



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2021

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WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

A.S.(MD)No.63 of 2013
and
M.P.(MD)No.4 of 2013
and
C.M.P.(MD)No.6539 of 2021

MUNUSAMY

... Appellant/Defendant

Vs

K.DHANABAL

... Respondent/Plaintiff

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code r/w. Order 41 Rules 1 and 2 of Civil Procedure Code, against the judgment and decree dated 12.03.2010 passed in O.S.No.147 of 2007 on the file of the learned Additional District Judge (Fast Track Court No.I), Thanjavur.

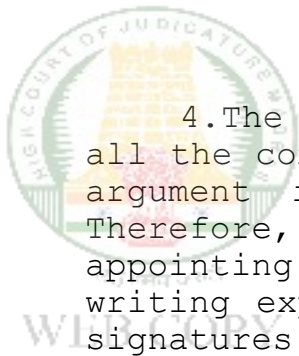
For Appellant : Ms.G.Sreenisha
For M/s.Sissy Law Associates.
For Respondent : Mr.H.Lakshmi Shankar

JUDGEMENT

The defendant in O.S.No.147 of 2007 on the file of the learned Additional District Judge (Fast Track Court No.1), Thanjavur, is the appellant herein. The respondent herein namely., Dhanabal filed the said suit for recovering a sum of Rs.8,12,306/- with interest at the rate 12% per annum. The suit was instituted on the strength of Ex.A1/promissory note dated 09.06.2006. The appellant filed his written statement controverting the plaint averments. Based on the divergent pleadings, the trial court framed the necessary issues.

2.The plaintiff examined himself as P.W.1. The attester as well as the scribe were examined as P.W.2 and P.W.3. Exs.A1 to A4 were marked on the side of the plaintiff. The defendant examined himself as D.W.1 and one Jeyadevi was examined as D.W.2. Exs.B1 to B9 were marked on the side of the defendant.

3.After a consideration of the evidence on record, the Court below by the impugned judgment and decree dated 12.03.2010 decreed the suit as prayed for. Questioning the same, this appeal suit has been filed.



4.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds. Her core argument is that Ex.A1/suit promissory note is a forged one. Therefore, the defendant filed an interlocutory application for appointing an advocate commissioner to obtain the opinion of a hand writing expert. D.W.2 after going through Ex.A1 with the admitted signatures of the appellant gave her opinion vide Ex.B9 that the signatures found in Ex.A1 is not that of the appellant. The hand writing expert was also examined as D.W.2. However, the Court below declined to accept her opinion on the ground that she is not qualified to depose as an expert. Therefore, the appellant has filed C.M.P.(MD)No.6539 of 2021 for referring Ex.A1 to a Government Forensic Lab for obtaining fresh expert opinion.

5.The learned counsel for the appellant would contend that since the defendant had taken steps to obtain the opinion of an expert and since the said opinion was not accepted by the Court below, this Court may allow C.M.P.(MD)No.6539 of 2021 in the interest of justice.

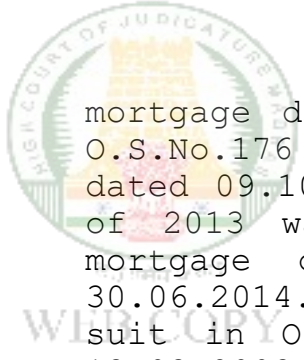
6.Per contra, the learned counsel appearing for the respondent submitted that the impugned judgment and decree do not warrant any interference.

7.I carefully considered the rival contentions and went through the evidence on record.

8.The point arising for my determination in this appeal suit is as to whether the Court below was right in coming to the conclusion that the plaintiff had proved the validity and genuineness of Ex.A1/promissory note.

9.Let me first take up the contention of the appellant's counsel that the appellant had denied the signature attributed to him in Ex.A1/promissory note. Though the learned counsel for the appellant was at pains to contend that interest of justice requires that the suit pro-note should to be sent for second opinion, I am of the view that it is not necessary. This is because in the written statement the appellant had not specifically denied his signature in the suit promissory note. On the other hand, his defence version is that he has had a number financial transactions with the plaintiff's family and that the plaintiff had obtained signed blank promissory notes and that one such document was filled up and on that basis, the suit came to be instituted. The learned counsel appearing for the plaintiff/respondent drew my attention to the admission made by the appellant, who was examined as D.W.1.

