



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.895 of 2011

1.K.Tamilselvi
2.K.Tamilanban
3.Minor K.Moovendhan ... Appellants
(Being represented by his mother and natural
guardian/first appellant)

Vs.

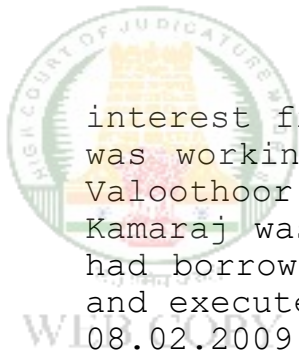
1.C.Mahalingam
2.The Correspondence,
Islam Primary School,
Valoothoor - 614 201.
3.The Additional Assistant,
Elementary Educational Officer,
(AAEEO), Papanasam Main Road, Papanasam.
4.The Treasury Officer,
Papanasam, Thanjavur District.
5.The District Collector,
Collector Office, Katarny Road,
Thanjavur. ... Respondents

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the decree and judgment passed in A.S.No.61 of 2010 dated 16.12.2010, on the file of the learned Appellate Tribunal / Additional Sub-Ordinate Court, Thanjavur, reversing the decree and judgment of the learned District Munsif, Thiruvaiyaru dated 15.04.2010 made in O.S.No.95 of 2009, dismissing the suit filed by the respondent / plaintiff.

For Appellants : Mr.S.Palani Velayutham
For R1 : Mr.K.Ramanathan
For R2 : No appearance
For R3 to R5 : Mr.R.Ragavendran,
Government Advocate.

JUDGEMENT

The defendants 1 to 3 in O.S.No.95 of 2009 on the file of the District Munsif Court, Thiruvaiyaru, are the appellants in this second appeal. The suit was instituted by the first respondent/Mahalingam for recovering a sum of Rs.50,000/- with

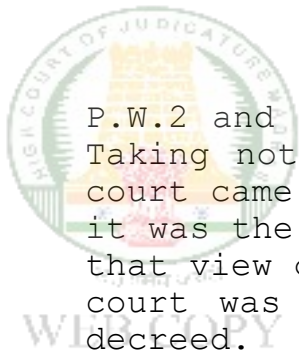


interest from the appellants herein. According to the plaintiff, he was working as the Headmaster of Shaukathul Islam Primary School, Valoothoor and that the husband of the first defendant namely., Kamaraj was working secondary grade assistant in the said school. He had borrowed a sum of Rs.50,000/- from the plaintiff on 24.01.2009 and executed Ex.A1/promissory note. The said Kamaraj passed away on 08.02.2009 due to heart attack leaving behind the appellants herein as his surviving legal heirs. The plaintiff issued Ex.A3/notice dated 24.04.2009 calling upon the appellants herein to clear the loan liability. Though the notice was received, there was no reply to the same. Left with no other option, the plaintiff filed the said suit.

2.The plaintiff examined himself as P.W.1 and the first attester/Balasubramanian was examined as P.W.2 while the scribe/Karunakara Tamilalagan was examined as P.W.3. Exs.A1 to A11 were marked on the plaintiff's side. The first appellant examined herself as D.W.1 and marked Ex.B1 on her side.

3.The trial court by judgment and decree dated 15.04.2010 dismissed the suit. The trial court gave a finding that when according to the plaintiff, he retired on 31.05.2009, he could not have given a sum of Rs.50,000/- from out of his retirement benefit amounts. It was further held that on a comparison of the signature of Kamaraj found in Ex.A1 with his signatures in the admitted documents namely., acquittance register/Exs.A8 to Ex.A11, there are certain differences and that therefore, it has not been established that Ex.A1 was executed by the deceased/Kamaraj. Aggrieved by the same, the plaintiff filed A.S.No.61 of 2010 before the Additional Sub Court, Thanjavur. Before the first appellate court, the plaintiff marked Exs.A13 to A18, which are official proceedings. The plaintiff established that even though he reached the age of superannuation on 31.10.2008, since the date of superannuation fell in the middle of the academic year, being a teacher/Headmaster, he was entitled to be re-employed till the end of the academic year. The first appellate court, therefore, came to the conclusion that the plaintiff had lent the suit amount from out of his retirement benefits. The first appellate court also undertook the task of comparison of the signature in Ex.A1 with the signatures found in Exs.A8 to A11 and came to the conclusion and it was the deceased/Kamaraj who executed Ex.A1. In paragraph No.25 of its judgement, the first appellate court gave solid and convincing reasons for coming to the conclusion that it was the deceased/Kamaraj, who had executed Ex.A1/promissory note.

