



S.A.No.54 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.54 of 2021
and
C.M.P.No.1318 of 2021

V.G.Jeganathan

... Appellant

Vs.

Krishnasamy

... Respondent

PRAYER: Second appeal filed under Section 100 of C.P.C to set aside the judgment and decree dated 20.02.2020 passed in A.S.No.46 of 2019 on the file of the III Additional District and Sessions Court, Erode at Gobichettipalayam reversing the judgment and decree dated 25.06.2019 passed in O.S.No.132 of 2016 on the file of the Subordinate Judge, Gobichettipalayam.

For appellant : Mr.J.Titus Enoch

For respondent : Mr.P.R.Balasubramanian



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JUDGMENT

The plaintiff in the suit for recovery of money based on a promissory note is the appellant before this Court.

2. It is the case of the plaintiff that on 29.09.2013, the defendant had borrowed a sum of Rs.3,00,000/- from him for his family expenses and agricultural purposes. He had executed a promissory note agreeing to repay the sum with interest at 12% per annum. Since the defendant did not repay in spite of repeated oral demands, the plaintiff issued a legal notice dated 04.07.2016, to which, a reply was issued on 09.07.2016, and a rejoinder sent on 22.09.2016. However, contrary to the undertaking given in the promissory note, the defendant has failed to make the repayment and hence the plaintiff has filed the suit in question.

3. The defendant in his written statement categorically stated that he had neither executed the promissory note nor received any amount from the plaintiff.



4. The learned Trial Judge *viz.*, Subordinate Judge, Gobichettipalayam in O.S.No.132 of 2016 was pleased to decree the suit against which A.S.No.46 of 2019 was filed by the defendant. The learned III Additional District Judge, Gobichettiapalayam has allowed the appeal and reversed the judgment and decree passed by the Trial Court in O.S.No.132 of 2016, aggrieved by which the plaintiff is before this Court.

5. The learned counsel Mr.Titus Enoch, appearing on behalf of the plaintiff/appellant would submit that in the reply notice the defendant has not stated that the promissory note is forged and the same has been stated only in the written statement. That apart, he would draw the attention of the Court to the several discrepancies in the evidence of the defendant with regard to handing over the original documents to the plaintiff.

6. Per contra, Mr.P.R.Balasubramanian, learned counsel appearing on behalf of the respondent/defendant would submit before



this Court that the defendant has denied both the execution as well as the receipt of consideration. P.W.2 who has been examined to prove passing of consideration is the employee under the plaintiff, though the said statement has been denied. He would further submit that there are discrepancies in the evidences of P.W.1 - the plaintiff and P.W.2 with reference to the alleged payment of the amount under the promissory note.

7. Heard the learned counsel on either side. A perusal of the documents and evidence would show that it is the evidence of P.W.1, that, even without signing the promissory note, the money was given and then, the promissory note was written and executed by P.W.2 in the presence of the plaintiff. This was contradicted by P.W.2 in his evidence.

8. The signature and handing over of the money are the most crucial ingredients of the promissory note and there is a contradiction in the evidence of both the plaintiff as P.W.1 and the witness as



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9. The plaintiff has not taken any steps whatsoever to have signature of the defendant in the disputed document sent for an expert's opinion, particularly, when the very defence is that the promissory note is not executed by the defendant nor was the money paid to the defendant. Therefore, the point for consideration is answered in favour of the defendant and against the plaintiff.

Accordingly, this second appeal is dismissed. Consequently, connected C.M.P. stands closed. No costs.

19.10.2023

Index : Yes/No
Speaking order/non-speaking order
ssa

To
1. The III Additional District Judge,
Gobichettipalayam.

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2.The Subordinate Judge,
Gobichettipalayam.

3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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