



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21/01/2022

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.287 OF 2017
AND CMP NO.6807 OF 2017

J.Lakshmanan ... Appellant /Defendant

VS.

S.Jawahar ... Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 15.11.2016 in A.S.No.2 of 2013 on the file of District Judge, Nilgiris, Udthagamandalam reversing the judgment and decree dated 25.08.2012 in O.S.No.49 of 2010 on the file of Subordinate Judge, Nilgiris, Udthagamandalam.

For Appellant :Ms.AL.Ganthimathi

For Respondent :Mr.M.L.Ramesh

J U D G M E N T

Inveighing the reversal of decree of dismissal made by the First Appellate Court in a Suit for recovery of money on promissory note, the defendant has preferred the above Second Appeal.

2.The respondent / plaintiff pleaded that the appellant / defendant borrowed a sum of Rs.90,000/- on 19.05.2008 from him and executed a promissory note in his favour promising to refund the amount on demand with interest @ 12% per annum. Since he failed and neglected to repay the amount, inspite of repeated demands, he sent a legal notice on 16.02.2009 and the same was returned on 24.02.2009 and he filed the present Suit for Rs.1,09,232/- together with interest.

3.Denying the allegations, the appellant would plead by way of written statement that he had not borrowed any amount from



the respondent at any point of time. He is working as a Teacher in Government Higher Secondary School and he has no necessity to borrow money from anybody. The alleged promissory note was not executed by the respondent / defendant at any point of time. There was no transaction between the appellant and respondent and all the allegations made in the plaint are devoid of truth and respondent / plaintiff is put to strict proof. The appellant does not owe any money and the respondent was trying to misuse the promissory note by creating forged signature. The cause of action alleged was imaginary and not true.

4.The Trial Court tried the Suit on the issues as to whether the defendant had not executed the Suit promissory note, whether no consideration, whether the appellant's signature was forged, whether the respondent is entitled to get the decree as prayed for. During trial, the respondent examined him as P.W.1 and marked Suit promissory note, legal notice and returned covers as Exs.A1 to A3 and examined the Head Master of Government Higher Secondary School, whether the appellant works as P.W.2 and marked attendance register containing the signature of the appellant of the year 2007-2009 as Exs.X1 to X3 and xerox copies of pay acquittance register for the months of January 2007, May 2007 and 2008 and November 2007 and signatures of the appellant in the acquittance register as Exs.A4 to A14. The appellant did not choose to enter the witness box and has not let in any evidence in defense.

5.The Trial Court finding that the respondent / plaintiff who admitted that no one had attested Ex.A1 - promissory note and that he did not send legal notice to residential address of the appellant in spite of knowing the same and that he could not speak about who scribed the promissory note had failed to discharge the burden that it was executed by the appellant herein and also passing of consideration. Though the signature of the appellant / defendant was admitted by P.W.2 - Headmaster, the respondent failed to take steps to send to Forensic Department for comparison and opinion and failed to discharge the burden to prove the signature which was disputed by the appellant / defendant. Though the defendant did not come to witness box, since the plaintiff failed to prove his claim and hence dismissed the Suit.

6.On appeal, the First Appellate Court considering the evidence and by comparing disputed signatures found in the promissory note with the admitted and proved signature set aside the decree and judgment of the Trial Court and decreed the Suit.



7. Aggrieved over the same, the appellant / defendant preferred the above Second Appeal on the following questions of law:-

WEB COPY

(i) Whether the learned District Judge is correct in granting a decree without any reasons for reversing the well considered findings of the Trial Court ?

(ii) Whether the learned District Judge is correct in comparing the signatures without sending it for expert evidence ?

(iii) Whether the learned District Judge is correct in comparing the signatures in the Suit promissory note with Ex.A4 to A14 which are not originals ?

8. On notice, respondent entered appearance through his counsel and both the sides consented to argue the above Second Appella on the legal issues arising out of the questions of law framed in the Memorandum of Grounds of Second Appeal.

