



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 01.03.2022
JUDGMENT PRONOUNDED ON : 04.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD) .No.17 of 2019

A.Veerapagu ...Appellant/Respondent/Plaintiff

Vs

S.Boomi ...Respondent/Appellant/Defendant

PRAYER : Second Appeal is filed under Section 100 of C.P.C, to set aside the judgment and decree dated 29.01.2018 passed in A.S.No.82 of 2017 on the file of the I Additional District Court, Tirunelveli reversing the judgment and decree dated 18.11.2016 passed in O.S.No.95 of 2014 on the file of the Subordinate Court, Ambasamudram.

For Appellant : Mr.S.Selva Aditya
for Mr.G.Prabhu Rajadurai
For Respondent : Mr.M.P.Senthil

JUDGMENT

The plaintiff is the appellant.

2.The plaintiff filed O.S.No.95 of 2014 before the Subordinate Court, Ambasamudram for recovery of money for a sum of Rs.1,61,680/- based upon a pro-note dated 14.11.2011 said to have been executed by the defendant. The trial Court decreed the suit. The defendant filed A.S.No.82 of 2017 before the I Additional District Court, Tirunelveli. The learned District Judge was pleased to reverse the judgement and decree of the trial Court and dismissed the suit. As against the same, the plaintiff has filed the present second appeal.

3.The plaintiff had contended that the defendant has received a sum of Rs.1,20,000/- on 14.11.2011 to meet out his family expenses and executed a pro-note in the presence of attestors. Though several demands were made by the plaintiff, the defendant has neither paid the principal amount nor the interest amount. Hence, the present suit for recovery of money.

4.The defendant filed a written statement disputing his signature in the suit pro-note. The defendant had contended that the suit pro-note has been forged by the plaintiff. According to



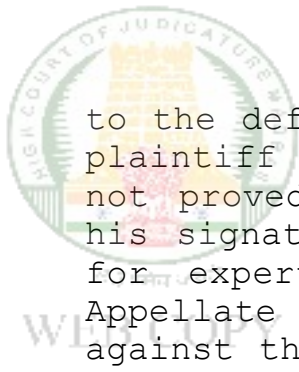
the defendant, the plaintiff is a money lender and he has been giving loan to several persons in the village. According to the defendant, he is running a small grocery shop in the village and the plaintiff used to come to the said shop. Many persons who have borrowed loan from the plaintiff had not repaid the same and the defendant used to collect the interest and principal amount on behalf of the plaintiff from the said debtors. The debtors sometime refused to repay the amount alleging that the plaintiff has not given credit to their payments. At one point of time, the plaintiff started to impose the liability of recovering the said amount on the defendant from those persons who have defaulted in returning the loan amount. The defendant had refused to collect the loan amount on behalf of the plaintiff.

5.The defendant had further contended that the plaintiff had used the signature of the defendant found in the passbook and created the present pro-note. The said pro-note is a forged document and the defendant is not liable to pay any amount based upon the said pro-note.

6.The trial Court after perusal of Exhibit A1 pro-note and the deposition of PW1 and PW2 arrived at a finding that the plaintiff has proved the execution of Exhibit A1 suit pro-note. The trial Court found that the entire pro-note is in the handwriting of the defendant and he has signed over the revenue stamp also. The trial Court also found that the evidence of PW1 and PW2 has not been discredited by the cross examination of the defendant. When no enmity would be attributed to PW2, there is no reason to reject the evidence of PW2.

7.The trial Court further found that just because there was some enmity between the plaintiff and the defendant in some temple festival, the same will not make the pro-note as a forged document. The trial Court also found that though there are some minor discrepancies in the deposition between PW1 and PW2, they are intact on the material aspects. Based upon the said findings, the trial Court decreed the suit as prayed.

8.The First Appellate Court has elaborately considered the deposition of PW1 and PW2 and has arrived at a finding that there are many discrepancies between the deposition of PW1 and PW2. PW1 has contended that he is not a money lender, but on the other hand, PW2 has admitted that the plaintiff is a money lender. That apart, PW2 had deposed that he was not aware whether the defendant has signed either in English or Tamil. Based upon the said discrepancy, the First Appellate Court arrived at a finding that the plaintiff has not discharged his initial burden of proving the execution of Exhibit A1 suit pro-note. Only when the plaintiff proves the execution of Exhibit A1 pro-note, the burden will shift



to the defendant to prove the passing of consideration. Since the plaintiff has not discharged his initial burden, the plaintiff has not proved Exhibit A1 pro-note. When the defendant has disputed his signature, the plaintiff has not chosen to send the document for expert opinion. Based upon the said findings, the First Appellate Court allowed the appeal and dismissed the suit. As against the same, the present second appeal has been filed by the plaintiff.

9.The second appeal was admitted on the following substantial questions of law:

(1)Whether the lower appellate Court is correct in law in reversing the well considered judgment on finding the minor discrepancies in PW2 when the deposition of PW2 in whole is clearly deposed the essential aspects of the execution of Ex.A1?

(2)Whether the lower Appellate Court is correct in law in rendering that the plaintiff has not discharged the initial burden of proving the execution of Ex.A1 on placing reliance on the minor discrepancies with PW2which may occur only due to the passage of time?

(3)Whether the lower Appellate Court is correct in law in not taking adverse inference against the defendant who has not taken any steps to compare the signature when he assails Ex.A1 as rank forgery?

