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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

S.A.No.854 of 2004

Perumal ...Appellant/Respondent/Defendant

Vs.

Seniappan ...Respondent/Appellant/Plaintiff

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 30.09.2003 passed in A.S. No.41 of 2003, on the file of the Additional District Court, (Fast Track Court No.2), Gobichettipalayam, reversing the decree and judgment dated 09.04.2003 passed in O.S. No.445 of 1996, on the file of the District Munsif Court, Gobichettipalayam.

For Appellant : Mr. B. Kumarasamy

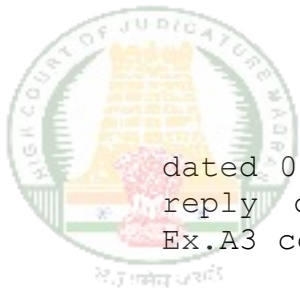
For Respondent : Mr. M. Narayanasamy

JUDGMENT

The appellant is the defendant in O.S.No.445 of 1996 on the file of the District Munsif Court, Gobichettipalayam. The respondent/plaintiff filed the suit against the appellant/defendant for recovery of money due under a promissory note.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiff is that the defendant borrowed a sum of Rs.20,000/- from him on 20.08.1987 and executed a promissory note (Ex.A1) promising to repay the principal together with interest at the rate of 12% per annum on demand by the plaintiff or to his order. His further contention is that inspite of repeated demands made by him orally and in person, the defendant did not pay any amount either towards principal or interest and therefore, he issued a legal notice



dated 06.08.1990 to the defendant for which the defendant sent a reply dated 09.08.1990 (Ex.A3). According to the plaintiff, Ex.A3 contained false allegations. He therefore, filed the suit.

4. The defendant denied the execution of the promissory note (Ex.A1) in his written statement. His contention is that the plaintiff being his neighbour had insisted him to sell his property in his favour. Since this proposal was not accepted by the defendant, the pronote was fabricated by the plaintiff. It is also contended by him that the plaintiff was a member in a chit fund conducted by the defendant and since there was some dispute over money transaction between him and the plaintiff, the present suit was filed by the plaintiff. He therefore, prayed for the dismissal of the suit.

5. The trial Court after framing appropriate issues and after full contest dismissed the suit filed by the plaintiff vide its decree and judgment dated 09.04.2003 on the following grounds :

- i. Thirumurugan (P.W.2), one of the attestors was a resident of Mallipalayam village, while the suit promissory note was executed in Madathukadu village. When it is admitted by the plaintiff that there are several houses in Madathukadu village, it is not known as to why P.W.2 had signed Ex.A1 as an attestor.
- ii. P.W.2 is an interested witness since he is a close friend of the plaintiff. There are also contradictions in the evidence of P.W.1 and PW.2.
- iii. The plaintiff and his father had advanced a sum of Rs.20,000/- each to the defendant on 20.08.1987 and obtained two promissory notes from the defendant. The plaintiff in the instant case did not adduce sufficient evidence to show that he has means to advance loan to the defendant.
- iv. The handwriting expert Tmt. Jeyadevi had also opined that the signature found on Ex.A1 is not the signature of the defendant.
- v. A comparison of the signature of the defendant found on Ex.A1 with his admitted signatures in vakalat, written statement, etc, clearly shows that the defendant had not signed Ex.A1.

6. Aggrieved over the same, the plaintiff filed an appeal in A.S.No.41 of 2003 before the Additional District Court (Fast



Track Court No.2), Gobichettipalayam. The learned Additional District Judge (Fast Track Court No.2), after analysing the oral and documentary evidence adduced on both sides, reversed the findings recorded by the trial court and decreed the suit filed by the plaintiff vide his decree and judgment dated 30.09.2003 on the following grounds.

- i. It is admitted that the plaintiff, defendant, scribe and the attestors of Ex.A1 are close relatives.
- ii. The evidence of P.W.1 and P.W.2 clearly proves the execution of the suit promissory note Ex.A1.
- iii. The plaintiff's father filed a suit in O.S. No.9/1996 before the same court for recovery of money due under a pro-note executed by the defendant on the same day i.e., 20.08.1987 and it is contended by the plaintiff that one Ponnusamy, one of the attestors of the said pro-note had deposed against the plaintiff and therefore, he has not been examined in the present case. In the circumstances, the defendant ought to have examined the said attestor Ponnusamy on his side and therefore an adverse inference has to be drawn against the defendant.
- iv. Though the handwriting expert has given an opinion that the signature found on Ex.A1 is not the signature of the defendant, the defendant did not examine the handwriting expert.
- v. It is settled law that the evidence of handwriting expert is a very weak piece of evidence and it is not safe to rely only on that evidence.
- vi. The defendant has not adduced any acceptable evidence to show that the plaintiff does not have sufficient means to advance loan to the defendant.
- vii. A careful comparison of the signature of the defendant on Ex.A1 with his admitted signatures shows that the defendant executed the promissory note after receiving a consideration of Rs.20,000/- from the plaintiff.
- viii. The trial court had unnecessarily highlighted the minor discrepancies in the evidence of P.W.1 and P.W.2 instead of harping on the main issue.

