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S.A.No.1519 of 2008



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1519 of 2008

and

M.P.No.1 of 2008

Dr.K.Sampath Kumar

.. Appellant

Vs.

A.Balasubramaniam

.. Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree made in A.S.No.83 of 2005 on the file of the Sub Court, Bhavani, Erode District, dated 30.11.2005 reversing the well considered judgment and decree made in O.S.No.89 of 2004 on the file of Principal District Munsif Court, Bhavani, Erode District dated 15.03.2005.

For Appellant : Mr.S.Vijayakumar

For Respondent : Ms.H.Kavitha
for Mr.S.Kaithamalai Kumaran

J U D G M E N T

This Second Appeal is filed against the judgment and decree made in A.S.No.83 of 2005 on the file of the Sub Court, Bhavani, Erode District, dated



30.11.2005 in reversing the judgment and decree made in O.S.No.89 of 2004 on the file of Principal District Munsif Court, Bhavani, Erode District, dated 15.03.2005.

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2.The defendant in O.S.No.32 of 1998 on the file of the Subordinate Judge at Bhavani, which was re-numbered as O.S.No.89 of 2004 on the file of the Principal District Munsif at Bhavani is the appellant before me. The suit had been presented on a promissory note. The relief that was sought was for recovery of Rs.95,250/-, together with interest from the date of presentation of the plaint till recovery.

3.It is the case of the plaintiff that the defendant, on 22.04.1995, had executed a demand promissory note in his favour. Despite several request to pay the amount, it was not paid. Since it was not paid, he issued lawyer's notice on 22.11.1996. Despite the receipt of the lawyer's notice, no response was given. As the defendant was evading payment, the suit was presented for recovery of the aforesaid amount on 22.04.1998.



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4.The appellant filed written statement denying the transaction and took a specific stand that the document is forgery. According to him, he had never executed the document and even assuming that the document had been executed, no consideration was passed under the said document and therefore, he is not liable to pay a single naya paisa.

5.The parties went to trial and the plaintiff examined himself as P.W.1 and the scribe of the document as P.W.2. The defendant examined himself as D.W.1.

6.During the course of pendency before the Principal District Munsif, Bhavani, Erode District, the appellant took out an application in I.A.No.953 of 2000 for the purpose of sending the document for examination by an expert under Section 45 of the Indian Evidence Act, 1872. Though the Court had called upon him to give his admitted signatures which had come into being before the litigation commenced for comparison along with suit promissory note, the defendant did not furnish the same.



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7.The learned Trial Judge cast the burden on the plaintiff and held that since there is contradiction between P.W.1 & P.W.2, he came to the conclusion that the borrowal of the amount under the suit promissory note was not proved and that the plaintiff is not entitled to succeed.

8.On an appeal made to the learned Subordinate Judge, Bhavani, Erode District, in A.S.No.83 of 2005, the learned Judge held that under Section 118 of Negotiable Instruments Act, 1881, there is a presumption that the suit promissory note was executed for consideration. He further held as the defendant did not give his admitted signatures, he was fighting shy to discharge the burden of proving the act of forgery, which had been cast upon him and allowed the appeal. He decreed the suit as prayed for. As against the reversal of the judgment, the defendant has filed the present Second Appeal.

9.Heard Mr.S.Vijayakumar, learned counsel for the appellant and Ms.H.Kavitha, learned counsel for Mr.S.Kaithamalai Kumaran, learned counsel for the respondent.



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10.Mr.S.Vijayakumar, would vehemently contend that there is no consideration that was passed under the suit promissory note. He would further allege that the suit promissory note is vitiated by forgery and there is contradiction in the evidence of P.W.1 & P.W.2 and finally that, by virtue of the evidence of D.W.1, the burden to prove the document had been shifted from the defendant to the plaintiff, who had miserably failed to discharge the same. Therefore, he sought for the appeal to be allowed and suit to be dismissed.

10(i).He would plead the following substantial questions of law arises for consideration.

**THE FOLLOWING SUBSTANTIAL
QUESTIONS OF LAW ARISES IN THIS
SECOND APPEAL**

a.Whether the Lower Appellate Court is right in reversing the Trial Court Judgment when the Plaintiff failed to discharge his initial burden that the Defendant has signed the pronote?



