



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD).No.289 of 2014

and

M.P. (MD).No.1 of 2014

WEB COPY

Paulkani

... Appellant/Appellant/
Defendant

Vs

- 1.Thangapandi (died)
- 2.T.Apoorvakani
- 3.T.Maharahakani
- 4.T.Mallika
- 5.T.Malathi
- 6.T.Mahendran
- 7.T.Sumathi
- 8.T.Palanivel
- 9.T.Malaiarasan
- 10.T.Mandhirakumar

... Respondents/Respondent/
Plaintiff

(Memo dated 09.04.2021 filed on 15.04.2021 in USR.No.10046 is recorded and R2 to R10 are brought on record as LR's of the deceased sole respondent as per said memo vide court order dated 12.07.2021 made in S.A. (MD).No.289 of 2014 by GRSJ)

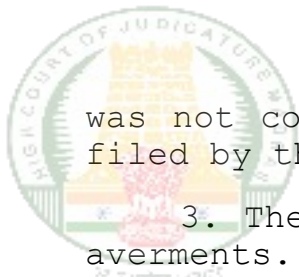
Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the decree and judgment in A.S.No.65 of 2011 passed by the learned Additional Judge, Fast Track Court No.II, Thoothukudi, dated 21.09.2011 confirming the decree and judgement in O.S.No.44 of 2009 passed by the learned District Munsif, Sathankulam dated 29.01.2010.

For Appellant : Mr.Ananth C.Rajesh
For Respondents : Mrs.P.Jessi Jeeva priya

J U D G E M E N T

The defendant in O.S.No.44 of 2009 on the file of the District Munsif, Sathankulam, is the appellant in this Second Appeal.

2. The suit was filed by one Thangapandi for recovering a sum of Rs.68,920/- with interest from the appellant herein. The case of the plaintiff was that the appellant had borrowed a sum of Rs.60,000/- from him on 02.02.2008 and executed Ex.A1, pro-note. However, the appellant did not make any payment towards principal or interest. Therefore, the plaintiff issued suit notice on 13.03.2009 (Ex.A2) calling upon the appellant to clear the loan liability. The defendant issued Ex.A4 reply notice dated 02.04.2009 controverting the notice averments. Since the demand set out in the suit notice



was not complied with, the aforesaid suit in O.S.No.44 of 2009 was filed by the plaintiff.

3. The defendant filed her written statement denying the plaint averments. The defendant categorically stated that the suit pro-note is a rank forgery. The defendant contended that she was not liable to make any payment to the plaintiff. According to the defendant, the plaintiff was a stranger. Based on the rival pleadings, the trial Court framed the necessary issues.

4. The plaintiff examined himself as P.W.1 and the attestor of the pro-note was examined himself as P.W.2. Exs.A1 to A5 were marked. On the side of the defendants, no documentary evidence was filed. The defendant however examined herself as D.W.1.

5. After considering the evidence on either side, the trial Court by judgement and decree dated 29.01.2010 decreed the suit as prayed for. Aggrieved by the same, the defendant filed A.S.No.65 of 2011 before the Additional District Court/ Fast Track Court, Thoothukudi vide judgment dated 21.09.2011. The appeal filed by the defendant was dismissed. Aggrieved by the same, this second appeal came to be filed.

6. The second appeal was admitted on the following substantial question of law:

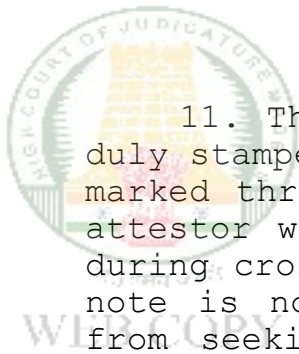
"Whether the Courts below are right in granting the decree in favour of the plaintiff when the execution of the pro-note itself was denied and the same was created after knowing the signature of the defendant through an acknowledgment card?"

7. During the pendency of this second appeal, the plaintiff Thangapandi passed away and his legal heirs have been brought on record as respondents 2 to 10.

8. The learned counsel appearing for the appellant strongly contended that the defendant clearly denied the execution of the Ex.A1 Pro-note. When the plaintiff was confronted with the defendant's photograph during cross examination and asked to identify, he was unable to identify. The learned counsel for the appellant would submit that from this, one can infer that the defendant's version that the plaintiff was a stranger was probabalised. He called upon the Court to answer the substantial question of law in favour of the appellant and allow this appeal by setting aside the judgment and decree.

9. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment does not call for any interference.

10. I carefully considered the rival contentions and went through the evidence on record.



11. The suit was anchored on a pro-note. The pro-note has been duly stamped and it is attested by two witnesses. Ex.A1 pro-note was marked through the plaintiff who examined himself as P.W.1 and the attesor was examined as P.W.2. The plaintiff could not shake them during cross examination. If really the signature found in the pro-note is not that of the defendant, nothing stopped the defendant from seeking reference to hand writing expert. No such step was taken by the defendant. As the plaintiff had examined the attesor, it was for the defendant to prove that the pro-note is a forged one. The defendant had miserably failed to discharge the onus. It is true that when the plaintiff was called upon to identify the defendant in a photograph, the plaintiff could not do so. From that single circumstance, no adverse inference can be drawn against the plaintiff. The Courts below have specifically considered the aforesaid contention raised by the learned counsel for the defendant. The Courts below have come to the concurrent finding that the suit pro-note was very much executed by the defendant. Exercising jurisdiction under Section 100 of Civil Procedure Code, I am not persuaded to take a contra view.

12. The substantial question of law is answered against the appellant. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sbm

To:

1.The District Munsif , Sathankulam.

2.The Learned Additional Judge/ Fast Track Court No-II, Thoothukudi.

Copy to

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate(SR-24523[F]dated 29/07/2021)

+1 CC to M/s.ANANTH C.RAJESH, Advocate (SR-24275[F] dated 29/07/2021)

S.A. (MD).No.289 of 2014
and
M.P. (MD).No.1 of 2014
28.07.2021

RK (07.10.2021) 3P 7C