



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.575 of 2007

S.Sivasubramanian

... Plaintiff/Respondent/Appellant

vs.

R.Muthukutty (Died)

... Defendant/Appellant/Respondent

2.M.Padmamani

3,M.Duraiarajalingam

4.M.Vijaya Arunkumar

5.M.Lingeswaram

6.M.Lakshmi Mahima

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree of the Principal Sub Judge, Tenkasi, dated 03.11.2006 in A.S.No.32 of 2006 reversing the Judgment and Decree of the Principal District Munsif Court, Tenkasi in O.S.No.222 of 2004, dated 09.06.2004.

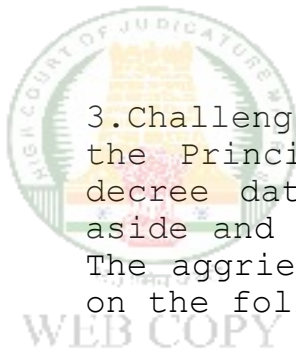
For Appellant : Mr.T.S.R.Venkatramana

For R2 to R6 : Mr.S.A.Ajmal Khan

JUDGMENT

The plaintiff in O.S No.222 of 2004 on the file of the Principal District Munsif Court, Tenkasi is the appellant in this second appeal.

2.The suit was filed for recovering a sum of Rs.86,100/- from the defendant R.Muthukutty. According to the plaintiff, the defendant borrowed a sum of Rs.70,000/- on 01.08.2000 and executed Ex.A1 pro-note. The defendant failed to pay interest. He also did not repay the principal amount. Hence, the plaintiff issued Ex.A2 suit notice dated 08.06.2002. Though it was received by the defendant, he did not comply with the demand set out therein. Hence, the plaintiff filed the said suit on 03.07.2002. The defendant filed written statement controverting the plaintiff's averments. The trial court framed the necessary issues. The plaintiff examined himself as P.W.1 and one of the attestors as P.W.2 and marked Ex.A1 pro-note, Ex.A2-suit notice and Ex.A3-acknowledgment card. The defendant examined himself as D.W.1 and one Thangasamy as D.W.2 and marked Ex.B1 to Ex.B9. Courts-exhibits 1 to 6 were also marked following the steps taken by the defendant. The learned trial Judge vide judgment and decree dated 09.06.2004 decreed the suit as prayed for.



3.Challenging the same, the defendant filed A.S.No.32 of 2006 before the Principal Sub Court, Tenkasi. By the impugned judgment and decree dated 03.11.2006, the decision of the trial Court was set aside and the appeal was allowed and the suit came to be dismissed. The aggrieved plaintiff filed this second appeal which was admitted on the following substantial question of law:-

"Whether the comparison made by the first appellate court with regard to Ex.A1 is correct?"

During the pendency of this second appeal, the defendant/respondent R.Muthukutty passed away and his legal heirs were brought on record.

4.The learned counsel appearing for the appellant submitted that the plaintiff had proved the due execution of Ex.A1 by examining one of the attestors of the document. Since the defendant had received Ex.A2-notice, comparison of the signature found in Ex.A1 with the one in Ex.A3 would show that Ex.A1 was very much executed by the defendant. But the first appellate court erroneously compared the disputed signature in Ex.A1 with the admitted signatures found in acquittance registers that were marked as court-exhibits. According to the learned counsel, signature put by a person would vary depending upon situation and circumstances. He submitted that the court below ought not to have relied on Ex.B3 and Ex.B4 when there is no reference to these exhibits in the written statement. In the absence of pleadings, the first appellate court was not justified in looking into those documents. He also contended that the attestor's credibility cannot be doubted. This is because though he was a tenant under the plaintiff, he hailed from the very same village and was also a relative. The learned counsel reiterated all the contentions set out in the memorandum of grounds and called upon the court to answer the substantial question of law in favour of the appellant and set aside the impugned judgment and decree and restore the decision of the trial court.

5.Per contra, the learned counsel appearing for the respondents submitted that the first appellate court had given solid reasons to hold that Ex.A1 pro-note was not executed by the defendant. He took me through the entire judgment and submitted that it does not call for any interference.

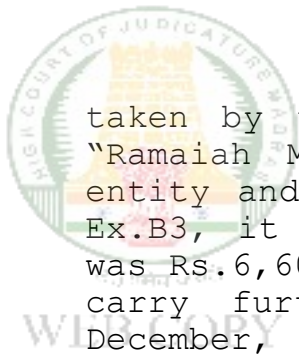
6.I carefully considered the rival contentions and went through the evidence on record. The defendant in the written statement had categorized Ex.A1 as a concocted document. Therefore, the signature attributed to the defendant in Ex.A1 became a disputed signature. It had to be compared with his admitted signature. If neither of the parties failed to take steps to obtain expert opinion, under Section 73 of the Indian Evidence Act, 1872 the court may undertake the task of comparing the disputed signature with an admitted signature. But then, a disputed signature cannot be compared with any admitted signature. One does not sign in the same style and manner at all



times. When signing a cheque, one is careful because it can be returned by the banker with the endorsement "signature differs". To provide another illustration, counsel may exhibit care while signing the vakalat indicating acceptance. It is said that the legendary lawyer Shri.V.L.Ethiraj would sign the vakalat/memo of appearance only during auspicious hours! But when giving "no objection" in response to a client's demand for change of vakalat, counsel may simply scribble something that may pass for a signature. While signing a copy application form or when making endorsements such as "true copy", "noted" or "received" on the case papers, one's signature is bound to be casual or even careless. Comparison of the disputed signature cannot be made with admitted signatures found in such documents. In the case on hand, the first appellate court had compared the disputed signature found in Ex.A1 with the admitted signatures found in the acquittance rolls (court-exhibits.1,2,4,5 & 6). For the reasons mentioned above, I hold that such a comparison was intrinsically improper. The first appellate court ought to have posed a question as to whether they were fit to be taken up for comparison. Without satisfying itself on that score, the task of comparison cannot be made mechanically with an admitted signature. I therefore answer the substantial question of law in favour of the appellant.

