



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.862 of 2014

Mohanadhas ... Appellant/Appellant/Plaintiff

Vs.

Ponnaiyan ... Respondent/Respondent/Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, against the decree and judgment passed in A.S.No.39 of 2005 dated 11.06.2014, on the file of the Sub-Ordinate Court, Padmanabhapuram and confirming the decree and judgment passed in O.S.No.66 of 2004 dated 21.12.2004 on the file of the Additional District Munsif, Padmanabhapuram and allow the second appeal.

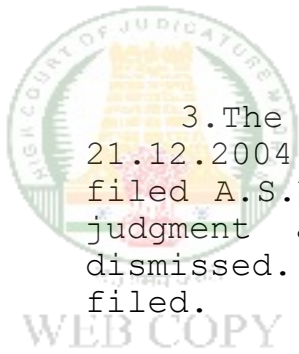
For Appellant : Mr.K.Sreekumaran Nair

For Respondent : Mr.V.M.Balamohan Thampi

JUDGEMENT

The plaintiff in O.S.No.66 of 2004 on the file of the District Munsif Court, Padmanabhapuram is the appellant in this second appeal. The plaintiff filed the said suit for recovering a sum of Rs.80,000/- from the defendant. The suit was laid on the strength of Ex.A1/promissory note dated 23.03.2001. The case of the plaintiff is that the defendant borrowed the said sum of Rs.80,000/- from the plaintiff on 23.03.2001 and executed Ex.A1/promissory note. The defendant had agreed to repay the same with interest at the rate of 24% per annum on demand. Since the defendant evaded repayment, the plaintiff had to file the said suit. The defendant filed his written statement denying the plaint averments. The defendant categorically denied the execution of the suit promissory note.

2.The trial court framed the necessary issues and the plaintiff examined himself as P.W.1. Since the signature in the promissory note was disputed, the matter was referred for expert opinion and the expert was examined as P.W.2. Exs.A1 to A8 were marked on the side of the plaintiff. The defendant examined himself as D.W.1 and marked Ex.B1 dated 29.09.1978, which is a sale deed executed in favour of the defendant.



3.The learned Trial Munsif by judgment and decree dated 21.12.2004 dismissed the suit. Questioning the same, the plaintiff filed A.S.No.39 of 2005 before the Sub Court, Padmanabhapuram. By judgment and decree dated 11.06.2014, the appeal was also dismissed. Challenging the same, this second appeal came to be filed.

4.The second appeal was admitted on the following substantial questions of law:-

"a) After having found that the signature in Ex.A1 promissory note was that of the defendant on the basis of evidence of P.W.1, P.W.2, report of expert and C.W.1, whether the courts below are right in rejecting the case of plaintiff on irrelevant grounds?

b) When execution of Ex.A1 was proved by plaintiff, the non payment of consideration had to be proved by the defendant. In such circumstances, whether the courts below are right in placing the burden to prove consideration on the plaintiff?"

5.The learned counsel appearing for the appellant submitted that since the defendant disputed his signature found in Ex.A1, the matter was referred for expert opinion. The handwriting expert was called upon to make a comparison of the signatures found in Exs.A1, A5 and B1. Since Ex.B1 was executed in the year 1978, it cannot be said to be a contemporaneous document and the expert confined his comparison to Exs.A1 and A5 alone. The opinion of the handwriting expert is that the disputed signature is that of the defendant. The trial court as well as the first appellate court had given a categorical finding that the defendant had executed Ex.A1. The learned counsel would point out that the first appellate court is the final court of fact and that therefore, the said finding cannot be re-appreciated. Once it is concluded that Ex.A1 was executed by the defendant, presumption under Section 118 of the Negotiable Instruments Act will get triggered. In the case on hand, the defendant had not adduced any rebuttal evidence and therefore, the courts below ought to have decreed the suit as prayed for. The courts below had been swayed by irrelevant considerations. It is true that the plaintiff straightaway instituted the suit without issuing any suit notice. But there is no requirement in law that a money suit should be preceded by a suit notice. There was a real threat that the defendant may flee or alienate his property if alerted and that is why, the suit had to be filed without giving any suit notice. The other reason given by the courts below is that the attestors had not been examined. The learned counsel would point out that Section 68 of the Evidence Act will not have any application to the case on hand. A promissory note does not require any attestation. Therefore, non examination of the attester cannot be put against the plaintiff. The learned counsel therefore



submitted that judgments of the courts below are clearly faulty and called upon this Court to answer the substantial questions of law in favour of the appellant and allow the second appeal by reversing the impugned judgments and decrees.

6.Per contra, the learned counsel appearing for the respondent submitted that the impugned judgments do not call for any interference and prayed for dismissal of the appeal.

7.I carefully considered the rival contentions and went through the evidence on record. It is true that the courts below have given a finding that Ex.A1 was executed by the defendant. Since the suit filed by the plaintiff came to be dismissed, there was no occasion for the defendant to challenge this finding. Therefore, this Court has to necessarily see if this finding can be said to be sound. The learned counsel for the respondent would state that the findings that Ex.A1 was executed by the defendant is perverse.

8.This is because, the findings of the courts below are anchored on the opinion of the expert. The handwriting expert had compared the disputed signature with the signature found in Ex.A5. Ex.A5 is a hypothecation bond. When it was attempted to mark the said document through the defendant, he categorically denied the signature found in Ex.A5. Therefore, the signature attributed to the defendant in Ex.A5 is also a disputed signature. A disputed signature can be compared by the handwriting expert only with an admitted signature. Two disputed signatures cannot be compared and no finding can rest on such a comparison. This is all the more so because when P.W.1 was cross examined, he categorically admitted that except the suit transaction, the defendant did not have any other transaction with him. This being the definite stand of the plaintiff, Ex.A5 cannot be taken as an admitted document.

9.The defendant had clearly denied having executed Ex.A1. Therefore, the burden to show that Ex.A1 was executed only by the defendant is only on the plaintiff. The courts below had proceeded in the matter based on the opinion of the handwriting expert, which as I have already held is intrinsically unsound. The substantial questions of law have been framed on the footing that Ex.A1 was executed by the defendant. In view of the foregoing discussions, I hold that it has not been established that Ex.A1 was executed by the respondent. The substantial questions of law are answered against the appellant and the second appeal is dismissed. No costs.

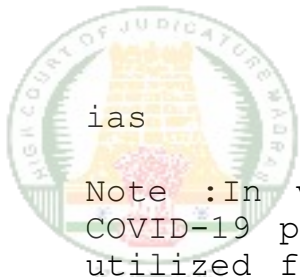
Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)



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To:

- 1.The Subordinate Court,
Padmanabhapuram.
- 2.The Additional District Munsif Court,
Padmanabhapuram.

Copy to:

The Record Keeper,V.R. Section,
Madurai Bench of Madras High Court,Madurai.(2 copies)

+1 CC to M/s.V.M.BALA MOHAN THAMBI, Advocate (SR-19461[F] dated 17/06/2021)

+1 CC to M/s.K.SREEKUMARAN NAIR, Advocate (SR-19607[F] dated 18/06/2021)

**S.A. (MD) No.862 of 2014
16.06.2021**

KMV(CO)
TR(27.07.2021) 4P 7C