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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2021

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

A.S(MD).Nos.368 & 369 of 2005

1.E.S.V.Sanji Ibrahim Rowther

2.S.Mohammed Maideen

3.S.Hidayathullah

4.S.Palkees Beevi

5.R.Noorjahan

6.S.Habibullah

7.S.Hakimullah

8.I.Shameem Begum

9.H.Barakath Nisha

10.P.Sarmatha Begum

11.S.Sahubr Sathik

12.S.Shahul Hameed

... Appellants
in AS (MD)No.368 of 2005

(Appellants 4 to 12 were brought on record
as LRs of the deceased first appellant as per
order dated 29.11.2018).



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... Appellants
in A.S (MD) No.369 of 2005

Appellants 5 to 12 were brought on record as LRS
of the deceased first appellant as per court
order dated 29.11.2018)

Vs

S.Srinivasan

... Respondent in both Appeals

Common Prayer: Appeal Suits filed under Section 96 C.P.C against the judgments and decrees in O.S.Nos.34 & 44 of 2005 on the file of the Principal District Judge, Tiruchirapalli dated 14.09.2005.



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In both cases: -

For Appellants : Mr.V.Raghavachari for S.Ramesh

For Respondent : Mrs.M.Krishnaveni, Senior Counsel
for Mr.P.Thiagarajan.

COMMON JUDGMENT

Heard the learned counsel for the appellants and the learned Senior Counsel for the respondent. This judgment is dictated in the open Court.

2.These first appeals are directed against the decrees and the common judgment dated 14.09.2005 made in O.S Nos.34 and 44 of 2005 on the file of the Principal District Judge, Trichirappalli. The suits were instituted by Thiru.S.Srinivasan, the respondent in these appeals for recovering certain sums of money on the strength of promissory notes Ex.A1 dated 28.01.1999 and Ex.A11 dated 28.02.2000. The suits were originally filed before the District Court, Pudhukottai. Later, they were transferred to the Principal District Court, Trichirappalli.



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3.The case of the plaintiff was that the defendants were engaged in construction of a shopping complex and were in need of funds and that they jointly approached the plaintiff and availed a loan of Rs.3.00 lakhs on 28.01.1999 agreeing to pay interest at the rate of 18% per annum. Ex.A1 was executed by the four defendants in O.S No.34 of 2005. It was handwritten by the fourth defendant Hakimullah. On 29.01.1999, the defendants handed over Ex.A2 sale deed dated 28.05.1975 to the plaintiff with an intention to create an equitable mortgage. Ex.A4 was executed by the defendants towards creation of equitable mortgage. Subsequently, E.S.V.Sanji Ibrahim Rowther and his two sons Mohammed Maideen and S.Hidayathullah borrowed a sum of Rs.5.00 lakhs from the plaintiff on 28.02.2000 and executed Ex.A11 pro-note. This was also handwritten by Hakimullah, the fourth defendant in O.S No.34 of 2005. Since the defendants did not clear the loan liability or make any payment either towards principal or interest, the plaintiff issued Ex.A5 legal notice dated 20.12.2001 to the defendants. It was received by the defendants. Instead of complying with the demand set out in Ex.A5, they sent reply notice dated 09.01.2002 (Ex.A10) denying



the allegations and averments set out in Ex.A5. The plaintiff therefore instituted the aforesaid suits.

4.The defendants filed written statements denying suit transactions as well as execution of Ex.A1 and Ex.A11. Based on the divergent pleadings, the learned trial Judge framed the necessary issues. Since the suits were interlinked, joint trial was conducted. The plaintiff examined himself as PW.1. Three other witnesses were examined on his side. Exs.A1 to A30 were marked. Thiru.Hakimulla examined himself as DW1. One Balasubramanian was examined as DW.2. Exs.B1 to B18 were marked. Specimen handwriting of the fourth defendant was obtained and the same was marked as Ex.C1.

