BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **17.12.2021**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.122 of 2021

S.Pandian ... Appellant/Appellant/Plaintiff

Vs.

M.Bose ... Respondent/Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 24.06.2020 passed in A.S.No.35 of 2019, on the file of the Additional District and Sessions Court, Theni at Periyakulam, confirming the judgment and decree dated 25.09.2019 passed in O.S.No.63 of 2016, on the file of the Subordinate Court, Periyakulam.

For Appellant : Mr.C.Jeyaprakash

For Respondent : Mr.M.Mohamed Ajeesdheen

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.63 of 2016 by the Subordinate Court, Periyakulam and in A.S.No.35 of 2019, by the Additional District and Sessions Court, Theni at Periyakulam, are being challenged in the present Second Appeal.

2. The appellant/plaintiff has instituted a suit in O.S.No.63 of 2016, on the file of the trial Court for recovery of money directing the defendant to pay a sum of Rs.4,15,400/- and 12% interest on the principal amount of Rs.3,10,000/- from the date of plaint till the date of realisation, wherein, the present respondent has been shown as defendant.

3. The case of the plaintiff is that the defendant had borrowed a sum of Rs.3,10,000/- for his urgent family needs and business development from the plaintiff on 10.06.2015 and executed a promissory note agreeing to pay interest at the rate of Rs.2/- for every hundred rupees and to repay the loan with interest on demand made by the plaintiff. Since the defendant did not repay either the interest or the principal, the plaintiff had approached the defendant requesting him to repay the loan. The defendant evaded to make payment. Hence, the plaintiff sent a legal notice on 10.10.2016 calling the defendant to repay the loan amount along with interest.

Even though the defendant received the legal notice on 13.10.2016, he failed to repay the loan nor sent any reply. Hence, the plaintiff filed the suit.

4. The defendant filed a written statement denying all the averments made in the plaint and submitted that the defendant had never borrowed the loan from the plaintiff on 10.06.2015 and executed a promissory note and he never put his signature in the promissory note. The promissory note is a fabricated and forged one created by the plaintiff.

5. Before the trial Court, on the side of the plaintiff, P.W.1 to P.W.3 were examined and Exs.A1 to A9 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and Exs.B.1 & B.2 were marked and Ex.C.1 and Ex.C.2 were marked.

6. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit.

7. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff, as appellant, had filed an Appeal Suit in A.S.No.35 of 2019. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

8. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the plaintiff, as appellant.

9. At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

> "(i) Whether the Courts below were right in relying upon the evidence of expert alone to come to the conclusion that the suit promissory notice has not been executed by the defendant?
> (ii) Whether the appellant had demonstrated that the report of the expert is flawed?"

10. The learned counsel appearing for the appellant/plaintiff would submit that the Courts below have misconstrued the case of the plaintiff and on an erroneous approach, had dismissed the suit by simply relying upon the opinion of the expert. Therefore, the Judgments and Decrees passed by the Courts below are liable to be set aside. In the written statement, the defendant has refused his signature in Ex.A.1 wantonly, wilfully and adamantly, but his signatures in all the documents are similar signature as signed in the promissory note and prayed for allowing the Second Appeal.

11. The learned counsel appearing for the respondent/plaintiff would submit that both the Courts below have correctly dismissed the suit and prayed for dismissing the Second Appeal.

12. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the defendant and also perused the records carefully.

13. The plaintiff claimed that the defendant had borrowed a sum of Rs.3,10,000/- as loan from the plaintiff for his urgent family needs and for improvement of business and executed a promissory note on 10.06.2015 at Periyakulam and agreed to pay the interest. Since the defendant neither paid the interest nor the principal and evaded to make payment and hence, the plaintiff issued a legal notice on 10.10.2016 calling the defendant to make the payment. Even after receiving the notice, the defendant has not chosen either to make payment or to make suitable reply. The defendant has claimed that he never borrowed the loan from the plaintiff and executed a promissory note on 10.06.2015 and the promissory note alleged to have been executed by the defendant is fabricated and forged and that the defendant never put his signature in the promissory note.

14. From the evidence of P.W.1 to P.W.3, it is seen that the alleged money transaction took place in foot-step of the Perumal Temple in Periyakulam. Admittedly, the plaintiff as well as the defendant are residing in the same Village and same street, viz., Melmangalam Village, Ammapatti Street. When the plaintiff as well as the defendant are residing at the same Village and same street, why the plaintiff had chosen the Perumal Temple at Periyakulam and the alleged transaction took place at the foot-step of Perumal Temple at Periyakulam, cannot be accepted. The plaintiff would categorically say that he did not know the scribe of the promissory note and the defendant brought the promissory note. P.W.2 and P.W.3 would also depose that they did not see the promissory note when it was written. From the evidence of P.W.1 to P.W.3, the execution of Ex.A.1-promissory note was not proved.

15. The defendant denied his signature made in Ex.A.1 and it is averred that Ex.A.1 is a fabricated and forged one. He took an application to send Ex.A.1 to the expert to examine the signature of the defendant scientifically. Accordingly, he submitted Ex.B.2-original sale deed, dated 05.03.2012 and the same was compared with the signature found in Ex.A.1. The Handwriting Expert examined the alleged signature of the defendant found in Ex.A.1 and Ex.B.2 and came to the conclusion that both the signature varies and not signed by the same person. The Document Expert was examined as D.W.2, who had marked his report as Ex.C.1 and he assigned the reason for his decision. The opinion given by the expert which was supported with other relevant fact can be considered. The evidence of P.W.1 to P.W.3 would not suffice to prove the execution of Ex.A.1 and the

opinion given by the expert is supported by the evidence of P.W.1 to P.W.3. Hence, this Court is of the view that the plaintiff has failed to prove that the promissory note was executed by the defendant for obtaining loan.

16. P.W.2 in his chief examination has stated that for doing real estate business, the defendant had borrowed loan from the plaintiff and executed a promissory note. The said promissory note was written by Ramasamy in Periyakulam and received the loan in Periyakulam and at that time, Ramasamy came along with the defendant. But P.W.3 in his cross-examination has stated that he know the plaintiff for the past 20 years and he did not know what business he was doing and in front of the Temple, the defendant had borrowed the loan amount from the plaintiff. On the side of the plaintiff, there is no proof to show that P.W.2 went along with the plaintiff and asked the defendant to pay the loan amount. The evidence of P.W.1 to P.W.3 would not suffice to prove the execution of Ex.A.1. Since the plaintiff has failed to establish his case and both the Courts below have rightly dismissed the same and hence, this Court is also not inclined to interfere with the well considered Judgments and Decrees passed by the Courts below. The substantial questions of law are ordered accordingly in favour of the defendant and against the plaintiff.

17. In fine, the Second Appeal is dismissed. No costs. The Judgments and decrees passed in O.S.No.63 of 2016 by the Subordinate Court, Periyakulam and in A.S.No.35 of 2019, by the Additional District and Sessions Court, Theni at Periyakulam, are confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

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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 Additional District and Sessions Judge,
Theni at Periyakulam.

2.The Subordinate Judge,Periyakulam.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(24.01.2022) 5P 5C