



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.767 of 2015

K.Periyasamy ... Appellant/Appellant/Plaintiff

Vs.

1.R.Moorthi

2.R.Kathigaivel

3.C.Pavunan @ Palanisamy ... Respondents/Respondents/
Defendants

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 04.12.2014 passed in A.S.No.22 of 2012, on the file of the Additional District Sessions Court, Dindigul, confirming the judgment and decree, dated 16.04.2012 passed in O.S.No.689 of 2003 on the file of the Principal Subordinate Court, Dindigul.

For Appellant : Mr.B.Saravanan

For Respondents : Mr.M.R.Sreenivasan
for Mr.R.Nandakumar

JUDGMENT

The second appeal is directed against the concurrent Judgments and decrees, passed in O.S.No.689 of 2003 by the Principal Subordinate Court, Dindigul and in A.S.No.22 of 2012, passed by the Additional District Court, Dindigul.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking as before the Trial Court.

3.The appellant herein as plaintiff has instituted a suit in O.S.No.689 of 2003, on the file of the trial Court for declaration, permanent injunction and mandatory injunction, wherein, the respondents have been shown as the defendants.

4.In the plaint, it is averred that the son of the plaintiff Sakthivel has already filed an insolvency petition against the defendants and others in I.P.No.1 of 2002, on the file of the Subordinate Court, Dindigul, and the said insolvency petition is still pending for enquiry. Due to money transactions between the



plaintiff's son and defendants, there exists a strong enmity. Therefore, on 07.08.2002 at about 7.30 p.m., the defendants along with three strangers came in a Ambassador Car, waylaid the plaintiff who was riding Hero Honda Motor Bike with one Raju as a pillion rider near Old Society at Sriramapuram and kidnapped the plaintiff in the Car and manhandled him. Pillion rider Raju who witnessed the incident was threatened with dire consequences by the defendants. After snatching a sum of Rs.10,000/- from the plaintiff, he was threatened to affix his signatures and Left Thumb Impression in many blank papers and stamp papers and he was thrown out from the Car at 3.00 p.m. on 08.02.2002 with severe warnings that if the plaintiff's son failed to withdraw the insolvency petition, he would be murdered. On 08.02.2002, the plaintiff lodged a complaint with Police and sent telegrams to the Police Higher Officials narrating the incident. Further on 08.02.2002, the plaintiff published a notice in Daily Thanthi warning the defendants and others to desist from using blank papers and stamp papers containing signatures and Left Thumb Impressions of the plaintiff by forging instruments thereon. The plaintiff apprehends that the defendants would manipulate the instruments on the blank papers and stamp papers bearing his Left Thumb Impression and signatures and initiate legal action against him and his properties on the basis of such forged instruments. Hence, the suit.

5.In the written statement filed on the side of the defendants, it is averred that the plaintiff has filed the suit only to defraud the defendants and to avoid payments payable by his son to the defendants. In order to defraud and cheat the debts due to the defendants, the plaintiff's son Sakthivel preferred an insolvency petition in I.A.No.1 of 2002, on the file of the Subordinate Court, Dindigul, showing the defendants as creditors along with number of other bogus creditors just to fulfil his intention. The plaintiff and his son criminally conceived a plan to avoid the defendants from appearing in Courts to pursue the insolvency proceedings. The defendants have lodged a complaint before Oddanchatram Police Station, but no action was taken. On the other hand, the Police entertained a false complaint preferred by the plaintiff and his son and continuously harassed the defendants. The defendants have not obtained plaintiff's signatures or Left Thumb Impression in stamp papers and blank papers as alleged by the plaintiff. These defendants do not possess any such documents. There is no necessity for the defendants to obtain such document by coercion to use them as against the plaintiff. There is no cause of action for filing the suit and the suit is liable to be dismissed with costs.

6. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and one Karuppannan was examined as P.W.2 and Exs.A1 to A14 were marked. On the side of the defendants, second defendant namely, Karthigaivel was examined as



7. On the basis of the rival pleadings on either side, the trial Court has framed necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit.

8. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff as appellant, had filed an Appeal Suit in A.S.No.22 of 2012. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, has dismissed the appeal and confirmed the Judgment and decree passed by the trial Court.

9. Challenging the said concurrent judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the plaintiff as appellant.

10. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents and perused the materials available on record.

