



*S.A.No.1056 of 2013*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.09.2022

CORAM

**THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI**

**S.A.No.1056 of 2013**  
**and M.P.No.1 of 2013**

Tamizharasan

... Petitioner

Vs.

Viswanathan

... Respondent

**PRAYER :** Second Appeal is filed under Section 100 of C.P.C., pleaded to allow the second appeal and set aside the decree dated 31.10.2008 passed by the District Munsif Court, Jayankondam in O.S.No.136 of 2007 as confirmed by decree dated 30.11.2012 by the Additional District Court, Ariyalur in A.S.No.63 of 2012.

For Appellant : Mr.E.J.Iyyappan  
for Mr.G.Peranban

For Respondent : Mr.T.Chandrasekaran



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## **ORDER**

This Second Appeal is filed seeking to set aside the judgment and decree dated 31.10.2008 passed by the District Munsif Court, Jayankondam in O.S.No.136 of 2007 as confirmed by the judgment and decree dated 30.11.2012, passed by the Additional District Court, Ariyalur in A.S.No.63 of 2012.

2. The appellant herein is the defendant in the suit in O.S.No.136 of 2007 filed by the respondent herein/plaintiff for recovery of money based on a pro note.

3. The case of the plaintiff is that the defendant borrowed a sum of Rs.40,000/- from him on 22.04.2004 and executed the said pro note and agreed to pay the sum on demand with interest. In spite of the demand, he failed to pay the amount, hence the suit.



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4. The defendant denied the alleged loan borrowed from the plaintiff and also denied the execution of the pro note in favour of the plaintiff. He contended that the pro note is a ranked forgery and there was an enmity when he was a Member in the Self Help Group under the Head of the plaintiff. Due the previous enmity, a false case was foisted against him, thereby he denied the suit claim.

5. Before the trial Court, the defendant has filed an application under Sections 73 and 151 of C.P.C., to send the disputed signature for comparing with the signature found in the documents of the contemporaneous period of 2004, in order to get the expert opinion. But, the said application was dismissed by the trial Court holding that it was filed belatedly.

6. Based on the oral and documentary evidence, the trial Court concluded that the plaintiff proved his case as well as established the borrowal of the loan by the defendant, by invoking Section 73 of the Indian



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Evidence Act, the Court can compare the signature and thus, the signatures found in the Ex.A1 pro note was compared with the signatures of the defendant found in the Vakalat and Written statement. Accordingly, the trial Judge found that the signature found in the pro note as well as the Vakalat and Written statement are one and the same. Thereby, decreed the suit.

7. Aggrieved over that, the plaintiff has preferred an appeal in A.S.No.63 of 2012 on the file of the Additional District Court, Ariyalur submitting that the trial Court failed to appreciate the fact that the defendant took steps to obtain the expert opinion by comparison of the signature in Ex.A1 pro note along with the contemporaneous documents as well as through the evidence of P.W.2, which has also not supported the case of the plaintiff. In spite of that the suit was decreed in favour of the plaintiff as such is it not maintainable in law.

8. Considering that the lower Appellate Court framed separate issues and independently analyzed the facts and evidence and finally held



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that the suit pro note was executed by the defendant and an application seeking the expert opinion was already dismissed by the trial Court and through the evidence of P.W.2, the plaintiff established his case, thereby confirming the trial Court finding, dismissed the appeal.

9. Challenging the concurrent finding, the defendant preferred this appeal submitting that both the Courts below failed to take note of the fact that the trial Judge compared the disputed signature of the defendant with that of the signature in Vakalat, Written statement and Deposition. But, those documents are not contemporaneous period concerned with Ex.A1 pro note, which is of the year of 2004 and rendered the finding without assigning proper explanation as such is unjust and misconception of law. Hence, he prays to set aside the same. Accordingly, the appeal is admitted on the following substantial questions of law.

