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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2021

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.721 of 2011

Murugesan

...Appellant /Appellant/Defendant

Vs.

1.Vasanthan

2.Mani

3.Annadurai

... Respondents/Respondents/Plaintiffs 2 to 4

Prayer : Second Appeal filed under Section 100 of CPC, 1908 against the decree and judgment dated 24.08.2009 passed in A.S. No.82 of 2008, on the file of the Sub Court, Tiruchengode, upholding the decree and judgment dated 29.11.2005 passed in O.S. No.232 of 2004, on the file of the District Munsif Court, Tiruchengode.

For Appellant

: Ms.D.Sathya

for M/s.V.Rajesh

For R2 & R3

: Mr.T.Sezhian

for Ms.R.Meenal

JUDGMENT

The appellant Murugesan is the defendant in O.S.No.232 of 2004 on the file of the District Munsif Court, Tiruchengode, while the respondents are the plaintiffs 2 to 4.

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 suit was filed by one Subramani (since deceased) for recovery of a sum of Rs.83,730/- from the defendant together with interest @ 24% per annum from the date of plaint till the date of realisation. During the pendency of the suit Subramani (P.W.1) died and his legal heirs were impleaded as plaintiffs 2 to 4.

4. The case of the plaintiffs in nutshell is as follows:

The defendant Murugesan (D.W.1) borrowed a sum of Rs.50,000/- from the first plaintiff Subramani (P.W.1) on 20.04.1999 to meet his family expenses and executed a promissory note (Ex.A1) on the same day promising to repay the principal together with interest @ 24% per annum. Despite repeated demands made by him, the defendant did not come forward to make good the payment. Therefore, he issued a legal notice dated 12.10.2001 (a copy of which is marked as Ex.A2) to the defendant. The defendant received the said notice as evidenced by the postal acknowledgment card (Ex.A3) dated 12.10.2001. The defendant sent a reply notice dated 23.01.2001 (Ex.A4), which according to the first plaintiff, contained false allegations. Therefore he filed the suit for recovery of a sum of Rs.83,730/- together with interest @ 24% per annum.

5. The suit was resisted by the defendant on the ground that the suit promissory note was not executed by him and that he used to sign only S.Murugesan and not M.S.Murugesan. According to him, his signature was forged on the suit promissory note by the first plaintiff. He therefore prayed for the dismissal of the suit.

6. The trial court, on the basis of the above pleadings, framed the following issues.

- i. Whether the plaintiff is entitled to claim the suit amount as prayed for by him?
- ii. To what relief the plaintiff is entitled?

7. In the trial court first plaintiff examined himself and two other witnesses and marked Ex.A1 to Ex.A4. The defendant examined himself and one another witness and marked Ex.B1 & Ex.B2.

8. After full contest, the learned District Munsif, Tiruchengode decreed the suit in favour of the plaintiff and directed the defendant to pay a sum of Rs.83,730/- together with interest @ 9% per annum from the date of plaint till the date of decree and thereafter at 6% per annum from the date of decree till the date of realisation.



9.The trial court observed that the plaintiffs have proved the execution of the promissory note (Ex.A1) by adducing acceptable oral and documentary evidence and that there is no good ground to hold that the first plaintiff forged the signature of the defendant on the promissory note. It is further observed that the defendant though had contended that his name is not M.S.Murugesan and only S.Murugesan, he has signed the vakalat and the postal acknowledgment card (Ex.A3) only as M.S.Murugesan and not as S. Murugesan.

10. Aggrieved over the same, the defendant filed an appeal in A.S. No.82 of 2008 before the Subordinate Judge, Tiruchengode. The learned Subordinate Judge, after analyzing the oral and documentary evidence adduced on both sides upheld the findings recorded by the trial Court and dismissed the suit filed by the plaintiffs.

11. Now the present second appeal is filed by the plaintiff on the following substantial questions of law:

- i. When the appellant / defendant had alleged that the suit promissory note was fabricated, can the burden of proof be placed on him?
- ii. Whether the Courts below were justified in comparing the signatures of the appellant, without any aid of an expert, to come to a conclusion that the suit promissory note was true and valid?

