



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.698 of 2013

and

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

WEB COPY

Praveen

... Appellant

Vs.

Maheswari

... Respondent

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.16 of 2012, on the file of the Sub Court (Camp Court), Padmanabhapuram, dated 30.10.2012, confirming the judgment and decree in O.S.No.156 of 2009, on the file Additional District Munsif Court, Eraniel, dated 25.11.2011.

For Appellant : Mr.K.P.Narayanakumar

For Respondent : Mr.H.Velavadhas

JUDGMENT

The plaintiff in O.S.No.156 of 2009 on the file of the Additional District Munsif Court, Eraniel, is the appellant herein. The plaintiff filed the said suit for recovery of a sum of Rs.45,385/- from the defendant/Maheswari on the strength of Ex.A.1/promissory note dated 06.02.2009. According to the plaintiff, he was very close to the husband of the defendant. The defendant borrowed a sum of Rs.40,000/- from the plaintiff on 06.02.2009 and executed the suit promissory note agreeing to repay the same with interest at the rate of 18% per annum. The defendant did not repay the loan inspite of several demands. Therefore, the plaintiff issued Ex.A.2/notice dated 14.10.2009. After receiving the the same, the defendant issued Ex.A.4/reply dated 30.10.2009 containing false averments. Since the demand set out in Ex.A.2/notice was not complied with, the plaintiff had filed the aforesaid suit. The defendant filed her written statement denying the execution of the suit promissory note. She had lodged complaints against one advocate by name Vimalan and pursuant to her complaint, the encroachment allegedly committed by the said Vimalan was removed and therefore, the said Vimalan was having a motive against her. She would allege that the said Vimalan fabricated the suit promissory note in collusion with the plaintiff herein. The plaintiff examined himself as P.W.1 and one Sasi Stalin, who is said to be an attesting witness was examined as P.W.2. Exs.A.1 to A.4 were marked. The defendant examined herself as D.W.1 and her departmental superior was examined as D.W.2. Exs.B.1 to B.11 were



marked. Exs.X.1 to X.3 were also marked through D.W.2 as court documents.

2.After considering the evidence on record, the suit was dismissed by judgment and decree 25.11.2011. Questioning the same, the plaintiff filed A.S.No.16 of 2012 before the Additional Sub Court, Nagercoil. In the appeal, the plaintiff also took out a petition for referring the suit promissory note for expert opinion. The first appeal was taken up for disposal and vide judgment and decree dated 30.10.2012, it was dismissed. The miscellaneous petition filed by the plaintiff was also dismissed along with the first appeal. Questioning the same, this second appeal came to be filed.

3.Though the second appeal is of the year 2013, till date it has not been admitted.

4.Heard the learned counsel on either side.

5.The learned counsel for the appellant reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame substantial questions of law and admit the appeal and thereafter post the matter for hearing.

6.Per contra, the learned counsel for the respondent would contend that the impugned judgments do not call for any interference. He would also argue that no substantial question of law arises for determination. He pressed for dismissal of the second appeal.

7.I carefully considered the rival contentions and went through the evidence on record. The case of the appellant is anchored on Ex.A.1/promissory suit. Before filing the suit Ex.A.2/notice was issued. The defendant received the notice and gave her reply vide Ex.A.4, in which she categorically denied the execution of the suit promissory note. When the defendant challenged the signature attributed to her in the suit promissory note, the burden was squarely on the plaintiff to establish the genuineness of the document. The plaintiff failed to take steps for getting the expert opinion as regards the veracity of the signature found in Ex.A.1/promissory note.

8.The plaintiff examined himself as P.W.1 and the attesting witness as P.W.2. The Courts below have referred to the testimony of P.W.1. P.W.1 did not even know the avocation of the husband of the defendant. The plaint in fact commences with the averment that the plaintiff and the husband of the defendant are close friends. But in the cross examination, he betrayed his lack of knowledge about the avocation of the defendant's husband. This throws considerable doubt on the claim of the plaintiff that in view of his

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to the defendant.

9.The defendant is working as staff nurse in a transport corporation. The place where the suit promissory note was said to have been executed is at a distance of more than 15 kms from the office of the defendant. The date on which the promissory note was executed was a working day. P.W.2 answered in the cross examination that when the promissory note was executed, it was around 01.30 pm. P.W.2 would make it appear that as if the transaction went on from 12.30 pm to 01.30 pm. The defendant has effectively rebutted this evidence by examining her superior as D.W.2. The testimony of D.W.2 as well as the court documents would indicate that on the date and time, when the suit promissory note is said to have come into existence, the defendant was very much in her work place. The testimony of D.W.2 could not be challenged. Taking into account all these aspects, the trial court came to the conclusion that the version projected by the defendant as to how the suit promissory note came into existence had been established on a balance of probabilities. Of course, in the Appellate Court, the plaintiff did file a petition for referring the suit promissory note for expert opinion. The plaintiff has not given any explanation as to why this step was not taken at the first instance. The Appellate Court was justified in holding that the plaintiff having missed the bus cannot at the first appeal stage insist that the suit document should be referred for expert opinion. The Courts below have carefully and correctly appreciated the entire facts and evidence appearing on record and came to the conclusion that the plaintiff has not at all established his case on a balance of probabilities. No substantial question of law arises for determination. I find no merit in the second appeal and it stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Vacation Officer

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Sub Court (Camp Court),
Padmanabhapuram.
- 2.The Additional District Munsif Court,
Eraniel.

Copy to:

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

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-17498[F] dated
26/04/2021)

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KK(20.05.2021) 4P 6C