5.After considering the evidence on record, the learned Trial Judge decreed O.S No.34 of 2005 for a sum of Rs.4,61,250/- with subsequent interest on the principal amount of Rs.3.00 lakhs at 18% p.a from the date of plaint till the date of decree and at 6% p.a from the date of decree till realization and decreed O.S No.44 of 2005 for a sum of Rs.6,68,333/- with subsequent interest on the principal amount of Rs.5.00 lakhs at 12%



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p.a from the date of plaint till the date of decree and at 6% p.a from the date of decree till realization. Aggrieved by the same, the defendants filed these appeals.

6.The learned counsel appearing for the appellants submitted that the suit pro-notes, namely, Ex.A1 and Ex.A11 are rank forgeries. Since the defendants denied having executed the documents, the burden lay entirely on the plaintiff to prove the due execution of the suit promissory notes. The promissory notes were not attested by any witnesses. In such circumstances, the trial court ought to have sent the promissory notes for expert opinion for comparing the signatures. But in the instant case, the promissory notes were not sent for expert opinion. Instead, the learned trial Judge herself undertook the task of comparison. Though under Section 73 of the Indian Evidence Act, 1872, the court may have the jurisdiction to compare the disputed signature with the admitted signature, it has been held time and again that courts not being handwriting experts should refrain from doing so. The learned counsel for the appellants placed reliance on the decision of the Hon'ble Supreme Court reported in **(2008) 7 SCC 655 (Mallavarapu Kasivisweswara Rao v. Thadikonda Ramulu Firm).**



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7.The learned counsel for the appellants also seriously impeached the creditworthiness of the plaintiff. The plaintiff claimed that he had arranged the funds from his close relatives. When questioned in this regard, the plaintiff claimed that one of his relatives, by name, Rangasamy gave him a sum of Rs.3.00 lakhs under the sale agreement and to prove the same, he examined PW.2. According to the learned counsel for the appellants, even a cursory look at the testimony of PW.2 would go to show that he had been set up by the plaintiff to make out a case for source of funds. He would argue that the original title deeds had been marked in O.S No.49 of 1979 on the file of the District Court, Pudhukottai. The plaintiff managed to fraudulently obtain the title document from court custody. When the defendants applied for copy application under Ex.B3, it was returned with an endorsement that the documents had already been destroyed. The learned counsel for the appellants launched a frontal attack on the character and conduct of the plaintiff. The plaintiff has been a lawyer for the defendants. He had conducted their cases before the Consumer Forum and also the Motor Accidents Claims Tribunal. According to him, the entire case of the plaintiff in both the suits is anchored on stolen and forged documents.



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He would strongly argue that the defendants had never availed any loan from the plaintiff and that the learned trial Judge failed to properly appreciate the defence projected in the written statements. He called for reversing the impugned judgments and decrees and for allowing the appeals.

8.Per contra, the learned Senior Counsel appearing for the plaintiff/respondent submitted that the impugned judgment and decrees do not warrant any interference.

9.I carefully considered the rival contentions and went through the evidence on record. The point for consideration is whether the trial court was justified in concluding that Exs.A1 and A11 were executed by the defendants and that Ex.A2 title deed was deposited by the defendants for creating equitable mortgage. The trial court had framed the following issues :

“(i) Whether the contention of the defendants that they did not execute the suit promissory note and that they did not hand over the documents towards security for the debt is correct ?



(ii) Whether the contention that the suit promissory note is a forgery is correct ?”.

Both the issues were answered in favour of the plaintiff by the trial Judge and the question is whether the conclusion arrived at by the trial Judge warrants interference. The plaintiff instituted the suits not only based on the strength of the promissory notes (Ex.A1 and Ex.A11) but also by pleading that the defendants had deposited Ex.A2 title deed. The plaintiff did not straightaway institute the suits. They were preceded by Ex.A5 legal notice dated 20.12.2001. The defendants in their reply notice dated 09.01.2002 (Ex.A10) denied the transaction and also came out with a version that the title document was handed over to the plaintiff in connection with a civil case and that the matter was compromised between the parties but they omitted to take back the title document. They also claimed that they signed certain documents and contended that the suit documents would have been fabricated on the strength of such signed blank documents. This stand taken in the reply notice was reiterated in the written statements also. In the reply notice, the specific stand taken by the defendants was that the title document was handed



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over to the plaintiff in connection with a civil case one year earlier.

