



S.A.No.1233 of 2010 & M.P.No.1 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.1233 of 2010 &

M.P. No.1 of 2010

E. Mahesh Kumar

...Appellant

Vs.

D. Venkataraju

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 12.07.2010 passed in A.S. No.4 of 2009, on the file of the Principal District Court, Krishnagiri, upholding the decree and judgment dated 06.01.2009 passed in O.S. No.103 of 2006, on the file of the Sub Court, Hosur.

For Appellant : Mr. P. Mani

For Respondent : No appearance.

JUDGMENT

The defendant who failed before both the courts below has filed the present Second Appeal.



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of which is marked as Ex.A2. Though the defendant received the said notice, as evidenced by the postal acknowledgment card (Ex.A4), the defendant neither send any reply nor come forward to make good the payment. The plaintiff had therefore filed the suit for recovery of the amount due under the promissory note.

5. The suit was resisted by the defendant on the following grounds:

- i. The suit promissory note is not true and valid.
- ii. Since both the plaintiff and the defendant are involved in the union activities and also in their place of work they are not in good talking terms with each other, it is highly improbable for the defendant to have obtained a loan from the plaintiff.
- iii. All the allegations contained in the plaint are false and there is no cause of action for filing the present suit.
- iv. Hence the defendant prayed for dismissal of the suit with exemplary costs under Section 35A CPC.



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6. On the basis of the above pleadings, the trial court framed the following issues:

- i. "Whether the suit Promissory Note is true and valid and was executed for consideration?
- ii. Whether the plaintiff is entitled for a sum of Rs.1,13,500/- together with subsequent interest?
- iii. Whether it is true that the defendant did not borrow any amount from the plaintiff?
- iv. To what relief, the plaintiff is entitled?

7. In the trial court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A4. The defendant examined himself and one another witness. However, no documentary evidence was adduced on his side.

8. After full contest, the learned Subordinate Judge, Hosur, decreed the suit filed by the plaintiff vide his decree and judgment dated



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06.01.2009 on the following grounds:

- i. The evidence of the plaintiff as P.W.1 and the attesor (P.W.2) of the promissory note, clearly shows that the suit promissory note was executed by the defendant in favour of the plaintiff.
- ii. In fact, the attesor had deposed that the defendant had written the entire promissory note in his own hand writing.
- iii. Though it is contended by the defendant that he was not in talking terms with the plaintiff, he did not choose to give any police complaint after receiving Ex.A2 notice from the plaintiff.
- iv. When the plaintiff has adduced evidence to prove the execution of Ex.A1 promissory note, the defendant did not produce any contemporary documents to show that the signature found on Ex.A1 is not his.
- v. The Head Constable, who was examined as D.W.2 did not state that the defendant's signature was forged on the promissory note Ex.A1. Moreover, D.W.1 also admitted that he did not give any complaint to the police.



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9. Aggrieved over the decree and judgment passed by the trial court, the defendant filed an appeal in A.S. No.4/09 before the Principal District Court, Krishnagiri. The learned Principal District Judge, Krishnagiri, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide his decree and judgment dated 12.07.2010.

10. Now the present Second Appeal is filed by the defendant. Notice of motion was issued to the respondent and after several adjournments, the case was posted for hearing today. In the Memorandum of Second Appeal, the appellant has raised the following substantial questions of law. -

- i. "Whether the courts below erred in law in casting the burden on the defendant to disprove his signature in the suit promissory note by getting expert opinion when in law it is for the plaintiff to prove the defendant's signature in the suit promissory note by getting expert opinion when the defendant denied the signature even though the plaintiff attempted to discharge his burden by



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examining himself as P.W.1 and his daughter (witness) as P.W.2 as laid down by the Hon'ble Apex Court in Thiruvengadampillai vs. Navadethammal and another (2008)4 SCC 530?

- ii. Whether the lower appellate court erred in law in holding that the court itself can compare the disputed signature with admitted signatures by exercising the powers under Section 73 of the Evidence Act without getting expert opinion when there is serious doubt about the execution of the suit promissory note by the defendant and P.W.1 and P.W.2 themselves admitted the variations in the defendant's signatures in the vakalat, written statement and suit promissory note?
- iii. Whether in law the judgment and decree passed by the courts below are sustainable when they have based their conclusions on mere surmises and conjecture without appreciating the evidence on record in their proper perspective?"

11. Heard Mr. P. Mani, learned counsel for the appellant and there is no representation on behalf of the respondent.



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12. Mr. P. Mani, learned counsel for the appellant contended that both the courts below had placed the burden of proof wrongly on the defendant especially when the defendant had denied the execution of the Promissory Note Ex.A1. To substantiate his contention, he relied on the following decisions:

- i. *Thiruvengada Pillai vs. Navaneethammal and another reported in (2008) 2 MLJ 1115 (SC)*
- ii. *P. Sood & Co., (Manufacturing), represented by its Partner, Krishna Kumar Sood, Chennai-1 vs. Peerchand Misrimalji Bhansali, Prop., Meena Metals, reported in 2005 (3) CTC 12.*

