



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD)No.709 of 2012

and

M.P. (MD)No. 2 of 2012

and

M.P (MD)No.1 of 2011

WEB COPY

- 1.Aaraayee
- 2.Anbalagan
- 3.Kalaiselvi
- 4.Kalaiyarasi
- 5.Chitra

6.Minor Muniyasamy

7.Minor Backiyaraj

(Minors rep. By their Mother and Guardian P.Aarayee)

... Appellants/Respondents/Defendants 2 to 8

-Vs-

Vasantha

...Respondent/Appellant/Plaintiff

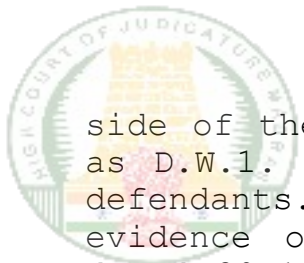
PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 26.11.2008 made in A.S.No.220 of 2005 on the file of the Additional Sub Court, Kumbakonam reversing the Judgment and Decree dated 30.11.2004 made in O.S.No.100 of 2002 on the file of the Principal District Munsif Court, Kumbakonam.

For Appellants : Mr.R.Rajaramani

For Respondent : Mr.Anandan

JUDGMENT

The defendants in O.S.No.100/2002 on the file of the Principal District Munsif Court, Kumbakonam, are the appellants in this second appeal. The suit was instituted by the respondent R.Vasantha. The case of the plaintiff is that Poovandi and his wife Aaraayee borrowed a sum of Rs.10,000/- on 08.12.1990 and executed Ex.A1 promissory note dated 08.12.1990. They had agreed to repay the loan with interest at 12% per annum. The borrowers did not clear the loan liability, even though a number of demands were made on behalf of the plaintiff. Therefore, the plaintiff had to issue notice-Ex.A2 dated 18.02.1991. Though both Poovandi as well as Aaraayee received the notices, no reply was sent. Since the demand for payment was not complied with, the plaintiff filed the suit on 07.12.1991 before the District Munsif Court, Kumbakonam. It was later renumbered as O.S.No.100 of 2002. During the pendency of the suit, Poovandi passed away and his children was brought on record. The defendants denied the case of the plaintiff in toto and categorized Ex.A1 as fabricated document. Vasantha examined herself as P.W.1 and one of the attestors namely Gnanaprakash was examined as P.W.2. On the



side of the defendants, D3-Anbalagan S/o. Poovandi examined himself as D.W.1. No documentary evidence was adduced on the side of the defendants. The learned trial Munsif, after consideration of the evidence on record, dismissed the suit vide Judgment and Decree dated 30.11.2004. Aggrieved by the dismissal of the suit, the plaintiff filed A.S.No.220/2005 before the Additional Sub Court, Kumbakonam. By Judgment and Decree dated 26.01.2008, the Judgment and Decree passed by the trial Court was set aside and the appeal was allowed. The defendants were directed to pay the suit claim with interest. Challenging the same, this second appeal came to be filed. The second appeal was admitted on the following substantial questions of law.

"1.Whether the lower Appellate Court is correct in decreeing the suit when the plaintiff did not get the signatures compared by a handwriting expert as contemplated under Section 45 of the Evidence Act? And

2.Whether the discrepancy in the date of attestation is a material alteration in the suit pro-note?"

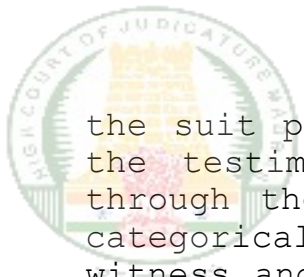
3.Heard the learned counsel on either side.

4.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds and submitted that the questions of law raised in this appeal deserve to be answered in favour of the appellants and he pressed for allowing the appeal by setting aside the impugned Judgment and decree passed by the First Appellate Court.

5.Per contra, the learned counsel for the respondent submitted that the impugned Judgment of the First Appellate Court does not call for any interference. He pressed for dismissal of the second appeal.

6.I carefully considered the rival contentions and went through the evidence on record. As already noted, O.S.No.100 of 2002 on the file of the Principal District Munsif Court, Kumbakonam, is a suit for recovery of money. It was instituted on the strength of Ex.A1 promissory note dated 08.12.1990. In the promissory note, one finds the signature of Poovandi and there is also the thumb impression of one Aarayee. The case of the plaintiff is that the original defendant Poovandi and his wife Arayee-D2 had executed the suit pro-note. But the defence is that Ex.A1 is a fabricated document. The plaintiff had not taken any step for referring Ex.A1 for comparison by the hand writing expert as far as the signature of Poovandi is concerned. Obviously, no Court can come to any conclusion as regards thumb impression. The trial Court had also noted that the signature found in Ex.A3-acknowledgement card differs from the one found in Ex.A1.

7.The only question that arises for my consideration is whether



the suit pro-note can be said to have been proved in the light of the testimony of P.W.2-Gnanaprakasam attesting witness. I went through the testimony of the attesting witness. Gnanaprakasam had categorically deposed that one Nagamuthu signed as attesting witness and he affixed his signature as attesting witness and only thereafter, scribe affixed his signature. Nagamuthu is said to have passed away, by the time, the case was taken up for trial. A mere look at Ex.A1 would show that Nagamuthu had signed in Ex.A1-pro-note on 15.01.1991. The date attributed to Ex.A1-pro-note is 08.12.1990. That is why, when the second appeal was admitted, one of the substantial questions of law formulated was whether the discrepancy in the date of attestation is a material alteration in the suit pro-note. Whether it is a material alteration or not need not be gone into for a moment. P.W.2-Gnanaprakasam had stated that he affixed his signature after the attestation by Nagamuthu, When it is seen that Nagamuthu had attested only on 15.01.1991, the entire case of the plaintiff falls to the ground. This vital aspect of the matter was not taken note of by the first Appellate Court. Therefore, the suit pro-note cannot be said to have been proved by the testimony of the witnesses examined on the side of the plaintiff. Only the expert opinion could have said shed light. The jurisdiction under Section 73 of the Indian Evidence Act could have been invoked to find out if the signature attributed to Poovandi was actually his. But the genuineness of thumb impression could have been established only after obtaining expert opinion.

8.In this view of the matter, the impugned Judgment passed by the First Appellate Court is set aside by answering the first substantial question of law in favour of the appellant. The Judgment and decree passed by the trial Court is restored. The second appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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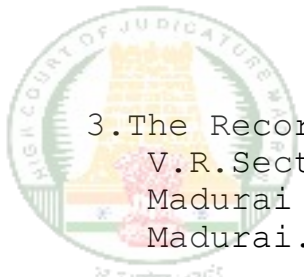
/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The Principal District Munsif, Kumbakonam.
- 2.The Additional Subordinate Judge, Kumbakonam.



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

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-17249[F] dated
23/04/2021)

Judgment made in
S.A.(MD)No.709 of 2012
and
M.P.(MD)No.1 of 2011
& M.P.(MD)No. 2 of 2012

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KK(08.07.2021) 4P 6C