*a) When the defendant through his written statement has taken a specific stand that the signature found in the promissory note is forged, whether the trial*



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*Court failed to even frame an issue with regard to the genuineness of the promissory note and hence the judgment and decree of the trial Court as confirmed in the Appeal is liable to be interfered by this Court?*

*b) Where the defendant has taken a specific stand that the signature found in the promissory note is forged and the steps taken by the defendant to send the promissory note for Expert Opinion was also dismissed, whether the burden of proof has been discharged by the plaintiff in satisfying the Court with regard to the genuineness of the signature found in the promissory note marked as Ex.A1?*

*c) Where the trial Court has chosen to compare the signature in exercise of its powers under Section 73 of the Indian Evidence Act, whether the finding of the trial Court can be sustained without the trial Court giving specific reasons as to why it arrived at a conclusion that the signature found in the Promissory Note is similar with the admitted signature of the defendant?*



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*d) Whether the findings of both the Courts below can be termed as perverse since it is not in line with the evidence available on record?*

10. The brief facts of the case is that the plaintiff filed a suit on promissory note against the defendant stating that he borrowed a sum of Rs.40,000/- from him and executed the suit pro note. Subsequently, he failed to repay the amount, hence the suit. The defendant totally denied the borrowal of the loan contended that the signature found in Ex.A1 pro note is not that of him and since, there is an enmity with regard to the Membership in the Self Help Group, the plaintiff filed the suit for unlawful claim. From the beginning itself, the defendant denied his signature in the alleged Ex.A1 pro note.

11. During the pendency of the proceedings also, the defendant filed an application to send the document for comparison with the other documents related to period of 2004. But, that application was not allowed by the trial Court. But, both the Courts below held that the Court is empowered



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to compare the signature of the document. Accordingly, they compared the signature found in Ex.A1 pro note along with the Written statement, Deposition and Vakalat of the present suit, which was filed in the year of 2007. The trial Court held that the signature found in the pro note is tallied with the signature found in the Written Statement, Deposition and Vakalat. Thereby, the plaintiff is entitled for the suit claim.

12. The learned counsel for the appellant/defendant submits that if the Court attempted to make comparison, it should give valid reasons about the disputed signature and admitted signature as the case may be with all minute details. But, the trial Court simply stated that the signature found in Ex.A1 pro note is tallied with the signature found in the Written statement, Vakalat and Deposition without giving any details, as such is totally erroneous procedure. To support his contentions, he relied upon the decision of this Court in the case of '*B.Radhamani Vs. S.Charubala reported in 2018 (4) CTC 164*' and the relevant portion of the order is extracted hereunder:-

“ ...



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*17. In the light of the above discussions, on a perusal of the materials placed on record as above discussed, it is found that the plaintiff has established her case clearly and without any ambiguity and accordingly, it is found that the plaintiff has clearly established that it is only the Defendant, who had received the Suit amount from her and executed the Suit Promissory Note as claimed in the Plaint and accordingly, it is found that the Defendant holds a liability to repay the borrowed sum as put forth in the Plaint. In the light of the above, it is found that the First Appellate Court had erred in comparing the disputed signatures with the signatures available in the documents that has come into existence subsequent to the institution of the Suit and the said approach of the First Appellate Court is found to be legally untenable, when as per the Authorities pointed out and discussed above, if at all, the Court endeavors to make a comparison, it should be done only with the signatures available in the documents anterior in point of time to the disputed document particularly with the contemporaneous documents. As a matter of caution, it*



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*is also reminded that the Court should refrain from making a comparison of the disputed signature with the admitted signatures as the same is not the province and domain of the Court and it the best option would be to leave the matter to the wisdom of the expert. Still, if the Court endeavors to make a comparison, it is reminded that the Court should give valid reasons as to in what respects, it had found the disputed signatures and the admitted signatures agree or disagree as the case may be in all minute details and if such details are not available, on that score alone, it could be held that the conclusion arrived at on naked comparison is weak and unreliable and unacceptable. The Substantial Questions of Law formulated in this Second Appeal are accordingly answered.*

*At the end, the Judgment and Decree dated 18.09.2002 passed in A.S.No.101 of 2001 on the file of the II Additional District Court, Coimbatore, are set aside and the Judgment and Decree dated 25.10.1999 passed in O.S.No.329 of 1994 on the file of the Principal Subordinate Court, Coimbatore are confirmed and*



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*accordingly, the Second Appeal is allowed with Cost. Consequently, connected Miscellaneous Petition, if any, is closed.”*

13. In support of his contention, he also relied upon the decision of this Court in the case of '*Subbaiya Gounder Vs. Velathal & Others reported in (2021)1 L.W.421*'.

