



S.A.No.812 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.812 of 2023

A.Sathakathullah

... Appellant

Vs.

Mrs.M.Basheera Banu

. . . Respondent

Prayer:- Appeal is filed under Section 100 of C.P.C against the judgement and decree dated 23.11.2022 made in A.S.No.60 of 2020 on the file of the VI Additional City Civil Court at Chennai confirming the Judgement and Decree dated 25.09.2019 made in O.S.No.269 of 2012 on the file of the XVI Asst. City Civil Court at Chennai

For Appellant : Mr.C.S.Vedavalli



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JUDGEMENT

The unsuccessful plaintiff before the Courts below has filed the above Second Appeal challenging the judgment and decree in O.S.No.269 of 2012 passed by the XVI Assistant Judge City Civil Court, Chennai which has been confirmed by the VI Additional Judge, City Civil Court, Chennai in A.S.No.60 of 2020.

2. While setting out the facts briefly herein below the parties are referred to in the same ranking as before the Trial Court.

Plaintiff's Case:-

3. The plaintiff had filed the above suit for recovery of a sum of Rs.2,49,970/- being the principal sum of Rs.1,85,000/- and interest of 64,750/- upto 8th January 2012 and subsequent interest at the rate of 12 % per annum from the date of the suit till the date of realization on the

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principal amount of Rs.1,85,000/-.

4. It is the case of the plaintiff that the defendant had borrowed a sum of Rs.1,85,000/- by cash on 11.01.2009 at Madras from the plaintiff and had executed a promissory note payable on demand or order. The defendant had agreed to pay the interest at 12% per annum. The amount was borrowed as the defendant had to urgently develop her share of the property bearing plot nos.24, 25 and 25A, measuring 5458 Sq.ft. in Survey No.170 at M.K.Nagar, Kerugambakkam Village, Sriperumbudurn Taluk which she had jointly purchased with her erstwhile husband Mr.A.Rahamathullah. The said Rahamathullah is no more. Though the plaintiff had made repeated demands, the defendant had not paid the amount. Therefore, the plaintiff had issued a legal notice dated 19.04.2011, to which the defendant had sent a reply dated 30.04.2011 setting out false allegations. To this, the plaintiff had sent a suitable rejoinder on 31.05.2011 and therefore, since the payment had not been made, the plaintiff had come forward with the suit in question.



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Defendant's Case:

5. The defendant had filed a written statement admitting that she had married Rahamathullah and out of the wedlock they had two children. The defendant would submit that the plaintiff had suppressed the fact that he is none else than the brother of her deceased husband, Rahamathullah. The said Rahamathullah had fallen into bad habits and had become a drug addict as a result of which he had frequently abused the defendant and her children. In fact, Rahamathullah had been sent for rehabilitation in the year 2000 but however, he once again resumed his addiction in and around the year 2002 and consequently started abusing the defendant and her children. Therefore, the defendant had moved over to her parent's house at Shimoga, Karnataka. On 21.11.2003, the said Rahamathullah had divorced the defendant by pronouncing Talak. Thereafter, the defendant had married one Mr.Munir Ahmed in the year 2008. The said Rahamathullah had died



6. The defendant would submit that the relationship between the defendant and the plaintiff was never smooth and therefore the allegation that she had borrowed a sum of Rs.1,85,000/- from the plaintiff is a blatant lie and the promissory note is a rank forgery. The defendant had denied her signature in the promissory note.

7. It is her further contention that the property in question stood in the joint names of her late husband and herself and during his lifetime, Rahamathullah had inducted tenants in the property. This continued even in the year 2009 when the alleged loan is stated to have been taken. The said Rahamathullah who was receiving the rent was utilizing the same for himself and had not given any money to the defendant. Therefore, when the Rahamathullah was in exclusive enjoyment of the property and receiving its rent, there is no question of



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the defendant taking a loan to develop the property. The defendant would pray for a dismissal of the suit which is based on a fabricated document.

Trial Court:

8. The Trial Court had framed the following issues:-

1. Whether the plaintiff is entitled to recover a sum of Rs.2,49,750/- with interest at the rate of 12% p.a. along with compounded monthly interest from the date of institution of plaint upto the date of realization of the amount as prayed in the plaint?

2. Whether the plaintiff is entitled to recover the cost of the suit from the defendant?

3. What other relief the plaintiff is entitled?



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9. The plaintiff had examined himself as P.W.1 and marked Ex.A.1 to A.4. On the side of the defendant no witnesses were examined nor were any exhibits marked.

10. The learned Trial Judge after hearing the parties had proceeded to dismiss the suit. Aggrieved by the same, the plaintiff had filed A.S.No.60 of 2020 on the file of the VI Additional Judge, City Civil Court, Chennai. The learned Appellate Judge had also concurred with the findings of the Trial Court and confirmed the Judgement and Decree of the Trial Court by dismissing the appeal. Challenging the same, the plaintiff is before this Court.

11. Heard Mr.C.S.Vedavalli, the learned counsel for the appellant/plaintiff.



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Discussion:

12. The case of the plaintiff is that the defendant had borrowed a sum of Rs.1,85,000/- on 11.09.2009 from the plaintiff for which the defendant had executed a promissory note for the like amount. The amounts had not been repaid and therefore, the suit. The defense to this claim is that the document is a fabricated one, there was no love lost between the plaintiff and her deceased husband and therefore, the question of borrowing from the plaintiff who is none else than the brother of the defendant's husband did not arise. The deceased Rahamathullah, the husband of the defendant was in possession of the property and was collecting all the rents. In the meanwhile, the said Rahamathullah had also divorced the defendant by pronouncing Talak on 22.11.2003. After the year 2003, there has been no connect between the defendant and the said Rahamathullah. Though the signature has been denied by the defendant, the plaintiff has not discharged his



burden of proving the same.

13. The Courts below have perused the oral evidence of P.W.1 wherein P.W.1 had deposed that the 1st attesting witness is the 2nd husband of the defendant and the 2nd attesting witness is one Dynanand who is known to both the parties. However, the plaintiff had not chosen to examine the said Dynanand despite the fact that the defendant had clearly and categorically denied the execution of the promissory note. The plaintiff has not discharged the burden of proving the signature in the promissory note, since under Section 118 of the Negotiable Instruments Act the burden of proof shifts on the plaintiff once the defendant denies both the signature as well as the receipt of consideration. The plaintiff has not taken any steps to have the signatures compared by an expert with contemporaneous documents. The Courts below had compared the signature under Section 73 of the



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Evidence Act. However, this Court is at loss to understand as to how the comparison could have been done since the signature in the promissory note is in Urdu whereas the signature in the vakalat and the written statement are in Tamil.

14. In the case on hand, the demand is on the basis of a document (promissory note) where the execution is denied by the defendant and the burden of proof is on the plaintiff to prove the same, which the plaintiff has miserably failed to discharge. The Courts below have rightly dismissed the suit and I see no reason to interfere with the same. Accordingly, the Second Appeal is dismissed particularly when the plaintiff has not made out any substantial question of law that requires the re-consideration of the Court. No costs.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No

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To

1. The VI Additional City Civil Court at Chennai
2. The XVI Asst. City Civil Court at Chennai
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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