



A.S.No.1126 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.06.2023

Judgment Pronounced on : 14.06.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.1126 of 2015

&

M.P.No.1 of 2015

S.Ravikumar

... Appellant

Versus

1.G.Deepa

2.Minor Sridhar,

S/o. Late Ganesan,

Rep.by next friend mother and guardian

G.Deepa,

W/o. Late Ganesan.

... Respondents

Prayer : Appeal Suit is filed under Section 96 of the Code of Civil Procedure, 1908, against the Judgment and Decree dated of the Learned I-Additional District Judge, Salem, dated 25.08.2015 made in O.S.No.202 of 2014.

For Appellant : Mr. I. Abarar Md.Abdullah

For Respondents : Mr. A. Esakkiappan



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JUDGMENT

A. The Appeal Suit :

This appeal suit is directed against the Judgment and Decree of the Learned I Additional District Judge at Salem, dated 25/08/2015 in O.S. No. 202 of 2014, thereby dismissing the suit filed by the Appellant/Plaintiff for recovery of a sum of Rs. 10,75,000/- with further interests and costs.

B. The Case of Plaintiff :

2.The case of the plaintiff is that the first defendant is the wife of one Ganesan. The second defendant is his son. The said Ganesan had on 19/07/2013 borrowed a sum of Rs.9,00,000/- for his family's needs and executed the suit promissory note agreeing to repay the said sum with interest at the rate of Rs.1.50, per Rs.100/- per month. The said *Ganesan* did not repay the principal or interest but passed away on 20/11/2013. After his demise, he was demanding the defendants have to repay the loan but they were evasive and hence legal notice was issued on 18/08/2014 and thereafter, the present suit is filed.

C. The Case of the Defendants :



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3.The case of the defendants is that the suit promissory note is a forged and fabricated one. The signature and left thumb impression found in the suit promissory note are not that of *Ganesan*. The plaintiff does not have any permanent job and is indulging in criminal cases and vexatious litigations by forging and fabricating documents. The attesor and scribe are his close associates. The said *Ganesan* died of heart attack and there was no necessity for him to borrow such a huge amount. The plaintiff approached the first defendant to sell her husband's ancestral property at a throw-away price and when she refused, the present suit is filed.

D. The Issue and Trial :

4. On the strength of the said pleadings, the Trial Court framed the following issues:

"1. Whether the suit promissory note dated 19.07.2013 is true and supported by valid consideration ?

2. Whether the plaintiff is entitled to get Rs. 10,75,500/- from the defendants along with interests as prayed for ?

3.What other reliefs the plaintiff is entitled



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to ? "

5.On the above said issues, the parties let in evidence. Plaintiff examined himself as **P.W.1** and the scribe-cum-attesting witness was examined as **P.W.2** and the Junior Assistant from the Regional Transport Office, Salem West, was examined as **P.W.3**. Exhibits **A-1 to A-4** were marked on behalf of the plaintiffs. Through **P.W.3**, Exhibits **C-1 & C-2** were also marked. On behalf of the defendants, the first defendant was examined as **D.W.1**. Exhibit **B-1** was marked on behalf of the defendants.

6.The Trial Court thereafter, considered the case of the parties and dismissed the suit by holding that the plaintiff failed to prove the execution of the promissory note and that it was supported by consideration. The trial court reasoned that the plaintiff did not even let in evidence as to when and where the suit promissory note was executed, no proof for his financial capacity or lending such a huge amount as cash, and no reason why the said *Ganesan* was not approached for payment of interest or principal during his lifetime, no particulars as to when the said *Ganesan* approached for loan and for what purpose, nothing was mentioned in the lawyers notice



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as to why the same is issued 10 months after the demise of *Ganesan* and why such huge amount was advanced without security and the attesting witness was also not examined and dismissed the suit. Aggrieved plaintiff is before this Court.

E. The Submissions :

7. Heard *Mr. I. Abarar Md. Abdullah*, the learned Counsel for the appellant. *Mr.A.Esakkiappan*, the learned Counsel appearing on behalf of the respondents.