14. In the light of the above decisions, a perusal of the records reveals that the trial Court is entitled to compare the disputed signature with the admitted signature under Section 73 of the Indian Evidence Act. The signature found in Ex.A1 Pro note is denied by the defendant and the defendant has also filed an application to send the document to obtain the expert opinion and the same was dismissed by the trial Judge. While deciding the issue between the parties, the trial Judge compared the signature found in Ex.A1 Pro note along with the Written Statement, Vakalat and Deposition of the present suit, which was filed in the year of 2007.



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15. It is a settled proposition that the signature found in the disputed document is to be compared with the admitted signature made in the document of the contemporaneous period concerned. In this case, the pro note is of the year 2004. The defendant already took steps to send the document for comparing the disputed signature with the admitted signature found in withdrawal slip dated 10.09.2004, through which he withdrew the amount through the Central Cooperative Bank, Jayankondam on 10.09.2004. But the application was dismissed by the trial Judge and the trial Judge compared the signature by invoking Section 73 of the Indian Evidence Act during the trial.

16. As discussed above, the admitted signatures in the documents are not related to the contemporaneous period and those Written Statement, Vakalat and Deposition are related to the year of 2007 onwards. When there is a document available to compare the signature of the contemporaneous period, instead of giving an opportunity to the defendant to prove his defence, the trial Court compared the signature on its own accord and also



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not stated any specific reasons as to how it arrived at the conclusion with the minute details as such is not valid under law, because the law requires that the Court should give valid reasons as to in what aspect, it agreed with the disputed signature and that of the admitted signature, but the trial Judge has not stated any such reasons.

17. In the instant case, moreover, the documents relied upon for comparison are also not related with the contemporaneous period of 2004. Hence, the finding given by the trial Judge with regard to the signature of the defendant as such is totally unjust and erroneous one. The authorities relied by the defendant are squarely applicable to the facts of this case. Hence, the objections raised by the appellant/defendant is justifiable one and thus, the findings rendered by the Courts below with regard to the signature found in the Ex.A1 Pro note is liable to be set aside. Accordingly, the substantial questions of law (a) and (b) are answered.

18. Furthermore, the defendant has not only denied the signature



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found in Ex.A1 pro note, but also contended that already there was previous  
enmity between himself and the plaintiff with regard to the Self Help Group  
Membership. So, there is lot of possibility to file the suit against the  
defendant by the plaintiff. Hence, a fair opportunity should be given to the  
defendant to prove his case. Accordingly, as stated above, the findings  
rendered by the Courts below is liable to be set aside. But, at the earliest  
point of time, the defendant filed an application to send the document for  
comparison and the same was dismissed. While pending Civil Revision  
Petition, the Judgment was pronounced by the Courts below. Hence, the suit  
has to be remanded back to the trial Court for a fresh disposal and the  
defendant is permitted to file an application to send the document for  
comparison with the admitted signature found in the documents of the  
contemporaneous period. After obtaining the expert opinion, the trial Court  
shall decide the issue on merits and give a fresh disposal of the case as  
expeditiously as possible.

19. Accordingly, the Second Appeal is allowed and the judgment



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and decree passed by the Courts below are set aside and the case is remanded back to the learned District Munsif Court, Jayankondam and the learned District Munsif, Jayankondam is directed to decide the issue between the parties, after obtaining the expert opinion and give a fresh disposal of the suit in O.S.No.137 of 2007 on merits as expeditiously as possible. Consequently, the connected Miscellaneous Petition is closed.

**05.09.2022**

Index : Yes/No  
Speaking order : Yes/No  
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To

1. The Additional District Court, Ariyalur.
2. The District Munsif Court, Jayankondam.



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**T.V.THAMILSELVI, J.**

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