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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.460 OF 2014

AND

M.P.NO.1 OF 2014

V.Franklin Edwindoss

... Appellant/
Defendant in Trial Court

Vs.

V..Marimuthu

... Respondent/
Plaintiff in Trial Court

PRAYER:

The Second Appeal has been filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 26.11.2013 made in A.S.No.60 of 2011 on the file of the Sub Court, Gudiyattam, Vellore District confirming the judgment and decree dated 05.04.2011 made in O.S.No.177 of 2008 on the file of the learned District Munsif Court, Gudiyattam, Vellore District.

For Appellant : Mr.K.A.Ravindran

For Respondents : Ms.A.B.Fathima Sulthana

J U D G M E N T

Aggrieved over the concurrent findings of the Court below, the unsuccessful plaintiff has preferred the above Second Appeal.

2. According to the appellant, he used to borrow money from the plaintiff and in the course of their transactions, the respondent/plaintiff used a discharged pronote, affixed a new Revenue stamp and filed a suit for recovery of money. He has taken the defence that he discharged the entire loan amount and Revenue stamp was torn away in the presence of one Duraisamy. The pronote was sent for expert opinion wherein the expert has



opined that it is not possible to offer any reliable opinion on the disputed signature. However, the Trial Court considering the elaborate evidence made by both the sides arrived at a finding that it is the habit of the parties to poke the Revenue stamp on discharge of the dues. On the disputed promissory note, there is no hole or poking mark and further no evidence to show that the Revenue stamp was torn and affixed afresh. Even though the appellant/defendant claimed that the discharge of loan was witnessed by Duraisamy, he has not chosen to examine the said person as witness. Other witnesses could not add credibility to the contention of the appellant/defendant. Therefore, the Courts below have given a categorical finding that there is no material alteration or manipulation as alleged is found on the promissory note.

3. Even before this Court, the learned counsel appearing for the appellant could not substantiate through relevant evidence that there was material alteration on the pronote or on the signature found on the promissory note. On the other hand, from the evidence placed before this Court, it is noted that the appellant in his oral evidence has categorically admitted that he has subscribed his signature below the Revenue Stamp. When the execution of promissory note is admitted, the presumption shall be that the consideration has already been passed and the appellant has borrowed the money. To rebut the presumption, onus is cast upon the borrower to prove that he has discharged the debt. Even though the defendant had taken a stand that he has discharged the debt in the presence of one Duraisamy, he failed to examine him as a witness. It goes to show that the rebuttal has not been proved. In the absence of any contrary evidence that the defendant has discharged the debt, I do not find any material to interfere with the concurrent findings of fact by the Courts below. The materials placed before the Court gives rise to question of fact and does not give rise to substantial question of law much less any question of law. In such circumstances, the above Second Appeal does not deserve admission and accordingly the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

KPR



To

1. The Sub Judge, Gudiyattam,
Vellore District.
2. The learned District Munsif Court,
Gudiyattam, Vellore District.

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S.A.No.460 of 2014
&
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PMK (CO)
PM/29/10/2021