Since the plaintiff happened to reside in the opposite house, the defendants forgot to collect the document back after the matter was compromised. Having admitted that the document was voluntarily handed over, though in different circumstances, it is too late in the day to argue that the plaintiff managed to steal the title document from court custody. The defendants having admitted in the reply notice as well as in the written statement that the title document was handed over by them in connection with a civil case to the plaintiff cannot subsequently contend that the document was marked by them in O.S No.49 of 1979 and that they failed to get back the document from court after the suit was disposed of. The arguments of the learned counsel for the appellants on the strength of Ex.B3 (Copy application dated 08.10.1999) in O.S No. 49 of 1979 and Ex.B4 legal opinion given on 20.10.1999 have to be necessarily rejected. The trial court also took note of the fact that the plaintiff specifically mentioned about Ex.A2 sale deed with date and description of property and that therefore, the explanation given by the defendants in the written argument as to how Ex.A2 would have come to the hands of the plaintiff was liable to be rejected. Convincing and



elaborate reasons have been given by the learned trial Judge. They are sound and commend one's acceptance.

10. The defendants had contended that the suit pro-notes have been forged by the plaintiff. The trial Court before taking up the contested issue took note of certain admitted facts. It was noted that the plaintiff and the defendants are residents of the same street. They were residing in opposite houses. The plaintiff who is a lawyer had conducted the case involving a motor accident on behalf of the first defendant. On behalf of the fourth defendant in O.S No.34 of 2005, the plaintiff had conducted a case before the Consumer Forum and succeeded therein. It is admitted that the defendants during the relevant time had constructed a commercial complex. To fund the construction, they borrowed loans from others. It is admitted by them that they availed loan from LIC and also from PW.3 and PW.4. Since the loans availed from PW.3 and PW.4 were not cleared, that led to the filing of the criminal complaints before the jurisdictional magistrate court. The cheque issued by the fourth defendant in O.S No.34 of 2005 towards the payment of property tax in favour of Pudhukottai Municipality was dishonored and the Municipality had initiated criminal prosecution against him.



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11.It is in this background, the learned trial Judge came to the conclusion that the plaintiff had on a balance of probabilities established that the defendants approached him for financial assistance and availed the same after executing Exs.A1 and A11. It had been clearly brought out in evidence that the defendants were in need of funds. It had also been brought out in evidence that they had defaulted in the matter of repayment. It is a fact that Ex.A1 as well as Ex.A11 had not been attested. Though it is customary to secure attestation of pro-notes, there is no rule of law that a pro-note has to be attested. A pro-note is very much a legal and enforceable document even if not attested. Ex.A1 as well as Ex.A11 have been handwritten. The case of the plaintiff is that it was the fourth defendant Hakimullah (O.S No.34 of 2005) who personally wrote them. But he denied the handwriting as well as signature. Therefore, his specimen handwriting was obtained in Ex.C1. In cross-examination, Hakimullah did not take a definite stand. He went to the extent of stating that the signatures found in Exs.A1 and A11 resembled the signatures of his father and his brothers. Interestingly, the other defendants did not enter the witness box. According to the plaintiff, all the defendants signed the pro-notes. Therefore, non-



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examination of the other witnesses rightly led the trial court to draw adverse inference against them. The trial court took note of the ratio laid down in AIR 1999 SC 1441 (Vidhyadhar v. Manikrao), (2002) 3 MLJ 814 (Balammal v. Velayutham) and 2000 (1) L.W. 178 (Iswar Bhai C.Patel @ Bachu Bhai Patel v. Harihar Behera) and concluded that non-examination of the other witnesses in the case was fatal. The trial court came to such a conclusion particularly because DW.1 in his evidence did not take any categorical stand about the signatures attributed to the other defendants in the pro-notes.