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b. Whether the Lower Appellate Court is right in decreeing the Suit by wrongly costing the burden on the Defendant to prove his signature when the plaintiff failed to discharge the initial burden?

c. PW2's evidence was not in corroboration with PW1 and failure on the part of Plaintiff to cross examine PW2 when he turned hostile, whether the Lower Appellate Court is right in decreeing the suit?

10(ii). This Court did not admit the appeal in the year 2008, but had only ordered notice regarding admission on 01.12.2008.

11. The argument that Court has to hold that no consideration was passed on under the promissory note fails to take note of Section 118 of the Negotiable Instruments Act, 1881. A reading of the said provision would show that there is a presumption that a promissory note, which has been executed, has been made out for consideration and the initial burden is on the defendant to disprove the same. In this case, the defendant's clear and categorical stand is that the promissory note is vitiated on account of forgery. The defendant, in fact, had taken out an application in I.A.No.953 of 2000 before the learned



Subordinate Judge, Bhavani, Erode District. The said application was allowed and the defendant had undertaken to produce contemporaneous documents. However, he had failed to produce them.

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12.Mr.S.Vijayakumar, learned counsel would argue that since the defendant did not have any contemporaneous document, he did not produce the same. Their argument is shocking to say the least. The appellant is not an illiterate individual carrying on some farm activities or indulging in grazing of cattle. He is a Government Medical Doctor and is also running a hospital at Anthiyur. Therefore, I can take judicial note of the fact that every day the Doctors would sign the case sheets, prescriptions and write documents as a course of in discharge of their duties. The failure to produce contemporaneous documents constrains me to draw adverse inference against the appellant as stated infra.

13.The reason stated out for not producing the document is not valid and I am not willing to accept the same. The defendant having taken out an application under Section 45, ought to have proceeded with it. Instead of doing so, he avoided the same. Being left with no other option, the trial Court



dismissed the application. No petition was filed either to restore I.A.No.953 of 2000 nor was a revision preferred before this Court. The mere fact that the defendant has been unwilling to produce his admitted signature, constrains me to draw adverse inference against him. The inference being that the defendant's case would have failed, had contemporaneous signatures had been produced and that is the reason why he did not produce any contemporaneous document.

14. Qua the argument that there is inherent contradiction in the evidence of P.W.1 and P.W.2., a proper reading of the evidence would show that the execution of the document is proved. The learned Appellate Judge has given proper reasons that since the defendant is colluding with P.W.2 and it is also been admitted by him in evidence, P.W.2 has been persuaded to go against his examination in chief. In this case, the evidence of P.W.2 was not recorded by way of proof affidavit, but P.W.2 has entered the witness box and has given statement on 15.02.2005. Two days later, i.e., on 17.02.2005, he would recant whatever he stated. In accordance with the statement of P.W.2, the proof affidavit came to be filed by D.W.1 on 21.02.2005. This shows that P.W.2. and D.W.1 evidence acting in tandem.



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15.Be that as it may, in the light of the special rules of evidence under Section 118 of the Negotiable Instruments Act, 1881 read with Section 103 of the Indian Evidence Act, 1872, the heavy burden lies on the defendant to prove his defence. He had miserably failed to discharge the same. He is bound to fail. I am not willing to admit the Second Appeal. The questions of law raised by the learned counsel do not arise for consideration.

16.The Second Appeal is dismissed at the admission stage itself. The judgment and decree of the Sub Court, Bhavani, Erode District in A.S.No.83 of 2005 dated 30.11.2005 in reversing the judgment and decree of the Principal District Munsif Court, Bhavani, Erode District in O.S.No.89 of 2004 dated 15.03.2005 stands confirmed. The suit is decreed as prayed for. Consequently, the connected Miscellaneous Petition is closed. Costs throughout.

18.04.2023

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Index	:	Yes / No
Internet	:	Yes / No
Neutral Citation	:	Yes / No



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V.LAKSHMINARAYANAN, J.

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To

- 1.The Principal District Munsif,
District Munsif Court,
Bhavani, Erode District.
- 2.The Subordinate Judge,
Sub Court,
Bhavani, Erode District.
- 3.The Record Keeper,
VR Section,
High Court of Madras,
Chennai.

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