant.

10. Notice of motion was ordered and after several adjournments, the matter is posted today for final hearing.

11. Mr. P. Mani, learned counsel appearing for the appellant contended that though the plaintiff did not take steps to verify the signature of the defendant on the suit promissory note Ex.A1, both the courts below had held that the suit promissory note was true and valid. His further contention is that the court ought not to have ventured into comparing the signatures of the defendant on the suit promissory note with his signatures found on Ex.C1 and Ex.C2.

12. In the instant case, both the trial court as well as the first appellate court compared the signature of the defendant found on Ex.C1 and Ex.C2, which are the acknowledgement card and court summons respectively, with the signature found on Ex.A1 promissory note. In fact, the trial court had observed that the signature found in Ex.A1 promissory note is that of the defendant. The relevant



"After the completion of evidence the defendant filed I.A. No.812/2009 under Section 45 of Indian Evidence Act for comparing the signature of the scribe and the signature of the P.W.2. The said application is dismissed by this court on 15.09.2009. At this juncture, it is pertinent to look into the signatures of the defendant. The defendant admitted his signature in acknowledgment card and court summons which are marked as Ex.C1 and Ex.C2. On perusal of signatures in Ex.C1 and Ex.C2 and also signature in Ex.A3 and signature in written statement and vakalat with the signatures in Ex.A1 pronote. All the signatures are looking similar. The signature in Ex.A1 pronote are very fluent and appear to be very natural it does not seem to be written slowly or written by trace-copying. The defendant in his written statement denied the execution of pronote and stated that pronote is forged one. In his cross examination he strongly denied the signature in pronote. While admitting the signature in Ex.C1 and C2. However, there is no difference between the signature in Ex.C1, C2 and A1."

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14. In the result,

i. the second appeal is dismissed. There shall be no order as to costs.

ii. the decree and judgment dated 02.07.2010 passed in A.S. No.28 of 2009, on the file of the Sub Court, Mettur, and the decree and judgment dated 09.10.2009 passed in O.S. No.119 of 2006, on the file of the District Munsif Court, Mettur, are upheld with costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Court,
Mettur.

2. The District Munsif,
Mettur

3. The Section Officer,
VR Section, High Court,
Madras.

S.A.No .1110 of 2007

GSM (CO)
PR (08/04/2022)