



THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.381 of 2014

Janab S.Sikandar

... Appellant/Respondent/Plaintiff

-Vs-

Janab M.Asanar

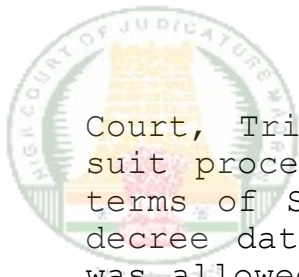
...Respondent/Appellant/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 28.04.2012 in A.S.No.175 of 2005 on the file of the first Additional District Judge, Trichy reversing the Judgment and Decree dated 15.10.2004 in O.S.No.619 of 2002 on the file of the Sub Judge, Trichy.

For Appellant : Mr.J.Anandkumar
For Respondent : Mr.K.Gnanasekaran
for Mr.K.Srinivasan

JUDGMENT

The plaintiff in O.S.No.619 of 2002 on the file of the Sub Court, Trichy is the appellant herein in this second appeal. The case of the plaintiff is that the defendant borrowed a sum of Rs.1,00,000/- from him and executed the suit pro-note. When the plaintiff made demand for repayment of the loan amount, the defendant is said to have evaded. Therefore, the plaintiff issued Ex.A3-notice, dated 26.06.2002. The same was returned 'un-served'. Left with no other option, the plaintiff filed the aforesaid suit for recovery of money. The plaintiff examined himself as P.W.1. The scribe of Ex.A2-pro-note was examined as P.W.2 and one of the attestors was examined as P.W.3. Ex.A1 is the letter written by the defendant to the plaintiff. In the said letter, the defendant had informed the plaintiff not to come on a particular date but to come on 12.10.1999. On 12.10.1999, the defendant executed and handed over Ex.A2-promissory note. The defendant examined himself as D.W.1. No documentary evidence was marked on his side. However, he denied the execution of the suit pro-note. He also denied having sent Ex.A1-letter. The learned trial Judge, vide Judgment and decree dated 15.10.2004 came to the conclusion that Ex.A2 was very much executed by the defendant and decreed the suit. Questioning the same, the defendant filed A.S.No.175 of 2005 before the First Additional District Judge (PCR), Trichy. The first Appellate Judge compared the signature appearing in Ex.A1 with the signature appearing in Ex.A2 and concluded that since the two differ from each other, the suit was liable to be dismissed. The First Appellate Judge also observed that even though the pro-note was executed at Ilayankudi in Sivagangai District, the suit was filed before the Sub



Court, Trichy. The First Appellate Judge took the view that the suit proceedings suffered from want of territorial jurisdiction in terms of Section 20 of C.P.C. On that basis, vide Judgment and decree dated 18.10.2006, A.S.No.175 of 2005 filed by the defendant was allowed and the suit was dismissed. Aggrieved by the same, the plaintiff filed S.A.No.410 of 2008 before the Madurai Bench. Vide Judgment and decree dated 25.10.2011, the Judgment and decree passed by the First Appellate Court was set aside and the matter was remanded in the following terms:-

"19.Hence, in these circumstances, I would like to set aside the Judgment and decree of the first Appellate Court and remit the matter back to the first appellate Court with the direction that the first appellate Court shall at the cost of the plaintiff, appoint an Advocate Commissioner as under with the mission to carry out the following:

(a) To carry the relevant documents in connection with this case personally in a sealed cover;

(b) and produce the same before the forensic expert;

(c) leave it in his custody under his acknowledgment for as many days as the forensic expert may require;

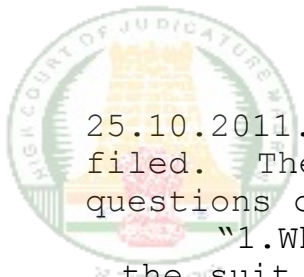
(d) collect the record from the forensic expert on the day as may be fixed by him;

(e) bring it back and lodge it with the Court.

The Forensic Expert is directed to complete the examination of the records in any event, without 48 hours after the depositing of the same by the Advocate Commissioner with him.

20.The first Appellate Court, after obtaining the report of the Advocate Commissioner and the expert concerned and entertaining objections if any from both sides and on hearing both, a reasoned Judgment shall be delivered. Endeavour shall be taken to see that that the matter is disposed of within a period of two months from the date of receipt of a copy of this Judgment. Both sides shall co-operate with the first appellate Court for speedy disposal of the matter. Both sides shall approach the first appellate Court on 08.11.2011."