Thus, the first appellate Court allowed the appeal and decreed the suit filed by the plaintiff.

7. At the time of admission of the present second appeal, the following substantial questions of law were framed.

- i. Whether the lower appellate Court is right in holding that the execution of the suit pronote (Ex.A1) is proved by the



evidence of P.W.1 & P.W.2 overlooking the fact that there are several other vital contradictions in their evidence creating doubt about the plaintiff's case.

ii. Whether the lower appellate court has properly appreciated and applied the principles to find out whether the plaintiff has proved the due execution of the suit promissory note (Ex.A1) by way of legally acceptable evidence?

iii. Whether there was a proper casting of burden of proof by the lower appellate court?

iv. Whether non examination of the scribe is not fatal to the case?

8. Mr. B. Kumarasamy, learned counsel for the appellant, pointing out the discrepancies in the evidence of P.W.1 and P.W.2, contended that the plaintiff has not proved the execution of Ex.A1. It is also his contention that when it is admitted by P.W.2 that he belongs to a different village and there are other relatives of the plaintiff in the same village where the plaintiff is residing, it has not been properly explained by the plaintiff as to why P.W.2 was chosen to be the attestor to Ex.A1. According to him, the trial court had the opportunity of seeing the demeanour of the witnesses and the first appellate court should not have reversed the findings recorded by the trial court.

9. Per contra, Mr. M. Narayanasamy, learned counsel for the respondent contended that the first appellate court had rightly appreciated the evidence on record and that the evidence adduced on the side of the plaintiff clearly proves the execution of the promissory note Ex.A1 and passing of consideration thereon. He therefore, prayed for the dismissal of the present second appeal.

10. The plaintiff in order to establish the execution of Ex.A1 had examined himself as well as one of the attestors Thirumurugan (P.W.2). Though the signature found in Ex.A1 along with the admitted signatures of the defendant were sent to a private handwriting expert at the instance of the defendant and the handwriting expert also filed his opinion (Ex.C1 and Ex.C2) contending that the signature on Ex.A1 does not tally with the admitted signatures of the defendant, the defendant did not take any steps to examine the handwriting expert. As rightly pointed out by the first appellate court, the opinion of the handwriting expert is a very weak piece of evidence and the court has to consider the other evidence on record before coming to a conclusion as to whether Ex.A1 is true and valid. As rightly observed by the first appellate court both P.W.1 and P.W.2 had



clearly deposed that the suit promissory note was executed on 20.08.1987 and that the defendant received a sum of Rs.20,000/-. The trial court had disbelieved the evidence of the attester Thirumurugan (P.W.2) only on the ground that he is residing in a different village. The reasoning that when there were many neighbours who could have attested Ex.A1, the attestation by P.W.2 belonging to another village, defies logic. It is also admitted that the plaintiff, the defendant, both the attestors to Ex.A1 and the scribe are all related to each other and therefore, there is no good ground to discredit or disbelieve the evidence of P.W.2. P.W.2 had corroborated the versions of P.W.1 as regards all material particulars. The trial court had unnecessarily highlighted the minor contradictions in the evidence of P.W.1 and P.W.2 like as to who counted the money, etc., and on the other hand, the first appellate court had analysed the evidence of P.W.1 and P.W.2 threadbare and had come to the conclusion that the plaintiff has proved the execution of the suit promissory note by the defendant.

11. The trial court had further held that since the plaintiff did not adduce any documentary evidence to show that he has sufficient means to lend money to the defendant, it has to be held that the plaintiff does not have sufficient means to advance loan in favour of the defendant. This observation made by the trial court cannot be accepted because in the instant case, the plaintiff had filed the suit based on a promissory note executed by the defendant and also proved the execution of the same. The first appellate court had also compared the signature of the defendant with his admitted signatures and had found that the signature on Ex.A1 is the signature of the defendant and all the observations of the first appellate court are based on sound principles of law and by no stretch of imagination they can be said to be perverse. The trial court, on the other hand, had cast the burden on the plaintiff to show his financial capacity especially when the plaintiff had proved the execution of Ex.A1. Therefore, the substantial questions of law are answered against the appellant. In fact there are no substantial questions of law in the instant case as the first appellate court had rightly appreciated the oral and documentary evidence adduced on both sides. In fine, the second appeal fails and is dismissed.

12. In the result,

- i. the second appeal is dismissed. No costs.
- ii. The decree and judgment dated 30.09.2003 passed in A.S. No.41 of 2003, on the file of the Additional District Court, (Fast Track Court No.2), Gobichettipalayam, is upheld.



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iii.The decree and judgment dated 09.04.2003 passed in O.S. No.445 of 1996, on the file of the District Munsif Court, Gobichettipalayam, is set aside.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bga
To

- 1.The Additional District Court, (Fast Track Court No.2), Gobichettipalayam.
 - 2.The District Munsif Court, Gobichettipalayam.
 - 3.The Section Officer, VR Section, High Court, Madras.
- +1 CC to Mr.M.Narayanasamy, Advocate sr 26052.
+1 CC to Mr.B.Kumarasamy, Advocate sr 26603.

S.A.No.854 of 2004

SJ(CO)
SP(09/05/2022)