12.The plaintiff had filed I.A No.297 of 2005 for obtaining expert opinion. But, this I.A was opposed by the defendants. The learned trial Judge was quite mindful of the various decisions in which it had been held that though there is no legal bar for the Judge to use one's eyes to compare the disputed writing with the admitted writing, as a matter of prudence, expert opinion must be obtained. But the learned trial Judge felt that in the case on hand that it was possible to arrive at a definite conclusion since the defendants themselves had admitted that they had put the signatures in blank papers and that they had been misused by the



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plaintiff. Since such an admission had already been made by the defendants even in their reply notice, the learned trial Judge was justified in invoking Section 73 of the Indian Evidence Act, 1872. Admitted signatures of the defendants are found in Exs.A4, A6 to A9 and A24 and Ex.C1. The trial Judge after undertaking a task of comparison with naked eye, arrived at the following conclusion :

“A cursory glance at the document Ex.A1 and Ex.A11 with that of the admitted signatures in Ex.A4, Ex.A5 to Ex.A9 and Ex.A24 (without any expert eyes) would go to show that the signatures in Ex.A1 and Ex.A11 are the signatures of the respective defendants in those cases. The line quality speed rhythm, pen pause, pen lift, slope or slant, alignment, size of letters, style of letters and the general characteristics of Ex.C1 when compared with Ex.A1 and A11 to show that they ought to have been written by one and the same person.”

Another reason as to why the matter was not referred to for obtaining expert opinion was that there was a direction from the Madurai Bench of the Madras High Court that both the suits ought to be disposed of on or before 15.09.2005. That is why, the learned counsel for the plaintiff submitted that he left it to the discretion of the trial court that either the



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I.A may be disposed of for obtaining expert opinion or the court itself may undertake the task of comparison. The trial court went to the extent of observing that nothing stopped the defendants from seeking expert opinion that the signatures attributed by them in Exs.A1 and A11 are not theirs. The fact remains that the defendants had not taken any step to prove that the documents, namely, Ex.A1 and Ex.A11 are forged. Nothing also turns on the difference in the rate of interest charged under two pro-notes. While in one case, the interest rate has been fixed at 12%, in the other case, the interest rate has been fixed at 18%. The loan covered in one pro-note was Rs.3.00 lakhs whereas the amount covered under the other pro-note was Rs.6.00 lakhs. Probably that was why the rates of interest were also different. In any event, nothing substantial turns on this defence. I also do not find merit in the contention that during the relevant time, the first defendant was taking treatment in a hospital as an in-patient and that therefore, he could not have signed the promissory-note. This is primarily because the first defendant did not enter the witness box to take such a stand. The first defendant ought to have entered the witness box and faced cross-examination. In any event, it is quite probable that the first defendant could have come to



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Pudhukottai to sign the pro-note and then returned to the hospital. The plaintiff examined one Ponnusamy as PW.2 to demonstrate one of the sources of his funds. Merely because the plaintiff has not produced the income tax returns or the books of accounts, the case of the plaintiffs could not be disbelieved on that score.

13.The fact remains that the plaintiff not only produced the two pro-notes executed by the defendants but also the title deed Ex.A2. It had been amply demonstrated that the version projected by the defendants as to how the plaintiff could have come in possession of Ex.A2 title deed is false. The trial court also rightly come to the conclusion that in view of the evidence adduced by the plaintiff, the case of invocation of presumption under Section 118 of the Negotiable Instruments Act has been made out. Therefore, it was for the defendants to have rebutted the presumption. The defendants miserably failed to discharge the burden cast on them. It is only after a detailed consideration of the entire evidence on record, the trial court has given a sound judgment decreeing the suits as prayed for. I express my full agreement with all the reasons assigned by the court below. No case for



interference has been made out. The first appeals stand dismissed. No costs.

13.08.2021

Index : Yes / No
Internet : Yes/ No
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To:

The Principal District Judge, Tiruchirapalli

Copy to : V.R.Section, Madurai Bench of the Madras High Court.



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G.R.SWAMINATHAN, J.

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A.S.(MD).Nos.368 & 369 of 2005

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