



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.1020 of 2008

Eswari Ammal

... Appellant/Respondent/Plaintiff

Vs.

1.Vallimayil

2.Vairamnai

3.Muthu Selvi

4.Kanchana

... Respondents/Appellants/Defendants

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree, dated 11.11.2005 passed in A.S.No.134 of 2005 on the file of the Second Additional Subordinate Court, Tirunelveli, reversing the judgment and decree dated 20.09.2004 passed in O.S.No.118 of 2004 on the file of the Second Additional District Munsif, Tirunelveli.

For Appellant : Mr.Uma Ramanathan

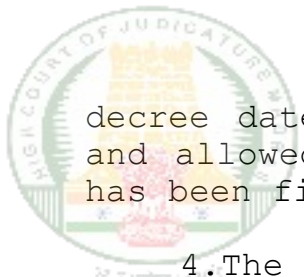
For Respondents : Mr.H.Arumugam

JUDGMENT

The plaintiff in O.S.No.36 of 1997 on the file of the Sub Court, Tirunelveli is the appellant in this second appeal. The appellant/Eswariammal filed the said suit seeking to recover a sum of Rs.42,300/- from the original defendant namely., Chellapandi. The suit was laid on the strength of Ex.A.1/promissory note, dated 25.05.1995. The suit was later transferred to the file of the II Additional District Munsif Court, Tirunelveli and renumbered as O.S.No.118 of 2004. The suit was originally decreed ex-parte. The original defendant/Chellapandi thereafter filed I.A.No.162 of 1998 for setting aside the same. The set aside petition was allowed. Before filing the written statement, the original defendant passed away. His legal heirs/respondents herein filed the written statement denying the genuineness of the suit pro note.

2.The plaintiff examined herself as P.W.1, through her, Exs.A.1 to A3 were marked. The wife of the original defendant namely., Vallimayil, examined herself as D.W.1, through her Exs.B1 and B2 were marked.

3.The learned Trial Munsif after considering the evidence on record decreed the suit and directed the defendants to pay a sum of Rs.42,300/- for the original amount of Rs.30,000/- with interest at the rate of 6% per annum to the plaintiff from the date of filing of the suit till the date of payment. Aggrieved by the same, the defendants filed A.S.No.134 of 2005 before the II Additional Sub



decree dated 11.11.2005 set aside the judgment of the Trial Court and allowed the appeal. Questioning the same, this second appeal has been filed.

4.The second appeal was admitted on the following substantial questions of law:-

"(1) Whether the respondents are bound to prove the plea of forgery?

(2) Whether the non-examination of the witnesses of Ex.A.1, the promissory note is fatal to the case of the appellant?"

5.Heard the learned counsel on either side.

6.The learned counsel for the respondents would submit that the First Appellate Court rightly reversed the judgment of the Trial Court and that no interference is called for. He drew my attention to the decision reported in (2014) 1 MWN (Civil) 787 (M.Balasubramaniam V. M.Ratna) for the proposition that the Courts ought not to undertake the task of comparison of the disputed signature with the admitted ones. In the case on hand, the defendants have specifically pleaded that the signature attributed to Chellapandi in Ex.A.1 is forged. Therefore, the burden lay squarely on the plaintiff to prove the due execution of the suit promissory note. The plaintiff could have discharged the said burden only by having the matter referred to a handwriting expert. Such an exercise was not undertaken. Instead, the learned Trial Munsif chose to undertake the task of comparison by himself. The approach of the Trial Munsif runs counter to the aforesaid decision.

7.That apart, he would also place reliance on another decision of the Madras High Court reported in 2019 (5) M.L.J. 203 (M.Thangapillai V. M.Periasamy) for the proposition that if the Trial Court were to undertake such a comparison, then the Court must also spell out in clear term as to why it came to the particular conclusion.

8.I carefully considered the rival contentions and perused the evidence on record. No doubt, the defendants have categorically pleaded that Ex.A.1 was not executed by the deceased/Chellapandi. It is equally true that steps were not taken by the plaintiff for having the matter referred for the opinion of the handwriting expert. Now the question arises as to whether the comparison done by the Trial Munsif is illegal.

9.Obviously, Section 73 of the Indian Evidence Act confers jurisdiction on the Court to compare any disputed signature with the admitted one. Section 73 of the Indian Evidence Act reads as follows:-

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"73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person."