10.The defendant had admitted that he was having earlier transactions with the plaintiff's family. The learned counsel for the respondent pointed out that the plaintiff's wife/Punithavathi



mortgage dated 26.07.1999 and that it was decreed on 22.06.2017. O.S.No.176 of 2012 was filed on the strength of the mortgage deed dated 09.10.2000 and that it was decreed on 22.06.2017. O.S.No.31 of 2013 was filed by the plaintiff's mother for enforcing the mortgage deed dated 13.01.2013 and that it was decreed on 30.06.2014. The plaintiff's wife/Punithavathi filed yet another suit in O.S.No.152 of 2016 to enforce the mortgage deed dated 13.03.2003 and that it was also decreed. The learned counsel for the respondent categorically asserts that these decrees have not been challenged till date. These documents have not been marked as they were passed subsequent to the passing of the impugned judgment and decree. However, they being public documents, I am entitled to take note of the same. More than anything else, the defendant himself had admitted both in the written statement as well as in the cross examination that he had several mortgage transactions with the plaintiff's family. In fact, the insinuation made by the defendant is that he is having a valuable property and that the plaintiff is scheming to usurp the same by enforcing the mortgages obtained by him. The plaintiff's wife/Punithavathi had filed yet another suit in O.S.No.18 of 2017 and it was also decreed. The appellant is said to have filed an appeal after a gap of more than four years.

11.The learned counsel appearing for the appellant would state that when the plaintiff had taken care to obtain security for each of those earlier transactions, it is improbable that he would have advanced a sum of Rs.7,00,000/- to the defendant on 09.06.2006 without taking any security and on the basis of mere promissory note. I am not impressed with this argument. Obviously the plaintiff and the defendant are having prior acquaintance dating back to 1999 atleast. The defendant had taken a sum a sum of Rs.50,000/- from the plaintiff's wife on 26.07.1999 under a registered mortgage deed. It is also admitted that there has been a number of transactions between the two. In the cross examination, the defendant had also admitted that he was heavily indebted to several persons and that a number of proceedings are also pending against him. The case of the plaintiff is that since the defendant was under financial stress, he requested the plaintiff to oblige him with a hand loan. Since the defendant is owning a valuable property, the plaintiff was probably confident of recovering the same. Therefore, the plaintiff chose to advance a sum of Rs.7,00,000/- on the strength the suit promissory note on 09.06.2006. The plaintiff not only examined himself as P.W.1 but also one of the attestors as P.W.2 as well as the scribe as P.W.3. Thus, the plaintiff had more than discharged the onus cast on him. I have already pointed out that the defendant had virtually admitted the signature found in Ex.A1. Therefore, the presumption under Section 118 of the Negotiable Instruments Act got triggered. The defendant to rebut the presumption chose to examine D.W.2/Jeyadevi. No opinion of the expert is conclusive or binding on the Court. The Court has to take the final call. In the case on

<https://hcservices.ecourts.gov.in/hcservices/> the defendant examined on his side has not been



shown to be an expert. She does not possess any professional qualification, which will entitle her to depose as a hand writing expert. Once Ex.B9 and the testimony of D.W.2 are rejected, the irresistible conclusion is that the appellant failed to rebut the presumption raised against him under Section 118 of the Negotiable Instruments Act. Therefore, the Court below rightly came to the conclusion that the appellant had proved the due execution of Ex.A1 by examining himself and P.W.2. Even after a careful appreciation of the evidence on record, I am not able to take a different view. C.M.P.(MD)No.6539 of 2021 filed by the appellant for referring Ex.A.1 for fresh expert opinion is liable to be rejected, since in the written statement itself the defence version is that the plaintiff had filled up the promissory note by using the signed blanked promissory notes taken from him earlier. C.M.P.(MD)No.6539 of 2021 is dismissed. The impugned judgment and decree passed by the trial court are confirmed and the appeal suit is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Judge
The Additional District Court,
Fast Track Court No.I,
Thanjavur.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-26661[F] dated 18/08/2021)



+1 CC to M/s.G.MAHALAKSHMI, Advocate (SR-26979[F] dated
23/08/2021)

A.S. (MD) No.63 of 2013
17.08.2021

SJ(CO)

KB(09.02.2022) 5P 6C