7.The institution of the suit was preceded by Ex.A2-notice. Ex.A3 is the acknowledgement card which had been signed by the defendant. I compared the defendant's signature in Ex.A3 with the disputed signature in Ex.A1 and I could see that they tally. Though I have answered the substantial question of law in favour of the appellant and I have also found that the defendant had signed Ex.A1 pro-note, that may still not be sufficient to upset the impugned judgment passed by the first appellate court.

8.The defendant had admitted that he had borrowed a sum of Rs.20,000/- from the plaintiff in November 1999 and executed a pro-note. He pleaded that the plaintiff was pressurizing him to pay Rs.1100/- as monthly interest. The plaintiff used to charge exorbitant interest @ 5.50% per month. His categorical defence was that apart from the said transaction, he had no other transaction with the plaintiff. He denied the suit transaction in toto. When the plaintiff was in the witness box, he was confronted with Ex.B3 and Ex.B4 which are slips containing account-statements. The plaintiff admitted that the handwriting found in those two documents were very much his. In other words, the plaintiff admitted that he was the author of those two documents. They pertain to one "R.M". The name of the defendant is "R.Muthu Kutty". The plaintiff claimed that these two documents did not relate to the defendant but to one Ramaiah Murugan. The defendant specifically challenged the plaintiff that there was no such Ramaiah Murugan as claimed by him. The plaintiff did not examine the so-called Ramaiah Murugan. Had the plaintiff really had such transaction as claimed by him, it would have been difficult to have him examined. No such effort was



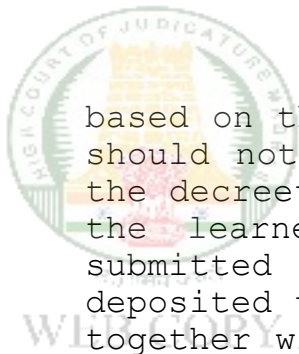
taken by the plaintiff in this regard. Therefore, I hold that "Ramaiah Murugan" referred to by the plaintiff is a fictitious entity and that Ex.B3 and B4 relate only to the defendant. In Ex.B3, it is mentioned that the balance interest as on 01.05.2000 was Rs.6,600/- and that if monthly interest was not paid, that would carry further interest. Ex.B4 states that for the months of December, January, February, March, April and May, the interest payable was Rs.6,600/- (1100 X 6). For the months of June and July also, there was a similar monthly levy of Rs.1,100/-. The first appellate court had given a categorical finding that the contents of Ex.B3 and Ex.B4 clearly probablised the defence. In my view, the said finding is well founded.

9.After a careful perusal of the entire evidence on record, I come to the conclusion that the defendant had borrowed a sum of Rs.20,000/- from the plaintiff. Ex.A1 pro-note was very much signed by the defendant. It is obvious that the plaintiff had been levying exorbitant interest on the defendant. Since the defendant failed to meet the said demand, the plaintiff had filled up the signed blank documents and on that basis, filed the instant suit. The presumption raised against the defendant under Section 118 of the Negotiable Instruments Act had been rebutted by the defendant and I hold that Ex.A1 though signed by the defendant was not executed by him.

10.In the normal course, the result should have been the dismissal of the second appeal. However, I proposed to adopt the approach fashioned by the Hon'ble Supreme Court in the decision reported in AIR 1951 SC 177 (Srinivas Ram Kumar v. Mahabir Prasad). In Para 9, it was held as follows :

"...The rule undoubtedly is that the court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in the written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings."

The defendant admitted that he had borrowed a sum of Rs.20,000/- from the plaintiff. It was not his case that it was returned. When I indicated that a decree will be passed in favour of the appellant



based on the admitted case of the defendant and I also felt that he should not be driven to filing an execution petition for realizing the decretal amount from the legal heirs of the deceased defendant, the learned counsel for the respondents took instructions and submitted that the appellant can withdraw the amount already deposited to the credit of E.P No.152 of 2004 before the trial court together with accrued interest. The respondents would also make an additional payment of Rs.25,000/- to the plaintiff.

11.In view of the undertaking given by the respondents before me, the appellant is permitted to withdraw the amount deposited by the defendant to the credit of E.P.No.152 of 2004 before the trial Court together with accrued interest. The respondents are also directed to pay a further sum of Rs.25,000/- to the plaintiff. The counsel for the respondents submitted that he would make the payment directly to the learned counsel for the appellant within a period of two weeks from the date of receipt of a copy of this order. He is permitted to do so. The learned counsel for the appellant submitted that if he receives cash payment, he would send a cheque directly to the appellant.

12.The Second Appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS II)

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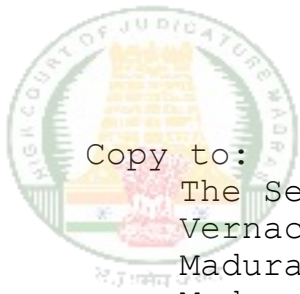
Sub Assistant Registrar(CS)

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 Principal Sub Judge,
Tenkasi.

2.The Principal District Munsif,
Tenkasi.



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Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

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+1 CC to M/s.T.S.R.VENKAT RAMANA, Advocate (SR-19397[F] dated 16/06/2021)

+1 CC to M/s.S.A.AJMAL KHAN, Advocate (SR-19457[F] dated 17/06/2021)

S.A. (MD) No. 575 of 2007

15.06.2021

RS (24.09.2021) 6P 7C