2.It is necessary to mention that while making the order of remand, this Court had specifically held that the suit was rightly instituted before the jurisdictional Court and that the proceedings did not suffer from any want of territorial jurisdiction. After the matter was remanded, the first Appellate Court referred Ex.A1 and Ex.A2 for the opinion of the hand writing expert. The question that was posed for reference was whether the signatures found in Ex.A1 and Ex.A2 are that of one and the same person. The report of the expert was to the effect that the signatures were not put by one and the same person. In the light of the said report, the appeal filed by the defendant was once again allowed. It is necessary to mention that the first Appellate Court once again went into the issue of territorial jurisdiction, even though the same was already decided in favour of the plaintiff while allowing S.A.No.410 of 2008 on



25.10.2011. 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 I Appellate Court is right in dismissing the suit on the ground of jurisdiction in the absence of any pleading and without framing an issue to that effect before the trial Court.?"

2.Whether the I Appellate Court is right in disbelieving Ex.A1 when the same was proved by the appellant herein through oral and documentary evidence as required under law?

3.Whether the I Appellate Court is right in shifting the burden to the appellant herein when admittedly did not discharge the burden against the provisions of the Indian Evidence Act under Sections 102 to 104?."

3.Heard the learned counsel on either side. There is no difficulty in answering the first substantial question of law in favour of the appellant. The Hon'ble Supreme Court, in the decision reported in **(2015) 13 Supreme Court Cases 514 (K.P.Ranga Rao Vs. K.V.Venkatesham and others)** had held that the issue regarding territorial jurisdiction ought not to be canvassed before the appellate Court unless there was failure of justice. In the instant case, the defendant did not even raise plea regarding territorial jurisdiction. Therefore, the first Appellate Court was clearly wrong in going into the said issue and giving a finding that the suit ought not to have been filed before the Sub Court, Trichy. There is yet another reason for faulting the decision of the first Appellate Court. The issue was already decided in favour of the plaintiff by this Court while allowing S.A.No.410 of 2008. Therefore, I answer the first substantial question of law in favour of the appellant.

4.The suit had been laid on the strength of Ex.A2-pro-note. The defendant had denied having executed the said pro-note. Therefore, the burden to establish its genuineness lay on the plaintiff. The plaintiff to discharge the said burden had examined himself and also the scribe as well as the attestor. Though it is open to the Court to refer the disputed signature for the opinion of the hand writing expert, the Court below went miserably wrong in seeking an answer to the question as to whether Ex.A1 and Ex.A2 were written by one and the same person. The Court below ought to have seen whether the disputed signature in Ex.A1 and Ex.A2 tally with the admitted signature of the defendant in any contemporaneous document. If such a document is not available, the Court can always invoke its power available under Section 73 of the Indian Evidence Act. The Court can even call upon the defendant to give his sample signatures in the presence of the Court. That apart, the report of the expert which was relied upon to allow the appeal, could have been marked only through the expert concerned. In this case, expert was not examined. Therefore, I answer the fourth substantial question of



law in favour of the appellant. In view of the answers given in response to the first and fourth substantial questions of law, there is no need to answer the remaining substantial questions of law formulated by this Court earlier.

5. In this view of the matter, the Judgment and decree of the first Appellate Court is set aside. The second appeal is allowed and the matter is remanded to the file of the first Appellate Court. The first Appellate Court will call upon the parties to make available contemporaneous signatures of the defendant so that the disputed signature in Ex.A2 can be compared with the signature of the defendant appearing in the contemporaneous document. If no such document is available, the first Appellate Court will invoke its power under Section 73 of the Indian Evidence Act. Thereafter, the evidence adduced by the plaintiff will be considered and the Appellate Court will come to the conclusion as to whether the plaintiff had discharged the burden cast on him.

6. The second appeal is allowed on these terms. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1. The Sub Judge, Trichy.

2. The first Additional District Judge, Trichy.

Copy to

The Record Keeper,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai(2 copies)

+1 CC to M/s.K.SRINIVASAN, Advocate (SR-17784[F] dated 28/04/2021)

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-17865[F] dated 28/04/2021)

Judgment made in
S.A.(MD)No.381 of 2014

KMK(CO)

TR(07.06.2021) 4P 7C