12. Heard Ms.Sathya, learned counsel appearing for the appellant and Mr.T.Sezhian for Ms.R.Meenal, learned counsel appearing for the respondents 2 & 3.

13. Ms.Sathya, learned counsel for the appellant contended that when the defendant had denied his signature on the suit promissory note, the trial Court should have sent the promissory note to a handwriting expert. It is also her contention that even in the notice dated 12.10.2001 (Ex.A1) the first plaintiff addressed the defendant as S.Murugesan and not as M.S.Murugesan. According to her, the Courts below did not analyse the evidence on record properly and therefore, the appeal should be allowed.

14. Per contra, Mr.T.Sezhian, learned counsel appearing for the respondents 2 & 3 would contend that the defendant had signed only as M.S.Murugesan both in the vakalat and the acknowledgment card (Ex.A3) and that both the trial Court and the



first appellate Court had compared the signature of the defendant found on the promissory note Ex.A1 and the signatures found on Ex.A2 & Ex.A3 and had come to a definite conclusion that the defendant had signed the suit promissory note. It is also his contention that both the Courts below had properly analysed the evidence on record and therefore, the appeal filed by the appellant/defendant should be dismissed.

15. The appellant/defendant had denied the signature on the suit promissory note (Ex.A1). In order to prove the execution of promissory note, the first plaintiff examined himself as P.W.1 as well as the attestors to the promissory note as P.W.2 and P.W.3. Both P.W.2 and P.W.3 had deposed that the defendant executed the promissory note on 20.04.1999 and received a consideration of Rs.50,000/-. Nothing useful was suggested to P.W.1 to P.W.3 during the course of cross examination to discredit or disbelieve their evidence. The main contention of the defendant is that he used to sign only as S.Murugesan and not M.S.Murugesan and his signature was forged on the promissory note. However, the defendant had denied his signature on the vakalat signed by him. In the vakalat he had signed only as M.S.Murugesan and not S.Murugesan. A perusal of the postal acknowledgment card (Ex.A3) also shows that the defendant signed as M.S.Murugesan. Both the Courts below had in fact compared the signatures found on Ex.A1 to Ex.A3 and had concluded that the defendant alone signed the promissory note. Section 73 of Indian Evidence Act, reads as follows:

"73.Comparison of signature, writing or seal with others admitted or proved : In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person."

Thus as per Section 73 of the Indian Evidence Act, the courts can compare the disputed signature, writing or seal with undisputed signature, writing or seal which have been admitted or proved to the satisfaction of the court. P.W.2 and P.W.3, the attestors to the pro-note also corroborated the evidence of P.W.1 in all



material particulars. Moreover, this is a second appeal under Section 100 of the Code of Civil Procedure where the jurisdiction of the High Court is confined to a substantial question of law. A full Bench of the Supreme Court in Bholaram Vs. Ameerchand reported in AIR 1981 SC 1209 has held that the High Court cannot interfere with the concurrent factual findings of court below in a second appeal. Both the courts below did not place the burden of proof on the appellant / defendant and as per Section 73 of the Evidence Act, the courts can compare the signatures. Thus, the substantial questions of law are answered accordingly. In fine, the second appeal fails and is dismissed.

16. In the result,

- i. the second appeal is dismissed. No costs.
- ii. the decree and judgment dated 24.08.2009 passed in A.S. No.82 of 2008, on the file of the Sub Court, Tiruchengode, and the decree and judgment dated 29.11.2005 passed in O.S. No.232 of 2004, on the file of the District Munsif, Tiruchengode, are upheld.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

mtl

To

1. The Subordinate Judge, Tiruchengode.

2. The District Munsif, Tiruchengode

Copy to:

The Section Officer,

VR Section, High Court, Madras.

+1cc to M/s.Zeenath Begum, Advocate SR.No.8555

+1cc to M/s.R.Meenal, Advocate SR.No.8609

S.A.No .721 of 2011

AJS(CO)

CB(28/02/2022)