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SA.No.1548 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.1548 of 2010

G.M.Thiruvengkatachalam

... Appellant

- Vs -

Karuppana Gounder (died)

2. Sundarajan

3. Balamani

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code prayed to set aside the decree and judgment in A.S.No.152 of 2008 on the file of the I Additional District Judge, Gobichettipalayam dated 20.04.2010 confirming the decree and judgment passed by the learned I Additional Subordinate Judge at Gopichettipalayam in O.S.No.104 of 2007 dated 29.09.2008.

For Appellant : Mr.B.Manibharathi

For Respondents : Mr.T.Karunamoorthy
for M/s.P.R.Balasubramanian for R1 & R2

JUDGMENT

The appellant herein is the plaintiff before the Trial Court and the first respondent herein is the defendant before the Trial Court. The respondents 2



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and 3 herein are the legal heirs of the first respondent.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

The brief facts, which give rise to the instant second appeal is as follows:-

3. On 11.11.2004 the defendant borrowed a sum of Rs.1,00,000/- from the plaintiff for his urgent family expenses. In evidence thereof, he has executed a promissory note dated 14.06.2007, agreeing to repay the said amount with interest at the rate of 12% per annum. After receipt of the said amount, the defendant neither paid interest nor principal. Hence, the plaintiff issued a legal notice on 14.06.2007. In spite of the legal notice, the defendant did not come forward to discharge the suit claim. Hence, the plaintiff has instituted the suit for recovery of money.

4. The above suit was resisted by the defendant on the sole ground that he has not borrowed any amount from the plaintiff. This defendant would further contend that he never signed in the promissory note, and that since 2002, he was in the habit of affixing thumb impression and there was no occasion for him to put any signature in Ex.A1-promissory note. Therefore, it was the contention of the defendant that Ex.A1-Promissory note is the



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Rank one forgery.

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Evidence, Documents and Finding of the both the Court below:-

5. Before the Trial Court, the plaintiff have marked as many as 4 documents as Exs.A1 to A4 and examined 3 witnesses as PW1 to PW3. On behalf of the defendants, the defendant himself was examined as DW1.

6. The Trial Court, after considering both oral and documentary evidence and having considered the submissions made by either side, has found that the plaintiff did not prove the signature found in Ex.A1-promissory note and ultimately dismissed the suit. The said finding was confirmed by the First Appellate Court. Aggrieved with the same, the plaintiff is before this Court.

Submission of either side counsel:-

7. The learned counsel for the plaintiff would submit that the plaintiff has discharged his burden by examining PW1, who has lent his money to the defendant, and PW2 was the attestor and PW3 was the scribe. The learned counsel would submit that by examining PWs1 to 3, the plaintiff has discharged his burden. Therefore, the burden shifts upon the defendant. Here, the defendant though disputes the signature, has not taken any steps to prove that the signature found in Ex.A1-promissory note is not that of the



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defendant. The learned counsel for the appellant would also further contend that the finding recorded by the First Appellate Court that the plaintiff ought to have filed a necessary application to send Ex.A1-promissory note for the opinion of the handwriting expert is in contravention to Section 101 of The Indian Evidence Act. Therefore, the learned counsel for the appellant prayed to allow this Second Appeal by decreeing the suit in OS.No.104 of 2007.

8. Per contra, the learned counsel for the respondents/defendants would vehemently contend that, the promissory note was not at all executed by him and that the signature found in Ex.A1-promissory note is not that of the defendant. Therefore, would contend that Ex.A1-promissory note is a Rank one forgery and that there are contradictions between the evidence of PW1 to PW3, which prove the case of the defendant. It is the further submission of the learned counsel for the respondents/defendants that the finding recorded by the Trial Court and the First Appellate Court is based upon the materials. Hence, prayed to dismiss the Second Appeal.

9. I have given my anxious consideration to either side submissions.

Analysis of the submissions:-

10. The sum and substance of the submissions made by the learned counsel for the defendant is that Ex.A1-promissory note is a Rank one



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forger. However, the learned counsel for the appellant/plaintiff would submit that it was executed by the defendant and the same was proved through PW1 to PW3.

11. Therefore, now it is the duty cast upon this Court to find out whether both the Courts have appraised the evidence in its right perspective. While seeing the judgment of the First Appellate Court, the First Appellate Court has rightly relied upon the evidence of PW1 to PW3 and has ultimately found that there is a variation between the two signatures of the defendant and that the evidences in respect of usage of ink by the signatories to the promissory note is varied between PW2 and PW3.

12. The First Appellate Court has recorded the finding of fact that contrary to the evidence of PW1 and PW2, where they admitted that they have put signature only using the blue ink, the signature found in Ex.A1 is in the black ink. Therefore, both the Courts below concluded that the plaintiff did not prove the existence of the signature of the defendant in Ex.A1-promissory note and therefore, the Trial Court ultimately dismissed the suit. Though the learned counsel for the appellant would submit that the case of forgery has not been proved by the respondents/defendant, in view of the fact that the plaintiff has not discharged his burden in proving the promissory



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note, this Court is of the view that the finding of fact recorded by both the Courts below that Ex.A1-promissory note was not executed by the defendant cannot be faulted with.

13. It is pertinent to mention here that the very finding of fact recorded by both the Courts below is based upon the sound reasoning and based upon the materials and this Court could not find any perversity over the finding. In order to deviate the said finding, there are no material available before this Court. Therefore, this Court is of the view that no substantial question of law arises in this Second Appeal.

14. In the result, this Second Appeal is dismissed confirming the finding of both the Courts below. There shall be no order as to costs.

07.11.2023

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The I Additional District Judge,
Gobichettipalayam.
2. The I Additional Subordinate Judge,
Gobichettipalayam.



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C.KUMARAPPAN,J

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