



THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.209 of 2012

and

M.P.(MD)No.1 of 2012

Velmurugan

... Appellant/Appellant/Defendant

-Vs-

Nagaraj

...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 28.02.2011 made in A.S.No.160 of 2007 on the file of the Additional Subordinate Judge, Dindigul confirming the Judgment and decree dated 28.12.2005 in O.S.No.1518 of 2004 on the file of the District Munsif Court, Dindigul.

For Appellant : Mr.J.Anandkumar

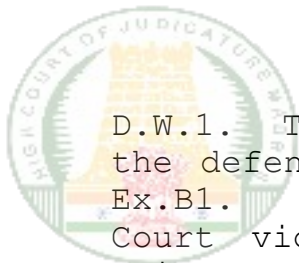
For Respondent : Mr.H.Lakshmi Shankar

JUDGMENT

The defendant in O.S.No.1518 of 2004 on the file of the Principal District Munsif Court, Dindigul is the appellant in this second appeal. The respondent herein Thiru.Nagaraj is the plaintiff.

2.The case of the plaintiff is as follows:-

The defendant approached the plaintiff on 24.12.2001 and borrowed a sum of Rs.50,000 after executing Ex.A1-pro-note. The defendant agreed to repay the said amount with interest at the rate of 12% per annum. The defendant did not pay any interest. Nor he repaid the principal amount. The demands made by the plaintiff in person and through other persons were in vain. Therefore, for recovering a sum of Rs.67,000/-which includes the principal loan amount and the accrued interest, the plaintiff filed the aforesaid suit. The defendant denied the plaintiff allegations in toto. He denied having borrowed the amount of Rs.50,000/- from the plaintiff. He questioned the genuineness of the promissory note relied on by the plaintiff. The defendant contended that there was an enmity between the defendant and one Vijayaraj in connection with a land dispute. The plaintiff had filed the suit at the instance of the said Vijayaraj by fabricating the suit promissory note. The learned trial Munsif framed the necessary issues. The plaintiff examined himself as P.W.1 and one Subbiah who is said to be the scribe as well as the attesting witness was examined as P.W.2. The promissory note was marked as Ex.A1. The defendant examined himself as



D.W.1. The sale agreement dated 31.05.2004 entered into between the defendant and the said Vijayaraj and another was marked as Ex.B1. After considering the evidence on record, the trial Court vide Judgment and decree dated 26.12.2005 decreed the suit. Aggrieved by the same, the appellant filed A.S.No.160 of 2007 before the Additional Sub Court, Dindigul. By Judgment and decree dated 28.02.2011, the first Appellate Court dismissed the appeal. Challenging the same, this second appeal came to be filed.

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

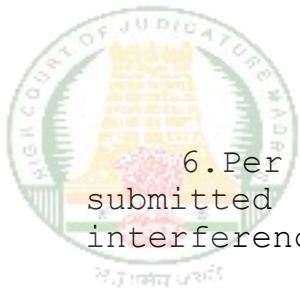
"(a) Whether the Courts below are correct in law in holding that Ex.A.1 was proved by the respondent?

(b) Whether the first Appellate Court is right in comparing the signature in Ex.A.1 without following the law laid down in 2006(4) CTC 850 by this Court?

(c) Whether the Courts below are right in shifting the burden to the appellant herein, when admittedly respondent did not discharge the burden?"

4.Heard the learned counsel on either side.

5.The learned counsel appearing for the appellant submitted that vide Ex.B1, the defendant had entered into an agreement with one Vijayaraj. The sale agreement however could not culminate into a proper sale on account of the attachment effected in respect of the subject matter of the agreement at the instance of the third party. Though the agreement was eventually cancelled that had given raise to a strained relationship between the said Vijayaraj and the defendant. The said Vijaya Raj in order to wreck vengeance on the defendant, had conspired with the plaintiff Nagaraj and fabricated the suit promissory note and on that basis, the present suit was instituted. He would point out that when the genuineness of the suit pro-note was challenged, the burden to prove the same lay squarely on the plaintiff. The plaintiff did not take any step for referring the suit pro-note for opinion of the hand writing expert. The Court below ought not to have undertaken the task of comparison of the disputed signature appearing in Ex.A1 with the admitted signature appearing in Ex.B1. He also would point out that the Courts below had erroneously cast the burden on the appellant herein. The burden to prove the due execution of the pro-note and to show that the signature appearing in suit pro-note is that of the defendant lay only on the plaintiff and this onus can never shift to the defendant. His contention is that the Courts below had misdirected themselves in law. He further submitted that all the three substantial questions of law deserve to be answered in favour of the appellant. He pressed for setting aside the impugned Judgment and decree and for allowing the second appeal.



6.Per contra, the learned counsel appearing for the respondent submitted that the impugned Judgment do not warrant any interference. He pressed for dismissal of the second appeal.

7.I carefully considered the rival contentions and went through the evidence on record. It is true that the defendant had questioned the genuineness of Ex.A1-pro-note. Therefore, the burden to prove the same to its due execution lay only on the plaintiff. The plaintiff had examined himself as witness. P.W.2-Subbiah was not only a scribe but also the attesting witness. The plaintiff had not taken steps for referring the suit pro-note for the opinion of the hand writing expert. However, the learned trial Munsif undertaken the task of comparison on his own. I am clearly of the view that the trial Court acted well within its jurisdiction by undertaking the task of comparison.

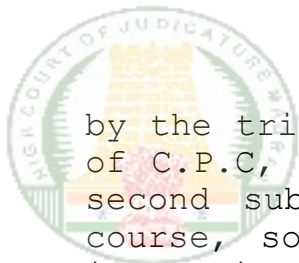
8.As rightly pointed out by the learned counsel for the respondent, Section 73 of the Evidence Act, 1872, clearly authorizes the trial Court to do so. Section 73 of the Indian Evidence Act, 1872 reads as follows:-

"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."

9.The learned counsel appearing for the respondent also draws my attention to the decision of the Madras High Court reported in **(1960) 1 MLJ 142 (Vazir Begum Ammal and another Vs. Seth Tholaram)**

10.I am of the view that the above decision furnish a complete answer to the contentions advanced by the learned counsel appearing for the appellant. Ex.B1-sale agreement was projected only by the defendant. The admitted signature of the defendant is very much appearing in Ex.B1. The learned trial Munsif compared the disputed signature in the suit pro-note only with the6 admitted signature in Ex.B1. Both are fairly contemporaneous documents. The learned trial Munsif, after perusal, had given a categorical answer that both the signatures are that of the defendant. The first Appellate Court did not find it necessary to interfere with the said finding of fact. The Courts below have concurrently found that the appellant had executed the suit promissory note. When the plaintiff had examined himself and also the attesting witness and the signature in the suit promissory note has been found to be that of the defendant



by the trial Court in exercise of my jurisdiction under Section 100 of C.P.C, an interference is not possible. I answer the first and second substantial questions of law against the appellant. Of-course, some of the observations made by the Courts below giving impression as if the defendant is having the burden are clearly incorrect. The third substantial question of law is answered in favour of the appellant. But then, that would not make any difference to the eventual result. Those observations are more in the nature of passing remarks and the reasoning of the Courts below is not anchored on such observations. In view of the my answer to the first and second substantial questions of law, I do not find any ground to interfere. The second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Additional Subordinate Judge, Dindigul.

2.The District Munsif Court, Dindigul.

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

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-17988[F] dated 29/04/2021)

S.A.(MD)No.209 of 2012

and

M.P.(MD)No.1 of 2012

28.04.2021

KK(28.06.2021) 4P 6C