10.A learned Judge of this Court vide judgment dated 28.04.2015 in S.A.No.356 of 2009 (Thirumuruga Ramalingam Vs. Mohmed Hanifa) had held as follows:-

"9. These provisions have been subject matter of several decisions of this Court. No doubt, a Court does not exceed its power under section 73, if it compares the disputed signatures with the admitted signature of the party so as to reach its own conclusions. Though there is no legal bar to the Judge using his own eyes, to compare the disputed signatures without the aid of an handwriting expert, the Judge should hesitate to render his findings with regard to the identity of the handwriting. The reason is that such opinion forms the sheet anchor against a person whose signature is compared. Such venture by the first appellate Court to compare the signatures by itself does not mean that the Court had assumed the role of an expert. Section 73 of Evidence Act expressly enables the Court to compare the disputed signature. Such comparison of signature by an expert is not done by the parties, may be for the reason of ignorance or affordability. Then it becomes the duty of the Court to compare the signature and come to a conclusion. Thus the Court cannot avoid its responsibility in the absence of an expert opinion. If the opinion of an expert is available, it would aid the Court in proper adjudication of the matter. When the same is not available, the Court will have to seek guidance from its own experience and knowledge.

10. Therefore, when it is said that there is no bar to the Court to compare the disputed signature, it goes without saying that the Court can record the opinion or finding on such comparison after analysis of the same.



Where the Court finds that the disputed signatures and admitted signatures are clear and the Court is in a position to identify the characteristic of the signature, even in the absence of an expert opinion, the Court may record the finding on comparison."

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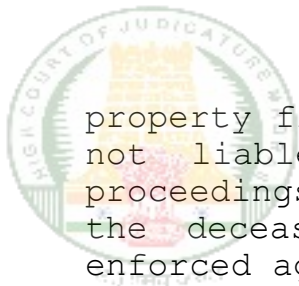
11. In the case on hand, the deceased/Chellapandi was originally set ex-parte. He filed I.A.No.162 of 1998 for setting aside the ex-parte judgment and decree. In the affidavit filed in support of the set aside petition, he had taken a specific ground that the signature attributed to him in the summons served on him is not that of him. He also filed his driving license for the purpose of showing his admitted signature. The driving license was marked in I.A.No.162 of 1998. With the said admitted signature, the signature of deceased/Chellapandi in Ex.A.1 was compared by the Court below.

12. Applying the ratio laid down in Thirumuruga Ramalingam Vs. Mohmed Hanifa, I hold that the Trial Munsif rightly discharged the judicial obligation cast on him by undertaking the task of comparison. The Trial Munsif had observed that even on a bare perusal, broad similarity between the signature found in the driving license of Chellapandi and the one in Ex.A.1 can be very easily noted. There is no reason to doubt this satisfaction arrived at by the learned Trial Munsif.

13. The next question that arises for consideration is whether non-examination of the attesting witnesses in Ex.A.1 is fatal to the plaintiff's case. It is well settled that a pro-note does not require attestation. When the Trial Munsif has come to a conclusion that the signature in Ex.A.1 is that of the deceased / Chellapandi, the omission to examine the attesting witnesses of Ex.A.1 pales into insignificance. Therefore, both substantial questions of law are answered in favour of the appellant.

14. I went through the contents of the written statement. There is absolutely no reason as to why the plaintiff should come forward with a case of this nature. The second defendant/D.W.1 would admit that the plaintiff is an illiterate lady. The defendant would allege that the plaintiff was running an unregistered chit business and that this was questioned by the deceased/Chellapandi. Angered by the same, the present suit has been instituted. This appears to be too farfetched a theory. I have no hesitation to come to the conclusion that the First Appellate Court clearly erred in reversing the well considered judgment of the Trial Court.

15. It is also necessary to note that the deceased/Chellapandi did not file any written statement along with the set aside petition. It was filed only in the year 2004 by the legal heirs of the original defendant. At this stage, the learned counsel for the respondents would point out that they have not inherited any



property from the deceased/Chellapandi and that therefore, they are not liable. This issue can be gone into only in execution proceedings. If the respondents have not inherited anything from the deceased/Chellapandi, obviously, the suit decree cannot be enforced against the respondents.

16. With these observations, the judgment and decree passed by the First Appellate Court is set aside and the Judgment and decree passed by the Trial Court is restored. The second appeal stands allowed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

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:

1. The Second Additional Sub Judge,
Tirunelveli.

2. The Second Additional District Munsif,
Tirunelveli.

3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

+1 CC to M/s.UMA RAMANATHAN, Advocate (SR-16096[F] dated 16/04/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-16211[F] dated 17/04/2021)

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