

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on
14.12.2021

Judgment Pronounced on
22.12.2021

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CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

S.A.No.983 of 2021
and
CMP.No.18472 of 2021

P.Ponnusamy ... Appellant/Appellant/Defendant
..vs..

Thangamuthu ...Respondent/Respondent/Plaintiff

This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 13.01.2020 made in A.S.No.9 of 2014 on the file of the learned Sub Judge, Sankari, confirming the judgment and decree dated 10.06.2014 made in O.S.No.303 of 2004 on the file of the learned District Munsif, Sankari.

For Appellant :Mr.N.Manokaran
For Respondent :Mr.P.Valliappan
for M/s. P.V.Law Associates

JUDGMENT

This Second Appeal is directed against the judgment and decree of learned Subordinate Judge, Sankari, in A.S.No.9 of 2014 dated 13.01.2020 confirming the judgment and decree of the learned District Munsif, Sankari in O.S.No.303 of 2004 dated 10.06.2014.

2. Respondent filed the suit on the basis of a promissory note for recovery of a sum of Rs.75,330/- with subsequent interest. The case of the respondent is that the appellant borrowed a sum of Rs.54,000/- from the respondent on 25.03.2002 to meet his urgent business and family expenses. He executed a promissory note in favour of the respondent promising to repay the amount with interest at 18% per annum either to the respondent or his order on demand. Despite several demands personally made to the appellant, he has not chosen to repay the amount either towards principal or interest. Respondent caused



a legal notice to the appellant on 18.11.2003 asking him to pay the amount. Appellant refused to receive the notice. Therefore, this suit.

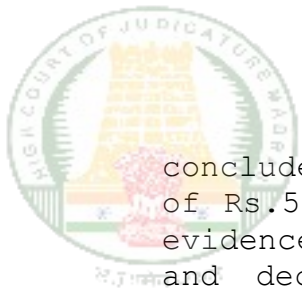
3. Appellant filed written statement denying the borrowal and execution of promissory note. It is submitted that the address of the respondent is not correct. The alleged borrowal of Rs.54,000/- on 25.03.2002 and execution of promissory note are specifically denied. It is further said that there is no necessity for the appellant to borrow from the respondent. There is a pathway dispute between the appellant and respondent and as a result of this enmity, a false complaint was given in Komarapalayam police station by the respondent against the appellant. Respondent openly challenged that he would teach a lesson to the appellant. The signature and thumb impression in the promissory note are not that of the appellant. Promissory note is false and fabricated one. It is created with a view to take revenge on the appellant, with the help of supporters of the respondent. There is no cause of action for the suit and therefore, the suit is liable to be dismissed.

4. On the basis of the above pleadings, the trial court framed the following issues:-

- 1) Whether the suit promissory note is true and executed for valid consideration ?
- 2) Whether the plaintiff is entitled for recovery of the amount ?
- 3) To what relief ?

5. During the trial, PW.1 and PW.2 were examined and Exs.A1 to A4 were marked on the side of respondent/plaintiff. DW.1 and DW.2 were examined and Exs.B1 to B3 were marked on the side of appellant/defendant. Apart from these documents, ExsX1 to X3 were also marked.

6. On considering the oral and documentary evidence, learned trial Judge found, on comparison of the disputed signature in the promissory note with the admitted signatures of the appellant in Exs.X1 to X3 and deposition, came to the conclusion that the signature in Ex.A1 promissory note is the signature of the appellant. He also found that the suit loan transaction was reflected in the Income Tax Return - Ex.A4 of the respondent. That apart, learned trial Judge also found that refusing to receive the pre-suit notice and taking a defence that the suit promissory note is a forged promissory note, without actually verifying the suit promissory note in the Court, are detrimental to the case of the appellant. Finally



concluded that respondent has satisfactorily proved the borrowal of Rs.54,000/- by the appellant from the respondent through the evidence of PW.1 and PW.2, accepted the case of the respondent and decreed the suit. Appellant filed appeal against the judgment of learned trial Judge. The learned first appellate Judge has also considered the issue raised before the trial Court with regard to denial of execution of promissory note and concurred with the finding of learned trial Judge and dismissed the Appeal. Challenging the judgment of the first appellate Court, this Second Appeal is filed.