9. The learned counsel for the appellant would vehemently contend that there is absolutely no evidence to prove that the disputed promissory note was signed by the appellant and that was supported by consideration. The signature can be proved by getting expert opinion, which the respondent failed to discharge. The First Appellate Court erred in comparing the signatures with xerox copies of the documents and not originals. Lack of pleadings for payment of interest and delay in issuing notice and also delay of filing the Suit after issuing the notice would probabalise rebuttal of presumption which is specifically made. In spite of knowing the residential address the respondent has not sent any notice as admitted by him and there was no cause of action to file a Suit. Without considering the least principles of law, the First Appellate Court compared the signatures with the signatures found in xerox copies of documents and erroneously decreed the Suit and hence, the decree and judgment passed by the First Appellate Court shall be set aside.

10. Per contra, the learned counsel for the respondent relying on the judgment of this Court in S.A.No.653 of 2006 dated 01.04.2014 and would contend that the respondent as P.W.1 has categorically proved that the respondent herein had subscribed his signature and borrowed the amount. The presumption raised by him was not rebutted by the appellant in



evidence. The First Appellate Court under Section 73 of the Evidence Act is empowered to compare the signature and compared with the admitted signatures found in vakalat, summons and written statement and not with the signatures found in the xerox copies of the documents. The defendant did not enter the witness box to probablise his case and therefore, the First Appellate Court has rightly decreed the Suit and there is no scope for interference.

11.This Court paid its anxious consideration to the submissions made by both sides.

12.The Suit is one for recovery of money on promissory note. The respondent / plaintiff would plead that the appellant / defendant has borrowed a sum of Rs.90,000/- on 19.05.2008 and let in evidence in support of plea and marked the promissory note as Ex.A1. It is his evidence that the signature found in the promissory note was made by the appellant and that he borrowed the money. He would further examine the Headmaster of the School, where the defendant worked as Vocational Instructor and marked the attendance register containing signatures of the appellant for proving the fact that the appellant worked in that school and the signatures were made by him during the relevant period of borrowal.

13.The evidence of P.W.1 supported by P.W.2 would go to show the appellant was working at Government School during the period the promissory note was executed. Further, the signatures of the appellant stood proved in the attendance register. There is no contrary evidence to the fact that the signatures found in Exs.X1 to X3 are not the signatures of the appellant / defendant. Admittedly, the respondent as P.W.1 would categorically depose that the appellant had subscribed his signature and consideration was passed. On the contrary, the appellant has taken a stand in the written statement that the signature was forged. Section 118 of the Negotiable Instruments Act clearly mandates that unless the contrary is proved that when signature is admitted, the passing of consideration also stood proved. The plaintiff had let in evidence to prove the execution and signature of the defendant. Once the presumption is raised by the plaintiff in evidence, the burden to prove the contrary shifts on the shoulders of the defendant. It is true to state that it is difficult to prove the negative. It can only be rebutted by giving evidence and probabalising the defense that there was no necessity to borrow and no such circumstances existed leading to the alleged execution of promissory note.



14. But, in the instant case, the appellant in his written statement would set up a case that he had not borrowed and that he had not executed any promissory note and the promissory note was created by forging his signature. But, in order to prove his pleadings, he has to enter the witness box to prove the same. Without adducing any contrary evidence that the signature found in the disputed promissory note was not made by him and that the signatures found in the attendance registers cannot be compared as they will not match with his actual signature, the appellant stayed silent. The appellant did not let in any evidence rebutting the presumption in support of his defense and prove the contrary. If the burden is discharged, that will shift back to the plaintiff. Thereafter, the issue will become academic and the Court can consider the weightage of evidence and arrive at a decision. But when there is evidence let in on behalf of one party, it shall be presumed that the presumption raised by the other party is probable. In the absence of any rebuttal of presumption by defendant through oral or documentary evidence, the First Appellate Court found that the case of the plaintiff was probalised.