11. At the time of admitting the present second appeal, the following substantial question of law has been framed for consideration:

- "a) Whether the Courts below are right in dismissing the suit without considering the pendency of criminal case with regard to the same occurrence ?
- b) Whether the Courts below are right in dismissing the suit without considering Ex.A.1 to Ex.A.14 ?
- c) Whether the Courts below are right in dismissing the suit without waiting for a decision in C.C.No.873 of 2010 ?
- d) Whether the Courts below are right in not considering the non-examination of the third defendant is fatal to the case of the defendants ?

12. The learned counsel appearing for the appellant/plaintiff contended that both the Courts below have failed to consider that the charges levelled against the respondents and the same is pending consideration before the competent Criminal Court; the plaint averments have been substantiated through Exs.A.1 to A.14 and the same probalised the case of the appellant; when a specific allegations have been levelled against the third respondent, he ought to have come to the witness box; the pendency of a criminal case in C.C.No.873 of 2010 with regard to the same occurrence and the Courts below ought to have waited till a decision is arrived in C.C.No.873 of 2010 and that a competent Magistrate alone is empowered to conclude whether such an occurrence has been happened or not and therefore, the plaintiff prayed for allowing the Second Appeal.



13.The learned counsel appearing for the respondents/defendants would submit that the first Appellate Court, after analysing the documents available on record, has rightly dismissed the Appeal and prayed for dismissal of the Second Appeal.

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14.This Court paid its anxious consideration to the rival submissions made and also carefully perused the materials placed on record.

15.The case of the plaintiff is that there was enmity between the plaintiff and the defendants since his son indebted to the first respondent and filed an insolvency petition. On 07.02.2002, the plaintiff was kidnapped by the defendants and some other persons in a Ambassador Car and he was threatened and coerced to affix his Left Thumb Impression and signatures in many blank papers and stamp papers and snatched away a sum of Rs.10,000/-. On the very next day, he was released and he immediately lodged a complaint before the Police and a case has been registered against the defendants in Crime No.129 of 2002 by Oddanchatram Police under Sections 147, 148, 342, 323, 383 and 506(ii) IPC. After completion of investigation charge sheet was laid and the case was taken on file in C.C.No.873 of 2010 by the learned Judicial Magistrate, Veda sandur. As the plaintiff apprehends that the signatures and Left Thumb Impression obtained under coercion may be misused and manipulated as documents by the defendants and those documents may be used against him. So the plaintiff has filed the suit for declaration that the defendants are not entitled to manipulate or concoct the blank papers and stamp papers bearing Left Thumb Impression and signatures of the plaintiff and also to restrain the defendants from misusing such documents and to return the blank papers and stamp papers bearing Left Thumb Impression and signatures of the plaintiff to him and for costs.

16. The plaintiff as P.W.1 has stated that due to enmity the defendants kidnapped the plaintiff in an Ambassador Car at about 7.30 p.m. on 07.02.2002. While so, he was threatened to put his signatures and affix his Left Thump Impression in blank papers and stamp papers and also snatched away Rs.10,000/- which was with him. It is further stated that the plaintiff was released on the very next day and thereafter, he lodged a Police complaint and also issued Warning Notice in Daily Thanthi, which was marked as Ex.A.4. P.W.1 would further submit that the plaintiff sent a telegram to the Superintendent of Police on 08.02.2002, about the alleged kidnapping and to take action against the kidnappers and a copy of the telegram is marked as Ex.A.2 and the complaint given to the Superintendent of Police is marked as Ex.A.3. Thereafter, the plaintiff has lodged a complaint with Oddanchatram Police and a case in Crime No.129 of 2002 was registered against the defendants and a copy of which was marked as Ex.A.5. During investigation, several witnesses were



Cr.P.C., which was marked as Exs.A.7 to A.13. On completion of investigation, charge sheet was filed against the defendants which was marked as Ex.A.6.

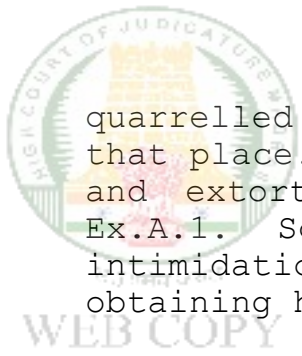
17. On the basis of the facts as narrated above, a suit in O.S.No.369 of 2008, on the file of the District Munsif Court, Oddanchatram, has been filed by one Karuppanan, and the same was dismissed and a copy of which was marked as Ex.A.14.

