



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

S.A(MD).No.158 of 2022

V. SUBBURAM, ... Appellant/Respondent/Defendant

Vs

N.S.BALAMURUGAN, ... Respondent/Appellant/Plaintiff

Second Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree passed in A.S.No.22 of 2018 on the file of the Additional District Judge, (FTC), Theni, dated 18.02.2019 reversing the well-considered judgment and decree passed in O.S.No.121 of 2011 on the file of the Sub-ordinate Judge, Uthamapalayam, dated 25.10.2017 and allow the appeal with costs.

For Petitioner	:	Mr.S.A.Kumar
		for Mr.R.Suriyanarayanan
For Respondent	:	Mr.C.Senthil Murugan

O R D E R

This Second Appeal has been filed to set aside the judgment and decree passed in A.S.No.22 of 2018 by the Additional District Judge, (FTC), Theni, dated 18.02.2019 reversing the well-considered judgment and decree passed in O.S.No.121 of 2011 by the Sub-ordinate Judge, Uthamapalayam, dated 25.10.2017 and allow the appeal with costs.

2. The defendant is the appellant. The plaintiff namely Mr.N.S.Balamurugan, who is the respondent herein, has filed a suit for recovery of money and costs from the defendant.

3. The facts of the case are that the defendant has borrowed a sum of Rs.3,00,000/- from the plaintiff on 05.05.2011 to meet out his family expenses and to develop his agricultural lands, and executed the promissory note on the very same day in favour of the plaintiff agreeing to repay the principal amount of Rs.3,00,000/- with interest at Rs.10/- p.m for Rs.100/-. The defendant did not repay any amount either principal or interest to the plaintiff, even after making so many demands by the plaintiff. Hence, the plaintiff has filed the suit to recover the principal amount of Rs.3,19,500/- with subsequent interest for Rs.3,00,000/- and cost from the defendant.



4. The defendant filed a written statement denying the averments set out in the plaint by stating that the defendant has borrowed a sum of Rs.3,00,000/- from the plaintiff on 05.05.2011 and the defendant has agreed to repay the principal amount with interest at Rs.1/- p.m. for Rs.100/-. It is also falsely stated that the defendant has executed a promissory note in favour of the plaintiff at Markaiyankottai Village on 05.05.2011. The defendant has denied all the allegations set out in the plaint by stating that he has not borrowed any amount from the plaintiff and not executed any such promissory note in favour of the plaintiff. It is further stated by the defendant that the plaintiff has forged the signature of the defendant at the instigation and inducement of Manivannan, who was erstwhile son-in-law of the defendant and fraudulently created the promissory note.

5. The First Appellate Court has framed the following issues:-

1. Whether the plaintiff has proved the execution of promissory note by the defendant in favour of the plaintiff on 05.05.2011 after borrowing a sum of Rs.3,00,000/- from him?

2. Whether the judgment and decree of trial Court in dismissing the suit is correct and proper?

3. Whether this appeal is liable to be allowed?

6. The trial Court accepted the contention of the defendant/appellant herein by stating that the signature of the defendant is not tallied and accordingly, dismissed the suit. The First Appellate Court considered the grounds raised by the plaintiff/respondent and made a clear finding that Ex.A1 is the promissory note which was denied by the defendant in his case. It is further contended that the said promissory note was not supported by any consideration. Signature in Ex.A1 was totally denied by the defendant. The defendant has stated that he did not receive any amount from the plaintiff on 05.05.2011. Under these circumstances, the First Appellate Court has formed an opinion that the plaintiff need not produce any documents such as Bank Pass Books or to pour the money before the Court to establish that he was having sufficient money to lend the same to the defendant. The trial Court dismissed the suit based on some minor contradictory evidences of P.W.1 to P.W.3 about the denomination of Rs.3,00,000/-, which is not at all well reasoned and well sounded one. Further, some minor contradictory evidences of P.W.1 to P.W.3 in respect of denomination of money will not ruin or dismantle the very root of the suit filed by the plaintiff.



