



THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.866 of 2013

in

M.P.(MD)No.2 of 2013

WEB COPY

Duraisamy ... Appellant/Appellant/Defendant
-Vs-
Chockaram ...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed by the Sub Court, Arupukottai in A.S.No.12/2011, dated 07.12.2011 by confirming the Judgment and Decree passed by the District Munsif Court, Arupukottai in O.S.No.149 of 2006 dated 24.09.2010.

For Appellant : Mr.G.Mari Muthu
For Respondent : Mr.V.Perumal

JUDGMENT

The defendant in O.S.No.149 of 2006 is the appellant herein. The respondent Chockaram filed the said suit on the strength of Ex.A1-pro note. The case of the plaintiff is that on 17.07.2003, the defendant approached him and took a loan of Rs.50,000/- after executing the suit pro-note. Since even after the persistent demands, the loan was not repaid, the plaintiff issued Ex.A2-notice dated 26.03.2006. The defendant received the notice but did not comply with the demand set out therein. Therefore, the suit was laid. The defendant denied having borrowed from the plaintiff. The trial Court framed the necessary issues. The plaintiff examined himself as P.W.1 and also the attesting witness as P.W.2. Since the defendant had denied the thumb impression attributed to him in the suit pro-note, it was sent for expert opinion and the expert opinion confirmed the thumb impression as that of the defendant. The expert opinion was marked as Ex.C3. The trial Court by Judgment and decree dated 24.09.2010 decreed the suit with cost. Challenging the same, the defendant filed A.S.No.12 of 2011 before the Sub Court, Aruppukkottai. By Judgment and decree dated 07.12.2011, the appeal was dismissed. 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 Courts below are correct in decreeing the suit for recovery of money based on the pro-note when the plaintiff has not even examined the scribe of the pro-note to prove the validity of the document?

2.Whether the Courts below are correct in accepting the documents Ex.C1 to C3 without examining the Author of the document / expert?



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 and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the Judgments passed by the Courts below.

4.Per contra, the learned counsel appearing for the respondent submitted that the suit was instituted on the strength of pro-note and the Courts below have concurrently found the same to be genuine and that, therefore, this Court may not interfere with the same in exercise of its jurisdiction under Section 100 of C.P.C. He pressed for dismissal of the appeal.

5.I carefully considered the rival contentions and went through the evidence on record. The contention of the appellant's counsel is that without examining the expert and marking Ex.C3 report through him, the Court below could not have placed reliance on the expert opinion. This at the first blush appeared to be attractive. The learned counsel appearing for the respondent would point out that it was the defendant who took out an application for referring the suit pro-note for the opinion of the forensic expert. When it transpired that the opinion was adverse, the defendant did not choose to challenge the same.

6.Since Ex.C3 opinion was obtained at the instance of the defendant and he has not chosen to challenge it, I have to necessarily answer the second substantial question of law against the appellant. Here is a case where the suit was laid on the strength of a pro-note. The plaintiff had issued suit notice Ex.A2. The defendant received the same but did not contest the same by giving a reply. The plaintiff examined himself as witness. He also examined the attesting witness. There is no need to examine the scribe. Therefore, I answer the first substantial question of law against the appellant herein. The Judgments of the Courts below are sustained. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1.The Subordinate Judge, Arupukottai.

2.The District Munsif, Arupukottai.

3.The Record Keeper-2 copies

V.R.Section,

Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.V.PERUMAL, Advocate (SR-17631[F] dated 27/04/2021)

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-17592[F] dated 27/04/2021)

Judgment made in
S.A. (MD) No.866 of 2013
26.04.2021

KM(19.05.2021) 3P 7C