



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.03.2022

Pronounced on : 20.04.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S.(MD)No.103 of 2017

Natarajan ... Appellant/Defendant
Vs.

M.Thangavel ... Respondent/Plaintiff

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, against the judgment and decree of the learned Principal District Judge, Karur, dated 10.08.2016 passed in O.S.No.47 of 2011.

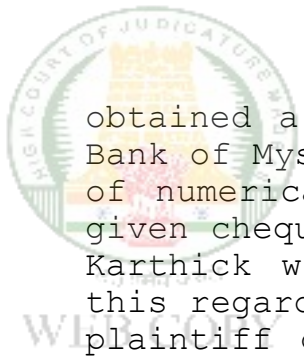
For Appellant : Mr.PT.S.Narendravasan
For Mr.T.K.Gopalan
For Respondent : Mr.M.P.Senthil

JUDGMENT

This Appeal Suit has been preferred challenging the judgment and decree of the learned Principal District Judge, Karur, dated 10.08.2016 made in O.S.No.47 of 2011.

2. The Appellant is the defendant; the plaintiff has filed the suit for recovery of money on the basis of promissory note dated 05.11.2009; the defendant had borrowed a sum of Rs.12,00,000/- from the plaintiff for his personal needs and family expenditure and in consideration thereof, he had executed a promissory note; he agreed to repay the above said amount with interest at the rate of Rs.1.50 per Rs.100 per month either to the plaintiff or to his order on demand; despite repeated request, the defendant did not pay the loan amount; the plaintiff issued legal notice dated 15.11.2011, calling upon the defendant to pay the loan amount; since the defendant refused to pay the loan amount after receiving legal notice from the plaintiff, he filed the suit for recovery of money due to him.

3. The defendant filed a written statement stating that the defendant is not well known to the plaintiff; the defendant actually borrowed a sum of Rs.2,00,000/- on 31.03.2009, from one Loganathan and Subramani, who are running a finance company in the name and style of "VSL Leasing Finance Company" and on the same day, they obtained unfilled signed promissory note in writing by mentioning a sum of Rs.2,00,000/- at the top of the promissory note and also they



obtained a blank cheque for a sum of Rs.2,00,000/- drawn on State Bank of Mysore; the plaintiff inserted numerical figure '1' in front of numerical figure '2' to make as Rs.12,00,000/-; Loganathan had given cheque to one Karthick, who was not known to the defendant and Karthick withdrew a sum of Rs.2,00,000/- from his account and in this regard, the defendant lodged a complaint before the police; the plaintiff does not have capacity to lend a sum of Rs.12,00,000/-; hence, the suit should be dismissed.

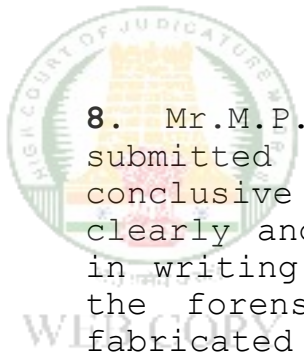
4. Based on both pleadings, the learned trial Judge framed the following issues:-

- "i)Whether the plaintiff is entitled to amount as claimed in the plaint?*
- ii)Whether the pronote was created by forgery with the help of one Loganathan as alleged?*
- iii) To what relief of any plaintiff entitled?"*

5.During the course of evidence, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A18 were marked; on the side of the defendant, two witnesses were examined as D.W.1 and D.W.2 and Exs.B1 to B8 were marked.

6.At the end of the trial, on considering the evidence on record, the learned trial Judge decreed the suit as prayed for. Aggrieved over the same, this Appeal Suit has been filed.

7.Mr.PT.S.Narendravasan, learned counsel for the appellant submitted that the learned trial Judge had ignored the evidence of handwriting expert who had stated that numerical '1' has been inserted subsequently before numerical '2'; that would show that the promissory note was fabricated; the learned trial Judge has not taken into account the complicity of fact of Loganathan and Subramani in not filing the suit against the appellant out of past motive in the real estate business; despite a petition was filed for referring the admitted signature of the appellant/defendant to the hand writing expert, the same was dismissed; the defendant had taken the pain to get favourable order by fighting it out till the Supreme Court; the appellant/defendant managed to send Ex.A1/promissory note for forensic analysis, even though the forensic expert had given report about the forged nature of promissory note, the learned trial Judge did not give proper evidentiary value, though the initial presumption that had arisen in favour of the plaintiff was rebutted by the defendant and the benefit was not given to the defendant; the contradiction between P.W.1 and P.W.2 was also not taken into account; since the suit promissory note is wholly a fabricated one, the suit is liable to be dismissed and the appeal should be allowed.