7. Learned counsel for the appellant submitted that there is previous enmity between the appellant and respondent in connection with pathway dispute. There was also a criminal case registered at the instance of the respondent against the appellant. This suit is based on forged and fabricated promissory note. When the appellant specifically denied the execution of promissory note and claimed that it is a forged and fabricated promissory note, respondent ought to have taken steps for subjecting the disputed signature in Ex.A1-promissory note for the examination by handwriting expert with the admitted signatures of the appellant. Respondent has not taken any steps. On the other hand, learned trial Judge has compared the disputed signature in Ex.A1-promissory note with the admitted signatures of the appellant that came into existence after the institution of the suit. The disputed signature in Ex.A1-promissory note was compared with the admitted signature of the appellant in his deposition, vakalath, acknowledgment card and summons. This procedure is not correct, for the reason that the Court is not an expert in comparing the handwriting. That apart, the disputed signature in the document can be compared with the admitted signatures, which have come into existence during the contemporaneous period. The suit promissory note is dated 25.03.2002, but the documents used for comparison came into existence in 2004. Therefore, the very comparison of disputed signature in Ex.A1- promissory note with other admitted signatures of the appellant that came into existence after the institution of the suit is not the right procedure and the finding reached on that comparison that the suit promissory note is a genuine promissory note is not the correct finding. In this regard, learned counsel for the appellant drew the attention of this Court to the judgment reported in (2008) 4 SCC 530 (Thiruvengadam Pillai ..vs.. Navaneethammal and another) for the proposition that "there is no doubt that the Court can compare the disputed handwriting/signature/finger impression with the admitted handwriting/signature/finger impression. Such comparison by the Court without the assistance of any expert,



has always been considered to be hazardous and risky." Thus, the learned counsel for the appellant submitted that the mode adopted by the trial Court for comparison of signatures, which was approved by the appellate Court, for decreeing the suit finding that the suit promissory note is a genuine promissory note is not based on sound principle of law and practice.

8. It is also submitted by the learned counsel for the appellant that PW.2 is an interested witness. He is working as a driver of PW.1/respondent and he deposed in the criminal case in favour of respondent and therefore, his evidence cannot be believed. Therefore, he prayed for setting aside the judgment of the courts below and for allowing this Appeal.

9. In response, learned counsel for the respondent submitted that the claim of the appellant that the suit promissory note was fabricated to wreck vengeance against the appellant in connection with the civil dispute is not correct. The incident related to the civil dispute had happened in 2004, much after the execution of promissory note. Suit promissory note transaction had come into existence on 25.03.2002. What is the necessity for the respondent to create a suit promissory note for a smaller sum of Rs.54,000/- when it can be created for a larger sum. PW.1 and PW.2 had given cogent and convincing evidence with regard to borrowal and execution of the promissory note by the appellant. PW.2 joined PW.1 as the driver, only after the criminal case reported in 2004. Merely because he was also cited as a witness in criminal case, we cannot come to the conclusion that he is an interested witness for the respondent. The trial Court has compared the disputed signature of appellant with his admitted signatures. Court is empowered to compare the signatures under Section 73 of Indian Evidence Act. It is not as though the courts are powerless to compare the signatures. The trial Judge has rightly compared the disputed signature of the appellant with his admitted signatures and came to the conclusion that the signature in Ex.A1-promissory note is that of the appellant and it is a genuine promissory note. Appellant has raised several grounds in the written statement, but not supported the grounds by producing evidence. He deliberately refused to receive the notice. Without even verifying the promissory note by filing appropriate petition, a defence was taken that the suit promissory note was forged promissory note. It makes clear that this defence is a bald defence taken only with a view to protract the proceedings. Both the Courts have concurrently found that the suit promissory note is a genuine promissory note and rightly decreed the suit. Learned counsel for the respondent relied on the judgment reported in (2014) 4



CTC 606 (Chelladurai ..vs.. Velmurugan) for the proposition as to the guidelines to be followed by the Courts for comparison of signatures. Thus, learned counsel for the respondent prayed for confirming the judgments of the Courts below and for dismissal of the Second Appeal.

10. Considered the rival submissions and perused the records.

11. The suit is based on promissory note, which is strongly denied by the appellant. Appellant has taken a defence that there is no necessity for him to borrow money. Suit promissory note is created to take revenge in connection with the criminal case. It is false and fabricated promissory note. Witnesses are henchmen of the respondent, address of the respondent is not correct etc. Respondent examined himself as PW.1 and the testator S.Chandrasekar as PW.2. Pre-suit notice is marked as Ex.A2. Admittedly this notice was returned by the appellant by refusing to receive it. It is seen from the cross-examination of appellant/DW.1 that an application in I.A.No.747 of 2008 was filed for comparing the disputed signature with the admitted signatures by the expert and it was dismissed on the opposition made by the appellant. During the course of his evidence, he admitted his signature in his deposition and also the signatures in Ex.A1 and Exs.X1 to X3. Strangely, he denies his signature in written statement.

