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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2022

PRONOUNCED ON : 18.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Second Appeal No.433 of 2013
& MP.Nos.1 and 2 of 2013

1.M.E.Arun

2.M.N.Saraswathi

...Appellants/Defendants

Vs

R.Sellamuthu

...Respondent/Plaintiff

APPEAL under Section 100 of the Civil Procedure Code against the judgment and decree dated 07.12.2012 in A.S.No.94 of 2012 on the file of the Principal District and Sessions Judge, Erode reversing the judgment and decree dated 04.8.2012 in O.S.No.47 of 2009 on the file of the Principal Subordinate Court, Erode.

For Appellants : Mr.R.Sankarasubbu

For Respondent : Mr.V.Anandhamurthy

JUDGMENT

The defendants are the appellants in this second appeal.

2. The respondent - plaintiff filed a suit seeking for the relief of recovery of money along with interest against the defendants.

3. The case of the plaintiff is that defendants borrowed a sum of Rs.1 lakh on 25.6.2006 towards urgent family expenses. They also executed a promissory note dated 25.6.2006, marked as Ex.A1, in favour of the plaintiff.

4. The grievance of the plaintiff was that the defendants failed to pay the interest and the principal in spite of repeated demands and requests made by the plaintiff. According to the plaintiff, the first defendant was working as a surveyor in the Survey Department at Erode and the second defendant, who is the wife of the first defendant, was working as a Superintendent in the Survey Department at Erode and they were possessed with sufficient income to repay back the loan to the plaintiff. Since the amount was not repaid, the suit came to be filed seeking for the relief of recovery of money.



5. The defendants filed a written statement and denied the entire loan transaction. According to the defendants, the plaintiff is not known to them and one P.Mathiyan had connived along with the plaintiff due to previous enmity with the defendants and had made the plaintiff file the suit with a false claim.

6. The Trial Court, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the very promissory note that is said to have been executed by the first defendant was doubtful and there was a lot of discrepancy in the claim made by the plaintiff and accordingly, the suit came to be dismissed through judgment and decree dated 04.8.2012.

7. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.94 of 2012 before the Principal District and Sessions Court, Erode. The Lower Appellate Court, on re-appreciation of the oral and documentary evidence and after considering the findings of the Trial Court, was pleased to allow the appeal through judgment and decree dated 07.12.2012 and thereby the judgment and decree of the Trial Court were set aside and the suit was decreed as prayed for. Aggrieved by the same, the defendants filed this second appeal.

8. This Court heard Mr.R.Sankarasubbu, learned counsel for the appellants and Mr.V.Anandhamoorthy, learned counsel appearing for the respondent. This Court carefully went through the materials available on record and the findings rendered by both the Courts below.

9. The respondent - plaintiff, in order to prove the execution of the pronote, marked as Ex.A1, examined himself as PW1 and also examined PW2 and PW3, who are attesting witnesses.

10. The Lower Appellate Court, on considering the oral evidence of PW1 to PW3, came to a categorical conclusion that the defendants signed the pronote and the execution of the pronote has been proved. The Lower Appellate Court also took into consideration the defense raised by the defendants as if the suit was filed at the behest of the said P.Mathiyan. The Lower Appellate Court found that except for the ipse dixit of the defendants, there was absolutely no proof to show that the suit was filed by the plaintiff on the instigation of the said P.Mathiyan. The Lower Appellate Court rightly applied the statutory presumption available under Section 118 of the Negotiable Instruments Act and found that the defendants have not discharged the burden. The defendants also did not take any steps to send the disputed pronote for expert opinion, if they are very sure that the signature found therein is not their signature.



11. Unfortunately, the Trial Court took upon itself the task of comparing the signatures and it was rightly commented upon by the Lower Appellate Court and the conclusion arrived at by the Trial Court in that regard was set aside. The Lower Appellate Court, after taking note of the various decisions of the Hon'ble Supreme Court rendered under Section 118 of the Negotiable Instruments Act, found that the Court has to necessarily raise a presumption in favour of the plaintiff, since the execution of the pronote has been proved. After rendering such a finding, the Lower Appellate Court came to the conclusion that the defendants did not discharge the burden that was cast upon them and as a consequence, the claim made by the plaintiff must be taken to have been proved.

12. The Lower Appellate Court had assigned cogent reasons while reversing the findings of the Trial Court and it is in line with Order XLI Rule 31 of the Civil Procedure Code. This Court does not find any perversity in the findings rendered by the Lower Appellate Court. In any event, this Court does not find any substantial question of law involved in the present second appeal.

13. In the result, the second appeal stands dismissed with costs. Consequently, the connected MPs are also dismissed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Principal District and Sessions Judge, Erode

2.The Principal Subordinate Judge, Erode.

Copy to:

The Section Officer,
V.R.Section, High Court, Madras-104.

+1cc to Mr.V.Anandhamurthy, Advocate SR. No. 25998

+1cc to Mr.R.Sankarasubbu, Advocate SR. No. 26200

SA.No.433 of 2013 &
MP.Nos.1 and 2 of 2013

GPL (CO)

PR (01/06/2022)

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