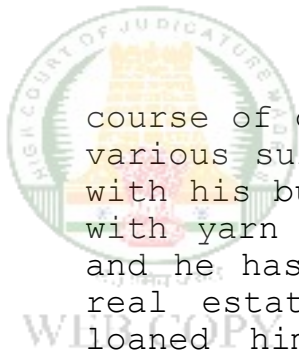


8. Mr.M.P.Senthil, learned counsel for the respondent/plaintiff submitted that the evidence of handwriting expert is not a conclusive evidence; the amount of the promissory note is written clearly and there is no material alteration; the alleged variation in writing numerical '1' on the top of the promissory note as per the forensic opinion will not render the promissory note as a fabricated one and no opinion is given about the ink and it is right for the learned trial Judge to give the presumption in favour of the plaintiff; the plaintiff did not deny his signature and he did not establish the relationship with one Loganathan, who is irrelevant to the case of the plaintiff; it is well settled principle of law that expert evidence is the weakest evidence and it cannot be considered as a conclusive one, in the absence of any other corroborative evidence; expert opinion is mere opinion and that will not override the substantial evidence of witnesses; since there is no reliable corroboration, it is right for the learned trial Judge to give due significance to the evidence of the witnesses and the amount written in words and decree the suit as prayed for; hence, there is no reason for interference.

9. Heard the learned counsel for the appellant and the learned counsel for the respondent.

10. The respondent/plaintiff has filed the suit for recovery of money on the basis of the promissory note/Ex.A1. The appellant/defendant did not deny his signature in the promissory note. The learned counsel for the appellant contended that the appellant/defendant availed a loan of Rs.2,00,000/- from one Loganathan and because of some misunderstanding between Loganathan and himself in the joint real estate business run by them, he managed to use the promissory note given to him by inserting the numerical '1' in front of '2', and on behalf of Loganathan, the plaintiff filed the suit. As per Section 118 of the Negotiable Instruments Act, once the signature in the promissory note is admitted, the initial presumption will go in favour of the holder of the promissory note, namely, the plaintiff. The above presumption is a rebuttable one.

11. The appellant/defendant has specifically pleaded that the respondent/plaintiff is a total stranger to him and his transaction was only with Loganathan and that too for a sum of Rs.2,00,000/- only. Despite the appellant/defendant alleged that the respondent/plaintiff is a stranger to him, he has stated that the respondent/plaintiff did not have any wherewithal to lend a huge sum of Rs.12,00,000/- to him. During the cross-examination the defendant was confronted about his knowledge about the financial wherewithal of the respondent/plaintiff and for which he stated that he came to know about it by making enquiries. However, the said fact was not stated in his written statement. The conduct of the defendant was also shown to be relevant from the admission given by him during the



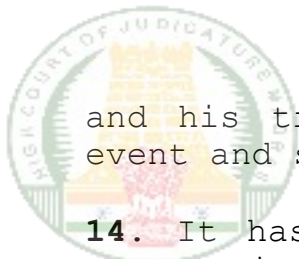
course of cross-examination. When it was suggested to him about the various suits filed against him for recovery of money in connection with his business, the defendant stated that he has several dealings with yarn traders and his main occupation was related to business and he has not given any evidence to show that he involved in any real estate business. Though he had pleaded that one Loganathan loaned him Rs.2,00,000/- in connection with joint real estate business, he has stated in his evidence that he has not taken any action to recover the same.

12. When the respondent/plaintiff filed a direct case that the appellant/defendant had borrowed a sum of Rs.12,00,000/- from him and the respondent/plaintiff's signature on the promissory note is also proved to be true, the onus is on the appellant/defendant that the promissory notice is not supported by consideration as found in the promissory note. The appellant/defendant had stated about Loganathan and Subramani, who involved in the business of VSL Leasing Finance Company that they were only instrumental in filing the suit. Excepting the self-assertive evidence of the appellant himself, there is no other independent evidence available on record to show that he had transaction with VSL Leasing Finance Company and his transaction with the said Company has got a bearing in this case. The appellant/defendant has stated that he has given an unfilled promissory note. However with abundant caution, he has stated that a sum of Rs.2,00,000/- was written on the top of the promissory note. It is because of the fact that in the body of the promissory note, the loan amount has been rightly written in figures and letters. It is not the case of the appellant/defendant that there are material alterations in the body of the promissory note, where the loan amount has been written in letters and figures. His only contention is that in the top of the promissory note, the figure of numerical '1' was inserted in front of '2'. In order to prove the above said contention, the appellant/defendant solely relied on the opinion given by the handwriting expert. Though D.W.2 has given his opinion that there is little variation in numerical '1', he has not given any opinion on the fundamental dissimilarity.

Even D.W.2 in his cross-examination, has stated that his opinion cannot be conclusive. Because he used the numerical '2' and '0' only for finding the variations. Such comparative analysis based on alignment, skill and detailed designing, such as, beginning and formation of roofs and curves cannot be done for the numerical '1'.

The very allegation of the appellant/defendant is that numerical '1' has been inserted in between the numerals.

13. Despite it is alleged by the appellant/defendant that the he has discharged the alleged loan availed from Loganathan by way of issuing a cheque for a sum of Rs.2,00,000/- and the same was encashed by a third party, by name Karthick, the appellant/defendant did not take steps to get back the promissory note. Unless the defendant could establish the connection between the promissory note



and his transaction with Loganathan, he cannot stretch any other event and say that it has a bearing on this suit.

