



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD) No. 591 of 2014 and

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

WEB COPY

S.Ramalingam

... Appellant/Respondent/
Defendant

Vs.

S.Kumaresan

... Respondent/Appellant/
Plaintiff

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the Decree and Judgment dated 26.08.2013 rendered in A.S.No.48 of 2005 on the file of the District Judge, Kanyakumari at Nagercoil, partly reversing the Decree and Judgment dated 20.04.2005 rendered in O.S. No.97 of 2001 on the file of the I Additional Subordinate Judge, Nagercoil, by allowing this second appeal.

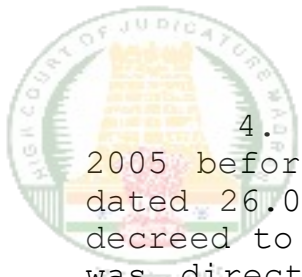
For Appellant	: Ms.Jessi Jeeva Priya, for Mr.G.Aravindhan
For Respondent	: Mr.K.Sreekumaran Nair

J U D G M E N T

The defendant in O.S.No.97 of 2001 on the file of the I Additional Subordinate Court, Nagercoil, is the appellant in this second appeal.

2. The respondent S.Kumaresan filed the said suit for recovering a sum of Rs.1,55,512/- with interest at the rate of 24% p.a. from the appellant. The suit was laid on the strength of three promissory notes, namely, Ex.A.1 dated 12.10.1990, Ex.A.5 dated 24.07.1998 and Ex.A.6 dated 15.10.1998.

3. The defendant denied the authenticity and genuineness of the promissory notes and disputed the suit claim. Before the trial Court, the plaintiff examined himself as P.W.1 and scribe Mohan was examined as P.W.2. Ex.A.1 to Ex.A.10 were marked. The defendant examined himself as D.W.1. On the side of the defendant, no documents were marked. Since the signatures in the promissory notes were disputed, the matter was referred for the opinion of the handwriting expert. The expert opinion was in favour of the defendant. The said expert opinion was marked as Ex.C.1. After considering the evidence on record, the trial Court dismissed the suit by judgment and decree dated 20.04.2005.



4. Aggrieved by the same, the plaintiff filed A.S.No.48 of 2005 before the District Court, Nagercoil. By judgment and decree dated 26.08.2013, the appeal was partly allowed and the suit was decreed to the extent the claim was covered by Ex.A.5. The defendant was directed to pay a sum of Rs.25,000/- to the plaintiff with interest at the rate of 12% p.a. from 24.07.1998 till the date of filing of the suit and thereafter, interest at the rate of 6% p.a. Aggrieved by the same, this second appeal came to be filed.

5. This second appeal was admitted on the following substantial questions of law:-

"(i) When the signatures in a promissory note had been disputed by the defendant, in a suit on a promissory note, filed by the plaintiff, whether it is legal on the part of the trial Court to allow the signature part of the document alone to be shown to be the witness, without showing the entire document?

(ii) When the execution of the document had been denied by the defendant, whether the admission of the signature would amount to an admission of the execution of the document itself so as to draw a presumption under Section 114 of the Evidence Act, read with Section 118 of the Negotiable Instruments Act?

(iii) When the plaintiff a licensee under the Tamil Nadu Money Lenders Act, is bound to maintain the account statutorily and when the consideration under a promissory note was disputed, whether the claim of the plaintiff could be upheld, without producing his account books and without drawing an adverse inference against such non-production of account books? "

6. Heard the learned counsel on either side.

7. The learned counsel appearing for the appellant submitted that the expert opinion was clearly in favour of the defendant and that therefore, the trial Court rightly dismissed the suit. She submitted that the first appellate Court erred in accepting the case of the plaintiff as regards Ex.A.5 promissory note. The learned counsel appearing for the appellant placed reliance on the decision reported in (2010) 8 SCC 452 (Kapil Corepacks (Pvt.) Ltd. V. Harbans Lal).

8. The learned counsel appearing for the appellant called upon this Court to answer the substantial questions of law in favour of the appellant and to restore the decision of the trial Court and also to set aside the judgment and decree passed by the first appellate Court.

9. Per contra the learned counsel appearing for the respondent submitted that the impugned judgment and decree passed by



the first appellate Court does not call for any interference.

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

11. The suit was laid on the strength of three promissory notes, namely, Ex.A.1, Ex.A.5 and Ex.A.6. It is true that in the written statement, the defendant had questioned the authenticity of all the three promissory notes. That is why, the matter was referred for the opinion of the handwriting expert. It is also true that the opinion of the handwriting expert went in favour of the defendant. Now the question is whether notwithstanding the said expert opinion, the first appellate Court was justified in not accepting the case of the plaintiff in so far as Ex.A.5 is concerned.

12. As rightly pointed out by the learned counsel appearing for the respondent, even though the defendant disputed the signatures in all the three promissory notes, during the cross examination, the defendant admitted that the signature found in Ex.A.5 was very much his signature. The learned counsel also took me to the very next sentence in the cross examination. The defendant disputed the signature found in Ex.A.6. No objection was taken when the defendant was shown the signatures and asked to confirm whether they are his signatures. Even while disputing the signature found in Ex.A.6, the defendant accepted that the signature found in Ex.A.5 was his. In such circumstances, the question of placing reliance on the expert opinion will not arise at all. The learned counsel also pointed out that the report of the expert is only a relevant piece of evidence which cannot be taken as binding or conclusive.

13. It is for the Court to take an independent call in the matter by considering all the relevant aspects. I sustain the contention of the learned counsel appearing for the respondent that a matter that has been admitted need not be proved at all. This is an elementary principle of evidence. Therefore, the substantial questions of law are answered against the appellant and the impugned judgment and decree of the first appellate Court is confirmed.

14. This second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

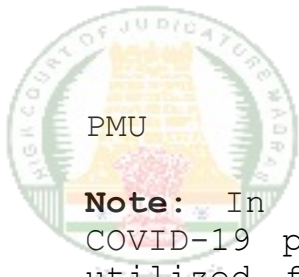
Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar(CS)



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 District Judge,
Kanyakumari at Nagercoil.
2. The I Additional Subordinate Judge,
Nagercoil.
3. The Record Keeper, V.R.Section, (2C)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-19460[F] dated 17/06/2021)

+1 CC to M/s.K.SREEKUMARAN NAIR, Advocate (SR-19608[F] dated 18/06/2021)

S.A. (MD) No.591 of 2014
17.06.2021

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