10.The learned counsel for the appellant had contended that the plaintiff has proved the execution of Exhibit A1 by examining himself as PW1 and one of the attestors as PW2. The alleged discrepancies between the deposition of PW1 and PW2 is with regard to the fact that whether the plaintiff is a money lender or not. Apart from that, there is no major discrepancy on material aspects between PW1 and PW2. The fact that the plaintiff is a money lender or not is not going to alter the mode of proving Exhibit A1 pro-note. He further contended that the suit pro-note has not been created in a printed form, in fact almost 15 lines have been written by the defendant himself in his handwriting and thereafter, he has signed on the stamp paper. The defendant has chosen only to dispute his signature on the stamp paper, but he has not chosen to dispute the handwriting found in the pro-note.

11.The learned counsel for the appellant further contended that the First Appellate Court erred in relying upon the minor discrepancy relating to immaterial facts and reversing the judgment and decree of the trial Court. The learned counsel for the appellant relied upon the judgment of our High Court reported in 2014 SCC Online Mad 10649 to impress upon the Court that a civil case has to be decided by preponderance of probabilities. Some minor inconsistency in the evidence as to the purpose of loan or some contradictory answers as to the time and place of



execution of the document will not materially affect the case of the plaintiff. Hence, he prayed for allowing the second appeal.

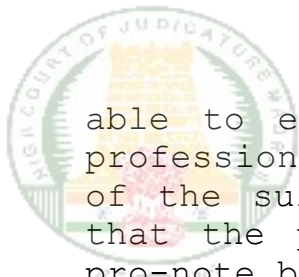
12.Per contra, the learned counsel for the respondent contended that the initial burden is upon the plaintiff to establish the fact that the defendant has executed the suit pro-note. In fact, the defendant in his written statement as categorically contended that the suit pro-note has been forged by the plaintiff. The signature of the defendant which was found in the passbook has been utilised by the plaintiff to create the suit pro-note. According to the learned counsel for the respondent, the First Appellate Court has correctly arrived at a finding that the plaintiff has not discharged the initial burden upon him to prove the execution of Exhibit A1 suit pro-note. Hence, he prayed for dismissal of the second appeal.

13.I have considered the submissions made on the either side.

14.A perusal of Exhibit A1 suit pro-note shows that it is a holographic pro-note. The entire contents of the pro-note have been written in a white paper and on the stamps, the signature of the defendant is found. The defendant has contended that his signature found in the passbook relating the money transaction between the plaintiff and the defendant has been used by the plaintiff to create a suit pro-note. However, the defendant is not able to explain how a 15 line pro-note is found in the handwriting of the defendant.

15.In paragraph No.4 of the plaint, the plaintiff has specifically contended that the suit pro-note is a holographic one and the same has not been specifically denied by the defendant in his written statement. His only defence is that the signature has been forged by the plaintiff and the suit pro-note is a forged one. The motive alleged in the said forgery is that the defendant refused to collect the dues on behalf of the plaintiff. In his written statement, the defendant has admitted that he used to collect the dues of the plaintiff from the debtors of the plaintiff. In the written statement, the defendant has also admitted that the plaintiff is a money lender and he used to lend money to various persons in the village. Hence, it is evident that the discrepancy between PW1 and PW2 with regard to the fact that whether the plaintiff is a money lender or not is not a material issue, when the defendant has admitted in the written statement that the plaintiff is a money lender.

16.A perusal of deposition of PW1 and PW2 will disclose that their evidence with regard to execution of pro-note and passing of consideration under the said pro-note have not been discredited by the defendant by his cross examination. The defendant was only



able to extract certain minor discrepancies with regard to the profession of the plaintiff and the motive relating to the filing of the suit. Hence, this Court can safely come to a conclusion that the plaintiff has proved the execution of Exhibit A1 suit pro-note by the defendant.

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17.The First Appellate Court has relied upon certain minor discrepancies between the deposition of PW1 and PW2 to arrive at a conclusion that the plaintiff has not established the execution of Exhibit A1 pro-note ignoring the admissions made by the defendant in his written statement. When the plaintiff has discharged his initial burden of proving the execution of suit pro-note, the presumption under Section 118 of the Negotiable Instrument Act get attracted and the burden will be upon the defendant to establish that no such payment was made on 14.11.2011. However, the defendant has not chosen to let in any evidence with regard to the quantum of consideration or the date of the pro-note. Hence, the plaintiff has proved the execution of Exhibit A1 and he is entitled to a decree for recovery of money.

18.In view of the above said discussions, the substantial questions of law are answered as follows:

(1)The First Appellate court erred in relying upon certain minor immaterial discrepancy between the deposition of PW1 and PW2 to reverse the judgment and decree of the trial Court.

(2)The deposition of PW1 and PW2 have not been discredited in the cross examination by the defendant. Hence, the plaintiff has discharged his initial burden of proving of execution of Exhibit A1 pro-note.

(3)When the plaintiff has proved the execution of Exhibit A1 by examining himself and the attestors, the defendant has not taken any steps to compare the signature to disprove his case.

19.In view of the above said discussions, all the substantial questions of law are answered in favour of the appellant. The judgment and decree of the First Appellate Court are set aside. The judgment and decree of the trial Court are restored. The second appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

msa



To

1.The Subordinate Judge
Ambasamudram

2.The I Additional District Judge
Tirunelveli

3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai. (2 COPIES)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-10413[F] dated
07/03/2022)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-10442[F] dated
07/03/2022)

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