8.*Mr. I. Abrar Mohammed Abdullah*, the learned Counsel appearing for the appellant would submit that the plaintiff has proved the execution of the suit promissory note by marking the document and examining the scribe-cum-attesting witness as **P.W.2**. Further the plaintiff has withdrawn the cash from his bank sometime prior to the advancing of loan for which the bank statements are produced as additional documents before this court. The first defendant in her evidence has completely lied about the deceased *Ganesan* having a *Tata Ace* load vehicle and the same has been



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proved by examining *P.W.3*. From Exhibits *C-1 and C-2* market, it would be clear that the hypothecation is also cleared in respect of the said vehicle. The plaintiff's case is clothed with the presumption under Section 118 of the Negotiable Instruments Act, 1881. The Trial Court could have found that the signature is that of the said *Ganesan*, even by comparing it with *Ex.B-1*, which is an admitted document. Therefore, the appeal suit is to be allowed.

9. *Mr. A. Esakkiappan*, the learned Counsel for the respondents would submit that when the defendants have specifically denied the execution of the promissory note contending that the same is a forged one, then it is for the plaintiff to have proved the same by sending the document for analysis by a signature expert by comparing the same with an admitted document. Secondly, when the plant itself did not contain any particulars whatsoever as to when the said *Ganesan* approached the plaintiff for loan, to what purpose, and when and where the suit promissory note was executed and how the plaintiff had the source etc., hence the plaintiff is not entitled for the relief. Without any pleading, belatedly without any reasoning, the bank statement cannot be now produced. Now, it can be



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seen that such a huge amount cannot be borrowed for family expenses, as the plaintiff himself claims that he is a neighbour.

10. I have considered the submissions made on either side and perused the material records of the case.

F. Points for Consideration :

11. Upon considering the arguments of both sides and perusing the material documents of the case, the points that arise for consideration are:

*"(i) Whether the suit promissory note is true
and is supported by consideration? and
(ii) whether the additional documents are to be
taken on file?"*

12. The plaintiff has to prove the execution of the promissory note so as to lean on the presumption under Section 118 of the Negotiable Instruments Act, 1881. In this regard, the Written Statement of the defendants is clear and categorical. It states that the suit promissory note is



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a forged one. The signature and the left thumb impression are forged.

There was no necessity to borrow Rs.9 Lakhs. The plaintiff is in the habit of indulging in these kinds of litigations. In the teeth of the same, it is for the plaintiff to have proved that the signature and left thumb impression was that of the deceased *Ganesan*, by sending the document for expert analysis. Especially in this case, an admitted registered document of contemporary time **Ex.B-1** was also very much available. Thus, the plaintiff failed to prove the execution of the promissory note. This failure is to be viewed in the context of facts. The amount of borrowal is said to be Rs.9 Lakhs. The promissory note states that it is for 'family expenses'. Neither in the plaint nor in the evidence of **P.W.1** there is any explanation about the purpose of borrowal. This was sought to be overcome by examining **P.W.3** as if the borrowal was relating to the hypothecation of *Tata Ace* vehicle. There also, it can be seen by virtue of **Ex.C-1** and **Ex.C-2**, even though the borrowal was in the year 2013, the hypothecation is cancelled much after the death of the said *Ganesan*. Thus, the plaintiff's case is absolutely nebulous.



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13. Besides, the fact that the plaintiff did not prove the wherewithal, as found by the Trial Court that neither in the pleading nor in the evidence, the place, time of approaching and borrowal were not at all mentioned. Thus, at this belated stage, no useful purpose would be served on taking on file the additional documents now sought to be produced. Further, nothing prevented the plaintiff from producing the same before the Trial Court. Thus, the application for additional documents is also without any merits and is dismissed. In view of the above findings, the appeal suit is without any merits.

G. The Result :

14. In the result,

(i) In the result, A.S. No.1126 of 2015 is dismissed.

(iii) However, there shall be no orders as to costs. M.P.No.1 of 2015 shall stand closed.

14.06.2023

Index : Yes/No

Speaking /Non-Speaking order

Neutral Citation : Yes/No

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To



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- 1.The I Additional District Court, Salem.
- 2.The Section Officer, V.R. Section, High Court of Madras.

D.BHARATHA CHAKRAVARTHY, J.

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Pre-Delivery Judgment in
A.S.No.1126 of 2015

14.06.2023