



SA.No.1425 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **22.02.2023**

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

SA.No.1425 of 2007

Arokiasamy

... Appellant

Vs.

Joseph Udayar

... Respondent

PRAYER: Second Appeal filed under Section 100 of the CPC, against the decree and judgement of the Court of the Additional District Judge (Fast Tract Court) Ariyalur, made in A.S.No.74 of 2003 dated 30.08.2004, confirming the decree and judgement of the Court of the District Munsif, Jayamkondam, made in OS.No.166 of 1996 dated 28.07.1997.

For Petitioner : Mr.R.Narayanan for Mr.M.V.Krishnan.

For Respondent : No appearance [sole respondent]

JUDGEMENT



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The unsuccessful defendant in a promissory note suit before the Courts below is the appellant before this Court. The brief facts which has preceded the filing of the above Second Appeal is hereinbelow set out and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.166 of 1996 on the file of the District Munsif, Jayamkondam for recovery of a sum of Rs.28,200/- together with interest due under a promissory note dated 01.05.1993. It is the case of the plaintiff that on the said date the defendant had borrowed a sum of Rs.25,000/- and executed a promissory note on the very same day. The defendant had undertaken to repay the amount on demand. However, he had failed to make the payment despite several demands. This constrained the plaintiff to issue a legal notice dated 22.03.1994 calling upon the defendant to pay the said amount borrowed with interest. However, the defendant had sent a reply dated 02.04.1994 containing false allegations. Therefore, the plaintiff had come forward with the suit in question.

3. The defendant had filed a written statement denying the very



execution of the document and contending that the plaintiff was a total stranger to him. The defendant would contend that since he had refused to assist one Johnson to give a false statement, the said Johnson and the plaintiff had together forged the plaintiff's signature and brought about the suit promissory note. He therefore, sought for a dismissal of the suit.

4. The learned District Munsif had framed the following issues which is translated hereinbelow:-

- 1. Whether the suit promissory note has been executed by the defendant?*
- 2. Whether the defendant is bound to repay the amount due under the promissory note with interest to the plaintiff?*
- 3. To what other relief the plaintiff was entitled to?*

5. The plaintiff had examined himself as P.W.1 and one Savarimuthu and Anthonysamy as PW.2 and P.W.3 to prove the execution of the promissory note and the passing of consideration. The defendant had



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examined himself as D.W.1 and 5 others as D.W.2 to DW.6. The plaintiff had marked Ex.A.1 to Ex.A.4 and no document was marked on the side of the defendants.

6. The learned District Munsif on considering the evidence on record both oral as well documentary and on comparing the disputed signature of the plaintiff in Ex.A.1 promissory note with the acknowledgment card Ex.A.3 came to the conclusion that the promissory note had been executed by the defendant and ultimately decreed the suit. Aggrieved by the said judgement and decree the defendant had filed A.S.No.74 of 2002 on the file of the Additional District Judge (Fast Tract Court) Ariyalur.

7. The learned District Judge also concurred with the findings of the Trial Court and dismissed the appeal against which this Second Appeal has been filed by the defendant. The same has been admitted on the following substantial questions of law:-

“ a. Whether the Courts below ought to have held that, when the execution of the suit pronote is denied, it is the plaintiff who should have proved



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*the due execution and passing consideration under
the promissory note?*

*b. Whether the findings of the Courts below
are vitiated by their failure to consider the evidence
of D.W.1 to 6?*

8. Mr.R.Narayanan, learned counsel appearing on behalf of the appellant would submit that the Courts below have failed to appreciate that the plaintiff had not proved the execution of the promissory note by the defendant. The learned Judge has undertaken the exercise of examining the disputed signature with an admitted signature which is not a contemporaneous document. He would submit that there were several discrepancies in the evidence of P.W.2 and P.W3 who have been summoned to prove the execution of the promissory note. The learned counsel would submit that the plaintiff ought to have taken steps to have the disputed signature of the defendant compared by a handwriting expert and having failed to do so, the learned Judge has erred in decreeing the suit.



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9. The respondent who had been served has not entered appearance either in person or through counsel and therefore was set ex parte.

10. Heard the learned counsel for the appellant.

11. The defendant had denied the execution of the promissory note and had gone on to state that the signature therein is not his signature. To prove that the promissory note was executed by the defendant, the plaintiff has examined P.W.2 and P.W.3. A mere perusal of the evidence of both P.W.2 and P.W.3 would amply demonstrate that the promissory note had been executed by the defendant who had also received the consideration therein mentioned. That apart, the Court had proceeded to compare the signature in the promissory note with that of the admitted signature in EX.A.3, acknowledgment card. Though the learned counsel has stated that the signatures are not contemporaneous. It is seen that the signature in the promissory note is stated to have been affixed in May, 1993. The acknowledgment card Ex.A.3 is of March, 1994 and the time gap between the two signatures is hardly a year.

12. Therefore, it can be safely construed that the documents are more



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or less contemporaneous being months apart from each other. This Court had also undertaken this exercise and the signature in Ex.A.1, promissory note and Ex.A.3, acknowledgment card appears to be similar and I see no reason to dispute the finding of the Trial Court in this regard which has been confirmed by the lower Appellate Court. The plaintiff has discharged his burden of proving the execution and passing of consideration by examining P.W.2 and P.W.3. The defendant has not taken any steps to have the signature examined. That apart, he has not proved the case put forward in his written statement with regard to the fabrication of the document by one Johson. Therefore, the Substantial Questions of law are answered against the defendant and the Second Appeal stands dismissed. No costs.

22.02.2023

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

1. The Additional District Judge (Fast Tract Court) Ariyalur.
2. The District Munsif, Jayamkondam.

P.T. ASHA, J,



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