



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2021

CORAM:

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.269 of 2014

R.Palanisamy

... Appellant/Respondent/Plaintiff

-Vs-

1.S.Samiyappan

2.S.Ganesan

...Respondents/Appellants/Defendants

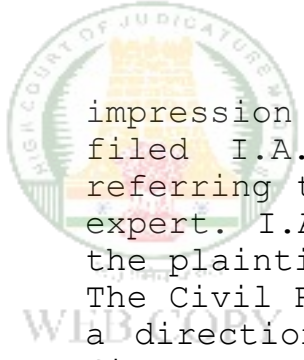
PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 10.12.2010 in A.S.No.72 of 2006 on the file of the District Court, Karur in reversing the Judgment and decree dated 13.10.2005 made in O.S.No.257 of 2002 on the file of the Sub Court, Karur.

For Appellant : Mr.K.Govindarajan

For Respondents : Mr.D.Nallathambi
for S.A.Ganapathy Raman

JUDGMENT

The plaintiff in O.S.No.257 of 2002 on the file of the Sub court, Karur, is the appellant in this second appeal. The case of the plaintiff is that one Sadayappa Gounder had borrowed a sum of Rs.3,00,000/- from the plaintiff on 30.06.1999 and executed Ex.A1-suit promissory note. Sadayappa Gounder passed away on 31.12.1999 leaving behind the defendants as his legal heirs. The plaintiff issued Ex.A2-notice dated 18.02.2002 calling upon the defendants to pay the said amount with interest. The defendants are said to have given a reply dated 28.02.2002. Since the demand set out in the suit notice was not complied with, O.S.No.257 of 2002 came to be instituted. The defendants had filed a written statement challenging the genuineness of the suit promissory note. Before the trial Court, the plaintiff examined himself as P.W.1 and one attesting witness as P.W.2. The second defendant Ganesan examined himself as D.W.1 and marked Ex.B1 to Ex.B4. On the side of the plaintiff, Ex.A1 to A5 were marked. The learned trial Judge after consideration of the evidence on record decreed the suit vide Judgment and decree dated 13.10.2005. Questioning the same, the defendants filed A.S.No.72 of 2006 before the District Judge, Karur. It is seen that in the suit promissory note, there is a thumb



impression attributed to Sadayappa Gounder. The defendants also filed I.A.No.73 of 2007 before the First Appellate Court for referring the said thumb impression for the opinion of the forensic expert. I.A.No.73 of 2007 was also allowed. Challenging the same, the plaintiff filed a civil revision petition before the High Court. The Civil Revision Petition filed by the plaintiff was dismissed and a direction to dispose of the first appeal was also issued. The first Appellate Court by the impugned Judgment and Decree dated 10.12.2010 allowed the first appeal and set aside the Judgment and decree passed by the trial Court. 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 finding of the learned Appellate Judge in reversing the well considered Judgment of the trial Court without assigning reasons which he ought to have given as a final Court of fact is sustainable?

2.Have not the learned Appellate Judge committed an error in dismissing the suit especially when Ex.A.1 was proved by the plaintiff?

3.Whether failure to refer Ex.A1 for expert opinion and not following the procedure set out in Order 41 Rule 28 of C.P.C., before marking Ex.B5 & B6 vitiate the impugned Judgment?"

2.Heard the learned counsel on either side.

3.The first Appellate Court had marked Ex.B5 and Ex.B6 as additional evidence on the side of the defendants. It is obvious that the procedure set out in Order 41 Rule 28 was not at all followed. That apart, when an application for referring the thumb impression for expert opinion was allowed, the first Appellate Court ought to have taken it to its logical conclusion. It is true that the High Court has given a direction for disposal of the appeal before a particular date. But that cannot be a ground for not referring the thumb impression for expert opinion, when it had already passed an order in that regard.

4.Therefore, on these twin grounds, I answer the third substantial question of law in favour of the appellant. The Judgment and decree passed by the Appellate Court is to be set aside. There is no need to answer the other two substantial questions of law. The impugned Judgment and decree is set aside. The second appeal is allowed. The matter is remitted to the file of the first Appellate Court for fresh disposal of A.S.No.72 of 2006 on merits and in accordance with law. I make it clear that the contentions of both the parties are left open. The first Appellate Court shall refer the disputed thumb impression for expert opinion and take up the matter for disposal after obtaining the opinion of the forensic expert. Secondly, the procedure set out in Order 41 Rule 28 of C.P.C., will be followed before marking Ex.B5 and Ex.B6. Since the



entire Court fee to the appellant. Both the parties shall appear before the Principal District Judge, Karur on 30.06.2021. No costs.

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Sd/-

Assistant Registrar (CS-I)

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Subordinate Judge, Karur.

2.The Principal District Judge,
District Court, Karur.

3.The Section Officer-2 copies
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Assistant Registrar(CO)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.GOVINDARAJAN, Advocate (SR-18104[F] dated 30/04/2021)

+1 CC to Mr.D.NALLATHAMBI, Advocate (SR-18183[F] dated 30/04/2021)

Judgment made in
S.A.(MD)No.269 of 2014
29.04.2021

KM(15.06.2021) 3P 8C