14. It has been already found that the report of the handwriting expert is not conclusive evidence and it is an opinion. The attesting witness has spoken about the transaction and execution of the promissory note to the satisfaction of the Court. It is submitted by the learned counsel for the appellant that alteration in a promissory note is material. And the learned trial Judge ought to have given the benefit in favour of the defendant as per Section 87 of the Negotiable Instruments Act. Section 87 of the Negotiable Instruments Act runs as under:-

"87. Effect of material alteration.—Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties; Alteration by indorsee.—And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof. The provisions of this section are subject to those of sections 20, 49, 86 and 125."

15. Before adverting into the eligibility of the appellant/defendant to get the benefit under Section 87 of the Negotiable Instruments Act, it has to be seen that whether the appellant/defendant has successfully proved before the Court below that suit promissory note did contain material alteration. It has been held time and again that the ocular evidence would override the evidence of handwriting expert and the positive evidence of ocular evidence cannot be considered as a weaker evidence than the opinion of the handwriting expert.

16. In this aspect, it is relevant to cite the decision of the Honourable Supreme Court reported in **1996 AIR SC 2184 (S.Gopal Reddy Vs. State of Andhra Pradesh)**. In the said case, it is held as below that the ordinary way of proving the document is by way of calling the person, who had signed the execution:-

"We are unable to agree, in the established facts and circumstances of this case, with the view expressed by the courts below that PW1 is a competent witness to speak about the handwriting of the appellant and that the opinion of PW3 has received corroboration from the evidence of PW1. PW1 admittedly did not receive any of those letters. He had no occasion to be familiar with the handwriting of the appellant. He is not a handwriting expert. The bald assertion of PW1 that he was "familiar" with the handwriting of the appellant and



fully "acquainted" with the contents of the letters, admittedly not addressed to him, without disclosing how he was familiar with the handwriting of the appellant, is difficult to accept. Section 67 of the Evidence Act enjoins that before a document can be looked into, it has to be proved. Section 67 of course, does not prescribe any particular mode of proof. Section 47 of the Evidence Act which occurs in the chapter relating to 'relevancy of facts' provides that the opinion of a person who is acquainted with the handwriting of a particular person is a relevant fact. Similarly, opinion of a handwriting expert is also a relevant fact for identifying any handwriting. The ordinary method of proving a document is by calling as a witness the person who had executed the document or saw it being executed or signed or is otherwise qualified and competent to express his opinion as to the handwriting. There are some other modes of proof of documents also as by comparison of the handwriting as envisaged under Section 73 of the Evidence Act or through the evidence of a handwriting expert under Section 45 of the Act, besides by the admission of the person against whom the document is intended to be used. The receiver of the document, on establishing his acquaintance with the handwriting of the person and competence to identify the writing with which he is familiar, may also prove a document. These modes are legitimate methods of proving documents but before they can be accepted they must bear sufficient strength to carry conviction."

17. Had the appellant/defendant established any relevance of his transaction with Loganathan to this case, then the evidence of handwriting expert would have served as a corroborative evidence. But in the case in hand, the appellant/defendant did not have any evidence except the weak corroborative evidence, namely, handwriting expert opinion. The learned trial Judge has rightly evaluated the facts and circumstances of this case.

18. It is pertinent to observe that the appellant/defendant has raised the very same defence in the suit filed against him for recovery of money by some other persons also. It is submitted by the learned counsel for the appellant/defendant that the earlier suits in O.S.No.232 of 2000 and O.S.No.4082 of 2001 were settled at Lok Adalat and settled out of Court. No one who had contested the suit for recovery of money on the ground of forged documents would come forward and settle the matter. Because settling the money claim would involve settlement of money and that would mean an admission of the liability either partial or full. In the background of the above facts, the observation of the learned trial Judge that the



appellant was in the habit of making such kind of defence is relevant.

19. At the risk of repetition, it is pointed out that there is no variation in the figures and words written in the body of the promissory note. The passing of consideration has also proved with substantive evidence on the side of the respondent/plaintiff. The financial capability of the respondent/plaintiff could not be within the knowledge of the appellant/defendant, if really the respondent/plaintiff was a stranger. In fact, the respondent/plaintiff has proved that he had financial wherewithal to lend a sum of Rs.12,00,000/- to the defendant. So, the learned trial Judge has rightly appreciated the evidence on record and recorded a finding that the suit promissory note is true and it is supported by consideration as stated therein. Hence, this Court finds no reason to interfere with the judgment of the learned trial Judge.

In the result, this Appeal Suit is dismissed and the judgment and decree passed in O.S.No.47 of 2011 by the Principal District Judge, Karur is confirmed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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The Principal District Judge,
Karur.

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+1 CC to M/s.T.K. GOPALAN, Advocate (SR-19838[F] dated 20/04/2022)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-19992[F] dated 21/04/2022)

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