IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.12.2023**

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.864 of 2023
and
C.M.P.No.27301 of 2023

P.Sadasivam ... Appellant

Vs.

A.Chinnasami (died)
1. Sarojini Devi
2. Eshwari
3. Kalaiselvi
4. Malathi
5. Sivakumar
6. SenthilKumar
7. Kirthika Devi ... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 30.01.2023 in A.S.No.27 of 2017, passed by the learned Sub Judge, Harur, Dharmapuri, confirming the judgment and decree dated 15.12.2012 in O.S.No.113 of 2004, passed by the learned District Munsif, Harur, Dharmapuri.

For appellant : Mr.R.Abdul Mubeen

For respondents : Mr.V.Nicholas

JUDGMENT

The unsuccessful defendant before the Courts below has preferred the above second appeal.

2. The facts which have led to the filing of the above second appeal are briefly set out hereinbelow. The parties are referred to in the same ranking as before the Trial Court *viz.,* District Munsif Court, Harur.

FACTS OF THE CASE:

2.1. The suit in O.S. No. 113 of 2004 was filed by the first plaintiff Chinnasamy, for recovery of a sum of Rs.45,000/- together with interest due towards the hand loan taken by the defendant from him for which he had executed a promissory note as a security.

2.2. It is the contention of the first plaintiff that the defendant had not come forward to clear the dues and therefore, he had come forward with the suit for recovery of the said money.

2.3. The defendant had filed a written statement *inter alia* denying the fact that he had executed the suit promissory note. On the contrary, it is the case of the defendant that on 23.03.1995, he had borrowed a sum of Rs.3,500/- from the plaintiff and executed a promissory note for the same. The defendant would submit that the plaintiff lends money and takes usurious loans (KanthuVatti).

2.4. The defendant would further submit that he had borrowed from the first plaintiff a sum of Rs.1,500/- on 17.06.1995 and Rs.500/- on 25.11.1995 and therefore, a total sum of Rs.5,500/- was borrowed by him from the first plaintiff. He had assured the plaintiff that he would pay the interest at the rate of Rs.2/- for every Rs.100/-. The defendant would further submit that he had totally repaid a sum of Rs.11,000/- for the aforesaid loan as follows:

(a)Rs.1,000/- on 17.06.1996;

(b)Rs.5,000/- on 14.11.1996;

(c)Rs.4,000/- on 10.10.1997;

(d)Rs.1,000/- on 22.04.1998;

2.5. This amount was paid by the defendant in the presence of one Motur Munusamy. The defendant would submit that the entire loan was cleared and when the defendant requested the plaintiff to return the promissory note and the same was also returned.

2.6. The defendant would further submit that the plaintiff is a Homeo Doctor and had requested him to give his house for rent which was turned down by him. Therefore, angered by the refusal of the defendant, the first plaintiff had created above suit promissory note and instituted the suit on false grounds. He would therefore, submit that no amount was due by him and the suit has to be dismissed.

TRIAL COURT:

3. The Trial Court has framed the issues as to

"(i) Whether the plaintiffs were entitled to the suit amount as claimed?

(ii) Whether the plaintiffs have fabricated the

promissory note and filed this suit?

(iii) Whether the defendant had repaid the entire loan to the plaintiffs?

(iv) To what other reliefs the plaintiffs are entitled for?"

4. Pending the suit, the sole plaintiff had died and his legal heirs were brought on record as the plaintiffs 2 to 8. The second plaintiff had examined herself as P.W.1 and one Gundan and one Jaffar as P.W.2 and P.W.3 respectively, and marked Exs.A1 to A3. On the side of the defendant, the sole defendant had examined himself as D.W.1 and marked Exs. B1 to B3.

5. The learned Judge, after considering the evidence on record and of the evidence of P.W.2 and P.W.3 who are the witness and scribe respectively, of Ex.A1- promissory note, held that the document has been executed and handed over by the defendant.

6. The learned Judge has also taken note of the pleadings taken by the defendant in his reply notice and in his written statement.

The defendant in his reply notice had contended that he had borrowed a sum of Rs.5,500/- from the plaintiff, whereas, the amount stated by him in his written statement would clearly show that the amount borrowed was a sum of Rs.6,000/-. The defendant has gone on to deny the signature in Ex.B1 which has been admitted by him. Therefore, the learned Judge, taking into consideration that the plaintiff had proved the execution of the promissory note, had ultimately decreed the suit.

7. Aggrieved by the same, the defendant had filed A.S.No.27 of 2017 on the file of the Sub Court, Harur.

LOWER APPELLATE COURT:

8. The learned Judge had also concurred with the judgment and decree of the Trial Court. Aggrieved by the concurrent judgment and decree, the defendant is before this Court.

DISCUSSION:

9. The only contention raised by the learned counsel appearing on behalf of the appellant is that a petition was taken out for the comparison of the signature in both the documents and to obtain a forensic report in this regard. However such an expert was not appointed and the lower Appellate Court has also not taken into consideration this factum, while dismissing the appeal.

10. Heard Mr.R.Abdul Mubeen, learned counsel appearing for the appellant and Mr.V.Nicholas, learned counsel appearing for the respondents and perused the materials available on record.

11. The defendant has not denied the signature in the promissory note. On the contrary, it is his contention that the promissory note which has been marked as Exs.A1 is the promissory note which was given by him as early as 1995. However, he has not proved it.

12. Be that as it may, once the defendant has admitted his signature, no useful purpose would be obtained by sending the signature for forensic test. The plaintiffs has proved the execution of the promissory note and the giving of the loan by examining P.W.1 and P.W.2 and the defendant has not been able to elicit any contra evidence from them. Therefore, the defendant has not made out any case for interfering with the concurrent judgment and decree of both the Courts below which have held that the borrowal and execution of the promissory note has been proved.

Accordingly, this second appeal stands dismissed as it does not contemplate any substantial question of law. Consequently, connected C.M.P. stands closed. No costs.

07.12.2023

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

To

1. The Sub Judge, Harur, Dharmapuri.

2.The District Munsif, Harur, Dharmapuri.

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

P.T.ASHA, J.,

ssa

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