7. The plaintiff has clearly established the presumption under Sections 118 and 139 of Negotiable Instrument Act in his favour through the evidence of P.W.1 to P.W.3. Per contra, the defendant did not discharge his burden to rebut the presumption drawn in favour of the plaintiff under Sections 118 and 139 of Negotiable Instrument Act.

8. The defendant has taken steps to compare the disputed signature in Ex.A1/Promissory note along with his admitted signatures and to get the expert opinion. He will not proceed the same even after getting the order from this Court for comparison of signatures and get the expert opinion. On perusal of the records, it is found that the defendant has filed the petition in I.A.No.286 of 2012 before the trial Court for sending the Promissory Note to the Handwriting Expert for comparison of his signature and to obtain the expert opinion. The trial Court has dismissed the I.A.No.286 of 2012 on merits on 23.10.2013. Thereafter, the defendant has preferred C.R.P(PD)(MD).No.211 of 2014 before this Court and as per the order of this Court, Thiru.Yesuthiruselvan was appointed as Advocate Commissioner to take over the original Promissory Note to the Handwriting Expert and to obtain the expert opinion. But, the defendant did not pay the remuneration of Rs.5000/- to the Advocate Commissioner and hence, further process in the commission petition was dropped by the trial Court. Hence, the First Appellate Court formed a clear opinion that the defendant did not comply with the order of this Court to proceed the expert opinion petition filed in I.A.No.286 of 2012.

9. On perusal of cross-examination of D.W.1, it is found that the defendant has wantonly denied his own signature signed in the Acknowledgement Due Card received by him in I.A.No.341 of 2011 and O.S.No.121 of 2011. However, the signature in Exs.A2 and A3 was admitted by the defendant in his cross-examination. Ex.A2 is the H4 notice served to the defendant in I.A.No.341 of 2011. Ex.A3 is the Summon served to the defendant in O.S.No.121 of 2011. The First Appellate Court found that the admitted signatures of the defendant in Exs.A2 and A3 and the signature of the defendant in his written statement are completely different from each other. Thus, the First Appellate Court arrived a conclusion that the defendant is used to follow the habit of putting his signature in a different manner in different documents. There is no constant and stable signature put up by the defendant and hence, he totally denied his own signature in the court summons and court acknowledgement card. The conduct of defendant will clearly establish that he wantonly and purposefully denied his own signature put up in the promissory note. The First Appellate Court clearly made a finding that the conduct of the defendant in putting signature in different places is established. Accordingly, the First Appellate Court arrived a conclusion that the



plaintiff has clearly proved through the evidence of P.W.1 to P.W.3 that the defendant has borrowed a sum of Rs.3,00,000/- from the plaintiff on 05.05.2011 and executed a promissory note in favour of the plaintiff on 05.05.2011 and it was supported by valuable consideration. It does not suffer from any legal infirmity. However, the trial Court has not considered the evidences adduced on both sides in a proper way and based on some minor discrepancies, the trial Court dismissed the suit.

10.This Court is of the considered opinion that the tactics of putting the signature in different places were traced out by the Appellate Court by verifying the notice and summons issued in the suit and Interlocutory application. When the First Appellate Court has clearly discussed about discrepancies and arrived a conclusion that the defendant/appellant is having the habit of putting the signature in different places in different manner and further, the trial Court has dismissed the suit merely on certain minor discrepancies, the findings of the First Appellate Court seem to be sufficient enough to dismiss the Second Appeal. In view of the clear findings, which are all cogent and reasoned with reference to the documents established between the parties, this Court is of the opinion that there is no reason whatsoever to interfere with the judgment and decree passed by the First Appellate Court in A.S.No.22 of 2018.

11. Accordingly, the judgment and decree passed by the Additional District Judge, (FTC), Theni dated 18.02.2019 in A.S.No.22 of 2018 stands confirmed and consequently, the Second Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

Ssb

TO

1.The Additional District , (FTC) Theni,

2.The Subordinate , Uthamapalayam.



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KB(13.04.2022) 5P 5C