15. On the other hand, the finding of the Trial Court that there were no witnesses for proving the execution of the promissory note and for passing of consideration is on erroneous basis, for, it is not mandatory that the promissory note shall be attested by witnesses. When law does not compel attestation of signature, it shall rely only on the evidence of the holder of the promissory note. Once the presumption of execution of the negotiable instrument stood established, passing of consideration shall also be presumed. The Trial Court solely based its finding on non-examination of witnesses as to execution or scribe of the promissory note is fatal. The finding of the Trial Court, in the opinion of this Court is erroneous and the finding of the First Appellate Court is based on sound principles of law.

16. Secondly, it has to be analysed as to whether the Court under Section 73 of the Evidence Act is competent to compare the disputed signature with the admitted signature. It is the contention of the learned counsel for the appellant that the disputed signature was compared with the signatures found in the xerox copies marked as Exs. A4 to A14. But the materials reveal that Ex. X1 to X3 are the attendance registers produced from school by the competent authority, the Headmaster of the school, where the appellant worked during relevant period. It is not disputed by the appellant / defendant and no contrary evidence was adduced that the signatures cannot be compared. It is not



WEB COPY

true to state that the signatures were not admitted by the defendant, but it was received, admitted and proved in evidence by the plaintiff's side through the competent witness. There is no legal bar for the Court to compare the signatures with proved documents. It is also pertinent to note that apart from Exs.X1 to X3, the other admitted documents are the vakalat, written statement and summons. Normally, comparison with these documents could be opposed by the plaintiff as the defendant has an opportunity to disguise his signatures in order to defeat the plaintiff's right. Here the situation is different, where the plaintiff insisted the signatures be compared. Obviously, the defendant cannot allege prejudice against such comparison as the signatures are admitted signatures. Therefore, as contended by the appellant, the comparison of signatures by the First Appellate Court were not with the signatures found on the xerox copies of the documents marked as Exs.A4 to A14, but the admitted signatures found on vakalat, summons, written statement and Exs.X1 to X3. The Court is competent to compare the signatures.

17.This Court in CHELLADURAI VS. VELMURUGAN [S.A.NO.653 OF 2006 DECIDED ON 01.04.2014] relied on by the learned counsel for the respondent would lay down the following propositions:-

"i) In case, a party, whose signature is disputed, wants his own signature found in the documents that came into existence much later in point of time or after the dispute has arisen and the same is opposed by the party relying on the document containing the disputed signature, it shall be prudent for the court not to make such a comparison.

ii) On the other hand, if the person, who relies on the disputed signature, does have no objection for comparing it with, or seeks comparison of the same with, the admitted signature contained in a document even though the same came into existence after the dispute has arisen as he believes that the signatures are not disguised and they are good for comparison, then, the person disputing his signature in the document in question cannot have any valid objection for making such comparison.



WEB COPY

iii) Only when the party who relies on the disputed document expresses an apprehension that the document of recent origin or the farthest document shall not be suitable for making comparison, the admitted or proved contemporary signatures alone should be used for such comparison."

18.The said proposition squarely apply to the case on hand. Hence, the questions of law are answered against the appellant and in favour of the respondent.

19.In fine, the Second Appeal merits no consideration and accordingly dismissed confirming the judgment and decree dated 15.11.2016 passed in A.S.No.2 of 2013 by the learned District Judge, Nilgiris, Udhagamandalam. No costs. Consequently, connected civil miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

TK
To

1.The District Judge,
Nilgiris.
Udhagamandalam.

2.The Subordinate Judge,
Nilgiris.
Udhagamandalam.

+1cc to M/s.A.L.Ganthimathi, Advocate Sr.3794
+1cc to M/s.G.Kumud Jhabakh, Advocate Sr.3651

SA NO.287 OF 2017

ss[co]
srg 16/02/2022