18. It is further stated that the son of the plaintiff has borrowed money from the defendants and others and as he could not repay the same, he filed an insolvency petition and being enraged by that act the plaintiff was threatened and kidnapped forcibly and obtained his signatures and Left Thumb Impression in several stamp papers and blank papers. As the plaintiff thought that the defendants may misuse the stamp papers, he filed a suit for declaration and for other consequential reliefs.

19. It is further submitted that the plaintiff has not mentioned about the fact that he has signed in the printed form of promissory note. However, as seen from the First Information Report Ex.A.5, no stamp papers or blank papers with the signatures of the plaintiff was recovered from the defendants and the plaintiff has also not stated whether the C.C.No.873 of 2010 is pending or not.

20. To corroborate the evidence of P.W.1, one Karuppanan was examined as P.W.2, who witnessed the kidnapping of the plaintiff by the defendants. P.W.1 and P.W.2 have never stated about the registration number of the car in which the plaintiff was kidnapped and the Police Officer who has investigated the case has also failed to make a mention of the same. P.W.1 - Plaintiff has stated that while he was kidnapped, he travelled with one Raju in a two wheeler and that the said Raju has witnessed the kidnapping, however, he was not examined as a witness to prove his case. On the other hand, one Karuppanan was examined as P.W.2, who is mentioned as an eye witness to the occurrence, however, his name was not mentioned in the complaint given by the plaintiff. Further, the said Karuppanan / P.W.2 has not mentioned about the forcible kidnapping and obtaining of signatures in blank papers and stamp papers and also about the signatures of the plaintiff in the printed form of promissory note namely, Ex.A.1.

21. Though the police has filed the charge sheet which was marked as Ex.A.6 against the defendants/respondents, there is no reliable evidence to hold that the prosecution has proved the charges mentioned in the charge sheet. As discussed earlier, no stamp papers and blank papers bearing the signatures of the plaintiff/appellant was recovered by the police during the course of investigation. According to P.W.2 on 07.02.2002 at about 7.30 p.m., when he was standing along with his relatives at Sriramapuram and at



quarrelled with the plaintiff / appellant and kidnapped him from that place. P.W.2 has not stated that the plaintiff was intimidated and extorted by the defendants for affixing his signatures in Ex.A.1. So the testimony of P.W.1 regarding the manner of criminal intimidation and extortion allegedly committed by the defendants in obtaining his signatures in Ex.A.1 remains uncorroborated.

22. A careful perusal of the pleadings and appraisal of the evidence adduced on the side of the plaintiff / appellant would clearly reveal that expecting some litigations, as a precautionary measures the plaintiff / appellant has lodged a complaint as if he was kidnapped and his signature was obtained by force in stamp papers and blank papers. Moreover, the plaintiff / appellant is a powerful person to influence the Police Officials to receive a false case against the defendants/ respondents. There is no iota of evidence to hold that after conclusion of trial in C.C.No.873 of 2010 the defendants / respondents were found guilty and convicted. Mere filing of charge sheet would not prove the case of the plaintiff/appellant as referred supra. Therefore, the oral testimony of P.W.1 and additional documents filed by the plaintiff / appellant would not substantiate his case.

23.The trial Court as well as the first appellate Court on analysis of both oral and documentary evidence has rightly come to the conclusion that the plaintiff / appellant is not entitled to any of the reliefs as sought for in the suit. Therefore, this Court is of the view that the plaintiff/appellant has not made out a *prima facie* case as prayed for by him and hence, the substantial questions of law are answered against the plaintiff/appellant and in favour of the defendant /respondents.

24. For the reasons aforesaid, this Court is of the considered view that there is no illegality or infirmity in the well-considered judgments and decrees rendered by the Courts below and accordingly, the Second Appeal is liable to be dismissed.

25. In the result, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To

1.The Additional District & Sessions Judge,
Dindigul.

2.The Principal Subordinate Judge,
Dindigul.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-119[F] dated 04/01/2022)

+1 CC to M/s.R.NANDAKUMAR, Advocate (SR-3[F] dated 03/01/2022)

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