4.The first appellate court also noted that the plaintiff apart from examining himself as P.W.1, had also examined the attester as well as the scribe of the document. The first appellate court further gave a finding that P.W.2/Balasubramanian is figuring as a surety in Ex.B1/loan application. From this circumstance, the first appellate court came to the conclusion that the relationship between



P.W.2 and that of the family of deceased/Kamaraj was quite cordial. Taking note of all the relevant circumstances, the first appellate court came to the conclusion that the plaintiff had established that it was the deceased/Kamaraj, who executed Ex.A1/promissory note. In that view of the matter, the judgment and decree passed by the trial court was set aside and the appeal was allowed and the suit was decreed. The first appellate court directed the contesting defendants (D1 to D3) to pay the plaintiff a sum of Rs.51,933/- together with interest at the rate of 12% from the date of plaint till the date of decree and at the rate of 6% from the date of decree till the date of realization. Questioning the same, this second appeal has been filed.

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

"1.Whether the decree and judgment passed by the lower appellate court by reversing the decree and judgment of the trial court contradicting the settled proposition of law is legally sustainable or not? and

2.Whether the lower appellate court is legally and factually correct in controverting the legal proposition enunciated under Section 73 of Evidence Act for scrutinizing the signature found in Exs.A8 to A11 and consequently the decree and judgment passed by shifting the burden of proof on the defendant is legally sustainable or not?"

6.The learned counsel appearing for the appellants reiterated the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and allow the appeal by setting aside the impugned judgment of the first appellate court.

7.Per contra, the learned counsel for the plaintiff/first respondent submitted that the impugned judgment and decree passed by the first appellate court does not call for any interference.

8.I carefully considered the rival contentions and went through the evidence on record. The only question that arises for my consideration is whether the jurisdiction under Section 73 of the Evidence Act has been properly exercised. It is well settled that if the parties do not take any step for referring the matter for expert opinion, then the Court is having the duty to undertake a task of comparison by exercising the power under Section 73 of Evidence Act. A learned Judge of this Court In **Thirumuruga Ramalingam vs. Mohamed Hanifa (2015 SCC OnLine Mad 440)** held as follows :

"9.These provisions have been subject matter of several decisions of this Court. No doubt, a Court



WEB COPY

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."

9. In the case on hand, the trial court had rightly undertaken the said task. But then, it came to the conclusion that the signature found in Ex.A1 differs from the signature found in acquittance register of the deceased/Kamaraj. The first appeal is a continuation of original proceedings. The first appellate court is the last court of fact. It was not only entitled to but was duty bound to re-appreciate all the question of facts as well as law. Exercising its legitimate jurisdiction as the appellate court, the first appellate court in the case on hand had also undertaken the very same task and came to the conclusion that signature found in Ex.A1 is very much that of the deceased/Kamaraj. I have carefully gone through the impugned judgement of the first appellate court and I am satisfied that the first appellate court has not anywhere gone wrong in coming to the conclusion that the signature found in Ex.A1 is that of the deceased/Kamaraj. Therefore, I have no hesitation to answer the aforesaid substantial questions of law against the appellants. I do not find any ground to interfere.

10. At this stage, the learned Government Advocate strongly submitted that the plaintiff needlessly impleaded the Education Department as well as the District Collector. As a result, the Government had to incur expense. It had to pay appearance fee to the Government counsel. When it is impleaded as a party, Government has to enter appearance through Government Pleader. It cannot remain ex-parte. No relief is claimed against the department. I



wanted to know from the learned counsel appearing for the first respondent as to why the department was made as a party. The learned counsel insisted that since the plaintiff wanted to establish certain factual aspects by summoning official documents, the department had to be impleaded as a defendant. I am not convinced by the said explanation. To prove that the signature was that of the deceased/Kamaraj, of course, the acquittance register will have to be marked. But then, they can very well be summoned even without impleading the department as a party. In my view, impleading the department was absolutely unnecessary and vexatious. Therefore, even while sustaining the impugned judgment of the first appellate court, I direct the first respondent to pay cost of Rs.5,000/- to respondents 3 to 5.

11.With this direction, the second appeal is dismissed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ias

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 Additional Subordinate Court,
Thanjavur.

2.The District Munsif Court,
Thiruvaiyaru.

Copy to:

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

+1 CC to M/s.SPL GP (SR-19426[F] dated 16/06/2021)

S.A. (MD)No.895 of 2011

15.06.2021

PM(CO)

TR(07.07.2021) 5P 6C