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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14 / 07 / 2021
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
AS (MD) NO.43 OF 2012

A.Manickam ... Appellant/Defendant

Vs.

1.R.Periyasamy
2.P.Meenakumari ... Respondents/Plaintiffs

PRAYER: First Appeal filed under Section 96 CPC against the decree and judgment passed in O.S.No.4 of 2007 dated 02.06.2010 on the file of the Principal District Judge, Tirunelveli.

For Appellant : Mr.T.Selvakumaran
For Respondents : Mr.B.Vijay Karthikeyan

J U D G M E N T

The present First Appeal has been preferred against the judgment and decree dated 02.06.2010 passed in O.S.No.4 of 2007 by the learned Principal District Judge, Tirunelveli.

2.The defendant is the appellant. The respondents / plaintiffs filed a Suit for recovery of money on the basis of two promissory notes executed by the appellant / defendant. According to the respondents, the appellant approached the second respondent and borrowed a sum of Rs.5,00,000/- on 01.09.2004, to meet out his family expenses and agreed to repay the same with interest @ Rs.1/- for Rs.100/- and also executed a promissory note in favour of the second respondent.

3.Likewise, the appellant has approached the first respondent and borrowed a sum of Rs.4,50,000/- on 12.08.2005 and executed a promissory note in favour of the first respondent. He failed to repay the principal as well as interest amount and therefore, the respondents have issued a legal notice dated 30.12.2006 to the appellant.

4.The Trial Court, based on the pleadings, framed the following issues:-

(1)Whether the two suit pronotes are true, valid and supported by consideration?

(2)Whether the plaintiffs are entitled to the suit amount?

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(3)To what reliefs?”

5.Before the Trial Court, the plaintiffs have examined five witnesses as P.W.1 to P.W.5 and marked nine documents as Exs.A1 to A9. On the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and marked two documents as Exs.B1 and B2.

6.The Trial Court, after considering the evidence, has come to the conclusion that the execution of promissory notes and passing of consideration has been validly and cogently proved by the plaintiffs and that the appellant is bound to repay the amount borrowed. However, the prayer for interest was rejected. Against which, the defendant has preferred the present appeal on the ground that the Trial Court failed to consider that the appellant herein never secured any loan on 01.09.2004 from the second plaintiff and never executed a promissory note on 01.09.2004 in her favour. The promissory note is a fabricated one and created for the purpose of the Suit. The evidence of the wife of the defendant, who is said to be an attesting witness has categorically stated that she has not signed the alleged promissory note and Exs.B1 and B2 clearly states that the appellant has not signed the alleged promissory note.

7.The learned Trial Judge has failed to consider the report of the Forensic Sciences Department which clearly stated that there is some significant difference available in the signature. Instead of dismissing the Suit on the basis of the report submitted by the expert regarding the signature, the Trial Court has decreed the Suit on the basis of the evidence of an attested witness P.W.3.

8.Now that, the point for consideration in the present appeal is that whether the valid execution of the promissory note and passing of consideration are proved or not?

9.From the perusal of the records placed before this Court, it is seen that the respondents 1 and 2 / plaintiffs in the Suit have deposed as P.W.1 and P.W.2. They have cogently deposed that the promissory notes were executed by the plaintiffs on two occasions and that the money was paid in cash with denomination to that effect. This evidence of P.W.1 and P.W.2 could not be discredited during the cross examination. P.W.3 who is a witness to the transaction would clearly depose that the appellant has executed the promissory notes and received the consideration. D.W.1 in his cross examination has deposed that the first respondent was running a Finance business as well as chit among the Teachers. Since the appellant did not join the chit run by the first respondent, the plaintiffs forged and created the promissory notes during the year 2000 itself and declared that they will take revenge against him. Due to the previous animosity, he has filed the frivolous litigation. But the Trial Court has rightly discussed the evidence as unreliable for nothing was pleaded in the written statement about the previous enmity between the appellant and the first respondent.

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Without such pleading, the evidence given by D.W.1 that the promissory note is forged and fabricated on this count, cannot be accepted.

10.Likewise, the defendant has taken out an application to compare the signatures found on the promissory notes with the public documents. The evidence of D.W.2 – Thamarai Selvan, who is an expert from the Forensic Sciences Department has reported that the signatures are made by different persons and not of the same person. The Trial Court discussed that Exs.B1 and B2 are reports sent by the Forensic Sciences Department comparing the disputed signatures with the admitted signatures and arrived at the conclusion that they were not signed by the same person. The report was duly signed by one Kumar. In the cross examination, D.W.2 has deposed that through the Video Spectral Comparator Instrument and magnification of the photography, the examination was done by him. However, the examination done through Video Spectral Comparator Instrument was mentioned in his report as well as the two times magnification of the signatures through photography. But, the details about the photographer and signature of the photographer were not found in the report. Therefore, the Trial Court has come to the conclusion that Ex.B1 does not reflect the scientific method of examination adopted by D.W.2 and therefore, it is found that it is not a conclusive one. But, it is important to note that the appellant relied on the sale deed executed in his favour. Even though he was having the original of the sale deed, he has produced only a photostat copy. The examination and the comparison of the signatures were made with the photocopy of the signatures. The appellant has failed to produce the original document wherein the admitted signature was found.

11.In the considered opinion of this Court, when the comparison of the signatures were taken from the photocopies of the documents, it will not lead to a conclusive proof. There can be manipulation in the photocopies. The appellant / defendant must have produced the originals of the admitted signatures found in the registered sale deed. Therefore, as rightly found by the Trial Court, the evidence of the expert of the Forensic Sciences Department cannot be construed as the conclusive proof that the signatures were not of the same person. It is not proved beyond doubt that the signature is forged or fabricated.

12.One more crucial aspect of this matter is that the appellant has taken a specific denial that his wife has not affixed the signature in the promissory notes. But, he has not examined his wife as a witness to prove the fact. In that event, it shall be construed that the signature of the wife of the appellant, who stood as an attesting witness, stands proved. Therefore, the findings of the Trial Court that the promissory notes were validly executed and valid consideration has been passed, does not require any interference, as it is based on valid evidence. The appellant has failed to disprove the valid execution and passing of consideration.

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On the other hand, the respondents have proved the same.

13.In fine, the judgment and decree dated 02.06.2010 passed in O.S.No.4 of 2007 by the learned Principal District Judge, Tirunelveli, is confirmed and the First Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Principal District Judge
Tirunelveli.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-22629[F] dated 15/07/2021)

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