



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.04.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)No.849 of 2013

and

MP(MD)No.1 of 2013

WEB COPY

V.Balasubramaniam

... Appellant/Appellant/Defendant

Vs.

Vijayaraj

...Respondent/Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 29.07.2013 in A.S No.54 of 2011 on the file of the Principal District Judge, Dindigul confirming the judgment and decree dated 29.04.2008 in O.S No.307 of 2004 on the file of the Principal Sub Judge, Dindigul.

For Appellant

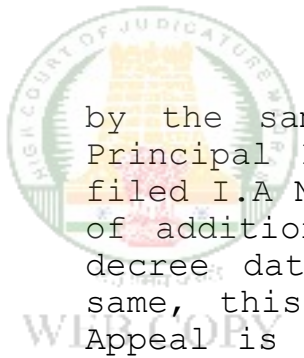
: Mr.J.Anandakumar

For Respondent

: Mr.H.Lakshmi Shankar

JUDGEMENT

The defendant in O.S No.307 of 2004 on the file of the Principal Sub Court, Dindigul is the appellant in this second appeal. The respondent Vijayaraj is the plaintiff in the suit. The case of the plaintiff is that the defendant approached the plaintiff on 30.11.2011 and borrowed a sum of Rs.1.00 lakh after executing a pro-note. The defendant had agreed to pay the amount with interest. Even though demands were made specifically, the defendant evaded in making the payment. Hence, the plaintiff had instituted the suit in question. The defendant filed his written statement denying the plaint averments. The stand of the defendant is that on 30.11.2001, the defendant did not borrow any amount from the plaintiff as alleged. The stand of the defendant was that on 31.05.2004, a sale agreement was entered into with the plaintiff. In the said agreement, the defendant as well as his son Velmurugan had signed. The sale agreement could not culminate in a pucca sale deed. This was on account of the attachment effected by a third party. This gave rise to a strained relationship between the parties. Even though the defendant had cancelled the said agreement with the plaintiff, the plaintiff in order wreak vengeance on the defendant, he has created the pro note and filed the suit on that basis. Before the learned Trial Judge, the plaintiff examined himself as PW.1. He examined one Mohan attesting witness as PW.2. Ex.A1 pro note was marked. The defendant examined himself as DW.1 and marked Exs.B1 and B2. The learned Trial Judge by the judgment and decree dated 29.04.2008, came to the conclusion that the execution of the said pro note has been established and decreed the suit. Aggrieved



by the same, the defendant filed A.S No.54 of 2011 before the Principal District Court, Dindigul. In the appeal, the defendant filed I.A No.138 of 2012 under Order 41 Rule 27 of CPC for reception of additional evidence. The first appellate court by judgment and decree dated 29.07.2011 dismissed the appeal. Questioning the same, this Second Appeal came to be filed. Though this Second Appeal is of the year 2013, only notice was ordered on 11.12.2013 and it has not been admitted, no substantial question of law has been framed.

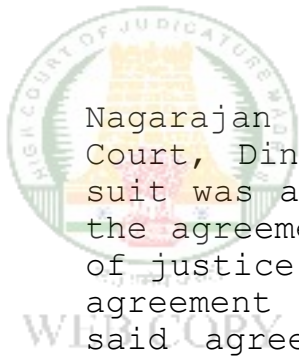
2. Heard the learned counsel on either side.

3. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds. He took me through the pleadings as well as the evidence. He wants this Court to set aside the impugned judgments of the court below and to allow the second appeal. His core argument is that when the genuineness of the pro note had been seriously challenged, the courts below ought to have shifted the burden of proof on the plaintiff. The plaintiff did not take any steps to obtain any handwriting expert opinion. The trial court chose to undertake the task of comparing the disputed signature in the said pro note with the signature of the appellant in the deposition.

4. The learned counsel drew my attention to the decision of the Hon'ble Supreme Court in the decision reported in **(2008) 3 SCC 233 (Mohd. Hussain (Dead) by LRs and Ors. vs. Occhavial and Ors.)** for the proposition that when the court undertakes the task of comparison of disputed signature with the admitted signature, it must also spell out the reasons for its eventual inference. In the case on hand, the trial court had made a bald statement that the signature found in Ex.A1 is that of the defendant. Such conclusions have been characterised as callous by the Apex court. The learned counsel for the appellant would also state that the defendant is in the habit of signing only as "Balasubramaniam". In the suit pro note, the defendant's signature appears as "Balasubramani". Therefore, he submitted that this Court ought to allow the second appeal and set aside the impugned judgments of the court below.

5. Per contra, the learned counsel appearing for the respondent/plaintiff submitted that the judgments of the courts below do not warrant any interference. He pressed for dismissal of the second appeal.

6. I carefully considered the rival contentions and went through the evidence on record. I must state that the defence of the appellant is that he and his son Velmurugan had entered into an agreement with Vijayaraj/plaintiff on 31.05.2004 and the dispute arose as a direct fall out of the sale agreement. The agreement was marked by the appellant Velmurugan in the suit filed by one



Nagarajan in O.S No.138 of 2012 on the file of the Principal Sub Court, Dindigul. Since the second appeal arising out of the said suit was also dismissed by me today, I was able to lay my hands on the agreement to which the appellant is the party. In the interest of justice, I had a look at the said sale agreement. The said sale agreement had not marked in the present suit proceedings. In the said agreement which is an admitted document, the name of the appellant is mentioned as "Balasubramani". He signed only as "Balasubramani". Therefore, the claim of the appellant that he would only sign as "Balasubramaniam" appears to be an afterthought. During the course of cross examination, the appellant went to the extent of denying his signature in the Vakalat as well as in the written statement.

7.The learned counsel for the respondent drew my attention to the decision of the Supreme Court reported in AIR 1999 SC 2544 (K.S. Satyanarayana vs. V.R. Narayana Rao). The Supreme Court has set out the guidelines as to how to deal with the litigants in such cases. In the case on hand, the plaintiff has examined himself as a witness. He had also examined an attesting witness. The trial court had undertaken the task of comparison. Section 73 of the Indian Evidence Act confers power on the court to do so. The learned counsel for the respondent drew my attention to the decisions of the Madras High Court reported in (1960) 1 MLJ 142 (Vazir Begum Ammal and Ors. Vs. Tholaram). In *Thirumuruga Ramalingam vs. Mohamed Hanifa* (2015 SCC OnLine Mad 440), a learned Judge of this Court held as follows :

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

8. More than anything else, if according to the appellant, the trial court's inference was erroneous, the appellant ought to have set out in his memorandum of grounds of appeal as to how the disputed signature is different from the admitted signature. Having not done so, the appellant is not justified in his criticism of the approach adopted by the trial Court. In any event, the impugned judgments do not rest on mere comparison of the disputed signature with the admitted signature alone. There is sufficient evidence to sustain the conclusion of the courts below that Ex.A1 was only executed by the defendant. I do not find any merit in this second appeal.

9. Since no substantial question of law arises for determination, this second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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 Principal District Judge, Dindigul.
2. The Principal Sub Judge, Dindigul.

Copy to :

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

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-17989[F] dated 29/04/2021)

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KM(CO)

TR(18.06.2021) 4P 6C