12. With regard to powers of the Court to compare the disputed signature with the admitted signatures, even in the judgment relied on by the learned counsel for the appellant reported in (2008) 4 SCC 530 (cited supra), it is observed that the Court can compare the disputed signature with the admitted signatures and when it is hazardous and risky, the services of an expert can be utilised. What is observed is that "when there is a positive denial by the person, who is said to have affixed his finger impression and where the finger impression in the disputed document is vague, or smudgy or not clear, making it difficult for comparison, the Court should hesitate to venture a decision based on its own comparison of the disputed and admitted finger impressions." The reported case involves comparison of finger prints and not signatures. In the case before hand, what was compared is signature.

13. It is seen from the judgment reported in (2014) 4 CTC 606 (cited supra), this Court after analysing the judgment on the field, narrowed down the following proposition:-



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"14. From the above said discussion, the following proposition will emerge:

i) In case, a party, whose signature is disputed, wants his own signature found in the documents that came into existence much later in point of time or after the dispute has arisen and the same is opposed by the party relying on the document containing the disputed signature, it shall be prudent for the court not to make such a comparison.

ii) On the other hand, if the person, who relies on the disputed signature, does have no objection for comparing it with, or seeks comparison of the same with, the admitted signature contained in a document even though the same came into existence after the dispute has arisen as he believes that the signatures are not disguised and they are good for comparison, then, the person disputing his signature in the document in question cannot have any valid objection for making such comparison.

iii) Only when the party who relies on the disputed document expresses an apprehension that the document of recent origin or the farthest document shall not be suitable for making comparison, the admitted or proved contemporary signatures alone should be used for such comparison."

It is seen from this proposition that "if a person, who relies on the disputed signature, does not have any objection for comparing it with, or seeks comparison of the same with the admitted signatures contained in the documents, which came into existence after the dispute has arisen, the person disputing the signature in the document cannot have any valid objection for making such comparison". It is clear from this judgment that even the signature that came into existence subsequent to the disputed signature can be used for comparison, if the person who relied on disputed signature believes that the admitted signature is not disguised and it is good enough for comparison. Therefore, the mode adopted by the trial Court for comparison of the disputed signature of the appellant in Ex.A1 with his admitted signatures in deposition, Exs.X1 to X3 cannot be found fault with.



14. It is seen from the evidence of PW.2 that the criminal case relating to the pathway dispute had happened on 29.05.2004. But the suit promissory note is dated 25.03.2002. Therefore, the contention of the appellant that the suit promissory note is created, fabricated to wreck vengeance for the pathway dispute cannot be accepted. It is true that PW.2 admitted that he deposed evidence in the criminal case against the appellant and he was working as driver under the respondent. Merely because PW.2 gave evidence in the criminal case and he was working as driver under the respondent, his evidence cannot be discarded, unless some serious doubt is created in his evidence. On going through the evidence of PW.1 and PW.2, it is evident that they categorically deposed in respect of the borrowal made by the appellant and execution of Ex.A1 promissory note.

15. Even without verifying the suit promissory note after obtaining permission, a defence was taken that the suit promissory note was created. It appears that the appellant is not in the habit of making uniform signatures and there are some variations as well in his admitted and disputed signatures. The anxious consideration of oral and documentary evidence coupled with the submissions of the counsel appearing for the parties show that the respondent has satisfactorily proved the borrowal of Rs.54,000/- by the appellant from the respondent on 25.03.2002 and execution of Ex.A1-suit promissory note. Both the courts below have rightly accepted the case of the respondent and decreed the suit and this Court has no reason to interfere with the view taken by the Courts below. There is no substantial question(s) of law arise for the consideration in this Appeal.

16. In fine, this Court confirms the judgment and decree of first Appellate Court/Sub Court, Sankari, in A.S.No.9 of 2014 dated 13.01.2020 confirming the judgment and decree of trial Court/District Munsif Court, Sankari. in O.S.No.303 of 2004 dated 10.06.2014 and dismisses the Second Appeal with the costs of the respondent throughout. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar



mra
To

1. The Sub Judge, Sankari.
2. The District Munsif, Sankari.

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The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.N.Manokaran, Advocate sr 69319
+1 CC to Mr.P.Valliappan, Advocate sr 69119.

S.A.No.983 of 2021
and
CMP.No.18472 of 2021

BR(CO)
SP(02/03/2022)