



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.550 of 2013

and

M.P. (MD)No.1 of 2013

Sucila

... Appellant/Respondent/Plaintiff

Vs.

Pauline @ Rajeshwari

... Respondent/Appellant/Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 21.12.2012 rendered in A.S.No.31 of 2012 on the file of the Subordinate Judge, Thoothukudi, reversing the judgment and decree, dated 20.10.2011 rendered in O.S.No.476 of 2005, on the file of the Principal District Munsif Court, Thoothukudi.

For Appellant : Mrs.Jessi Jeeva Priya

For Respondent : Mr.M.P.Senthil

JUDGEMENT

The appellant in this second appeal was the plaintiff in O.S.No.476 of 2005 on the file of the Principal District Munsif, Thoothukudi. The suit was instituted for recovering a sum of Rs.71,350/- with interest. The suit was laid on the strength of Ex.A1/promissory note, alleged to have been executed by the respondent herein. The defendant filed her written statement denying the suit transaction as well as the genuineness of the promissory note. The signature ascribed to the defendant was denied as forgery. The plaintiff examined herself as P.W.1. Muthulatha, who is one of the attesting witness in Ex.A1 was examined as P.W.2. The defendant examined herself as D.W.1. The handwriting expert/Jeya Devi was examined as D.W.2 and Ex.B1 is her expert opinion.

2.The learned Trial Munsif by judgment and decree dated 20.10.2011 decreed the suit as prayed for. Aggrieved by the same, the defendant filed A.S.No.31 of 2012 before the Sub Court, Thoothukudi. Vide judgment and decree dated 21.12.2012, the first



reversed. Challenging the same, this second appeal has been filed.

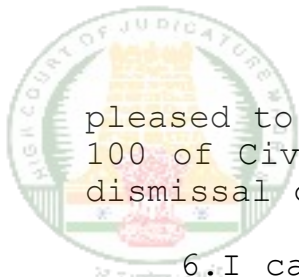
3.The second appeal was admitted on the following substantial questions of law:-

"(1) Whether the appellant/plaintiff proved that the suit promissory note is true and valid document as prescribed under the provisions of law?

(2) Whether the decree and judgment passed by the trial Court is perverse, since no reason was given for its disagreement with the findings of the trial Court?"

4.The learned counsel appearing for the appellant contended that the defendant had borrowed a sum of Rs.50,000/- from the plaintiff on 27.10.2012 and executed Ex.A1/promissory note on the same date. In the said Ex.A1/promissory note, the husband of the defendant and P.W.2/Muthulatha signed as the attesting witnesses. The defendant agreed to pay interest promptly. However, only for six months, the interest was paid and thereafter, the defendant did not pay any interest. In spite of repeated demands from the plaintiff, the principal amount was not repaid. Therefore, the plaintiff filed O.S.No.476 of 2005. Though expert opinion (Ex.B1) had undermined the case of the plaintiff, the learned counsel for the appellant would contend that any opinion evidence is not conclusive or binding on the Court. It is only a relevant piece of evidence and the Court may come to an independent conclusion in favour of the plaintiff, notwithstanding the adverse opinion of the expert. She would also point out that Trial Munsif adopted the correct approach and that the Appellate Court without assigning any proper or convincing reason reversed the judgment of the Trial Munsif. She would also point out that the plaintiff had filed two other money suits against the defendant, apart from the present suit. She would contend that though all the three suits were decreed and only the impugned judgment and decree passed by the Trial Munsif was put to challenge in the appeal. She pointedly drew my attention to the reason given by the learned Trial Munsif in this regard. The standard defence taken by the respondent herein in all the three written statements was one of denial of the suit transactions and also denial of signatures attributed to her in the promissory notes. The learned counsel also pointed out that the Trial Munsif had specifically observed that the defendant was paying the decreed amount in installments in the execution proceedings. She therefore wanted me to disregard the defence taken in the present second appeal.

5.Per contra, the learned counsel appearing for the respondent submitted that though this second appeal has been admitted by framing two substantial questions of law, a careful perusal of the evidence would show that that this second appeal does not involve any substantial question of law. The First Appellate Court is the final Court on facts and that therefore, this Court may not be



pleased to interfere while exercising its jurisdiction under Section 100 of Civil Procedure Code on a question of fact. He pressed for dismissal of the second appeal.

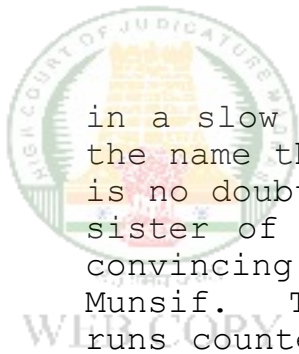
6.I carefully considered the rival contentions and went through the evidence on record.

7.The learned Trial Munsif in paragraph 8 of the judgment had been swayed by the fact that the defendant had taken the very same defence as in O.S.No.471 of 2005 and that the defence was rejected in the said suit and that it came to be decreed and that the defendant was satisfying the decree in the execution proceedings. The reason ascribed by the Trial Munsif can cut both ways. The fact that the defendant had accepted the decree in O.S.No.471 of 2005 on the file of the Principal District Munsif, Thoothukudi and was paying the decreed amount in installments cannot by itself lead to the conclusion that the defence taken in O.S.No.476 of 2005 on the file of the Principal District Munsif, Thoothukudi, is false.

8.As rightly pointed out by the learned counsel for the defendant, since the signatures of the defendant in all the three promissory notes was disputed, they were referred for comparison to, D.W.2/Jaya Devi, handwriting expert. The very same expert gave opinion adverse to the respondent in the other two suits. The plaintiff who accepted the opinion of the expert in other two suits wants to dispute the expert opinion in the present suit proceedings.

9.The first appeal is a continuation of the original proceedings. In the case on hand, the First Appellate Court has given solid and convincing reasons as to why, Ex.B1/expert opinion given by D.W.2 has to be accepted. D.W.2 had compared the disputed signatures with the admitted signatures and gave as many as 16 reasons for her opinion that the disputed signature was not made by the person, who had made the admitted signature. The learned counsel for the appellant would point out that even if the admitted signatures are compared among themselves, one can very easily find out a variation. Of course, there is some substance in this contention advanced by the learned counsel for the appellant. But then, I am only exercising jurisdiction under Section 100 of Civil Procedure Code and therefore, I do not want to interfere on a question of fact.

10.When signature found in the suit promissory note is disputed, the burden is entirely on the plaintiff to establish that the promissory note was executed only by the respondent herein. The expert opinion had gone against the plaintiff. The learned counsel for the respondent wanted me to have a look at the suit promissory note. I found that one letter in the name of the defendant is missing (t). Of course, the learned counsel for the appellant would point out that defendant had admitted in her deposition that she is



in a slow manner. Be that as it may, the omission of one letter in the name the suit promissory note goes against the plaintiff. P.W.2 is no doubt an attesting witness but then, she happens to be the own sister of the plaintiff. The Appellate Court has given solid and convincing reasons for differing with the decision of the Trial Munsif. The second question of law framed in this second appeal runs counter to the record. As regards, the first question of law, as rightly pointed out by the learned counsel respondent, it does not give rise to any substantial question of law and it is pure question of fact. Therefore, I am not inclined to interfere with the impugned judgment and decree. The second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T & P)

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/ /2021

Sub Assistant Registrar(CS)

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To:

- 1.The Subordinate Court, Thoothukudi.
- 2.The Principal District Munsif, Thoothukudi.

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+1 CC to M/s.M.P.SENTHIL, Advocate (SR-15886[F] dated 15/04/2021)

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PM(CO)

TR(19.05.2021) 4P 7C