13. At the outset it may be observed that the plaintiff had filed the suit for recovery of a sum of Rs.1,13,500/- due under the promissory note Ex.A1 executed by the defendant in his favour. In the written statement, the defendant had denied the execution of the promissory note. It was also contended by him that both the plaintiff and the defendant are colleagues and that since they are involved in union activities, they are not



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in good talking terms with each other. In order to prove the execution of the promissory note, the plaintiff examined himself apart from filing the original promissory note Ex.A1. A promissory note does not require to be attested by a witness. However, Ex.A1 was attested by Uma Maheswari (P.W.2). P.W. 2 in her evidence had categorically contended that the suit promissory note was written by the defendant and signed by him in her presence and in the presence of P.W.1. Therefore it is clear from the evidence of P.W.1 and P.W.2 coupled with the Ex.A1 that the suit promissory note was executed by the defendant. The trial court and the first appellate court had taken pains to compare the signature of the defendant found on the suit promissory note with his admitted signature on the written statement and had concurrently held that the defendant had the habit of signing in different fashions. Moreover, the defendant did not choose to send any reply to the notice Ex.A2 issued by the plaintiff to him. In fact, Ex.A4 acknowledgement card clearly shows that Ex.A2 notice was served on the defendant. The first appellate court had held that even in the acknowledgement card (Ex.A4), the defendant had signed differently only to defeat the case of the plaintiff. It is not known



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as to why the defendant did not take any action against the plaintiff if he is of the opinion that the latter had forged his signature on the suit promissory note. In fact, both the plaintiff and the defendant, as already observed, are colleagues and P.W.1 in his cross examination deposed that he is well versed with the signature of the defendant. If really the plaintiff had forged the signature of the defendant on the suit promissory note, the defendant would not have kept quiet even after the notice of demand (Ex.A2) made by the plaintiff and absolutely there is no explanation from the defendant as to why he has not taken any action against the plaintiff till date.

13.1. In the decision in ***Thiruvengada Pillai vs. Navaneethammal and another*** (cited supra) relied upon by the learned counsel for the appellant, it was held as follows:

"17. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the defendants, it was for the defendants to



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establish that the document was forged or concocted, is not sound proposition. The first appellate court proceeded on the basis that is for the party who asserts something to prove that thing; and as the defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case plaintiffs came to court alleging that the first defendant had executed an agreement of sale in favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses. But the various circumstances enumerated by the trial court and High Court referred to earlier, when taken together, rightly create a doubt about the genuineness of the agreement and dislodge the effect of the evidence of P.W.1 to 3. We are therefore of the view that the decision of the High Court, reversing the decision of the first appellate Court, does not call for interference.



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In the said decision, the suit was filed for specific performance of contract and the defendant had denied his signature on the sale agreement. Moreover, the agreement was not executed on requisite stamp paper. Though the plaintiff attempted to prove the execution of the sale agreement by examining himself, scribe and one of the attestors as witnesses, there were various other circumstances which created a doubt about the genuineness of the agreement. In such circumstances, it was held that a mere examination of the plaintiff, the scribe and the attesor to the agreement was not sufficient. The facts of the present case are entirely different. This is a case based on a promissory note and the entire promissory note was in the hand writing of the defendant and P.W.2 (attesor to the promissory note) had also spoken to about the due execution and receipt of consideration by the defendant. There is no good ground to discard the evidence of P.W.2 especially when her evidence is corroborated with the evidence of P.W.1 in all material particulars.



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13.2. The decision in ***P.Sood & Co., (Manufacturing), represented by its Partner, Krishna Kumar Sood, Chennai-1 vs. Peerchand Misrimalji Bhansali, Prop., Meena Metals*** (cited supra) may not also apply to the facts of the present case because, in the said decision, the plaintiff had contended that the defendant purchased goods from him on credit basis and that he agreed to pay the principal amount with interest @ 22.5% after 60 days and handed over a letter Ex.P2. The signature on Ex.P2 was denied by the defendant. The plaintiff though examined two witnesses on his side, there were so many contradictions in their evidence and the plaintiff did not take steps to ascertain the genuineness of the disputed signature. In such circumstances, it was held that the appellant/plaintiff did not take steps to ascertain the genuineness of the disputed signature by sending the same to the handwriting expert. In the instant case, as already observed, the evidence of P.W.1 corroborated with the evidence of P.W.2.

14. It is also pertinent to mention that this is a second appeal filed under Section 100 of the Code of Civil Procedure where the jurisdiction of the High Court is confined to a substantial question of law.



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A full Bench of the Supreme Court in ***Bholaram Vs. Ameerchand*** reported in ***AIR 1981 SC 1209*** has held that the High Court cannot interfere with the concurrent factual findings of courts below in a second appeal. Moreover, there is no substantial question of law involved in the present Second Appeal.

15. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.
- ii. The decree and judgment dated 12.07.2010 passed in A.S. No.4 of 2009, on the file of the Principal District Court, Krishnagiri, and the decree and judgment dated 06.01.2009 passed in O.S. No.103 of 2006, on the file of the Sub Court, Hosur. are upheld.

16.06.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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1. The Principal District Judge, Krishnagiri.
2. The Subordinate Judge, Hosur.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.
bga

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