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CMSA.Nos.28 & 29 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM: JUSTICE N.SESHASAYEE

CMSA.Nos.28 & 29 of 2023

Chinnapaiyan

... Appellant in both CMSAs

-Vs-

1.Kandasamy

2.Raju

3.Kamala

...Respondents in both CMSAs

Common Prayer: Civil Miscellaneous Appeal filed under Section 100 CPC, against the Order and decreetal order dated 20.12.2013 passed in C.M.A.Nos.20 & 21/2007 on the file of the I Additional District Judge, Salem reversing the order and decreetal order dated 20.3.2007 in I.P.No.11/2003 on the file of the Subordinate Judge, Sankari.

In both CMSAs:

For Appellant : Mr.P.Jagadeesan

For R1 to R3 : Mrs.R.Meenal

JUDGMENT

The petitioner in IP.No.11 of 2003 on the file of the Subordinate Court, Sankagiri is the appellant herein. The IP was allowed by the Trial Court

Vide its Judgment dated 20.03.2007 and it gave raise to two CMA's, one



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in CMA.No.20 of 2007 and other in CMA.No.21 of 2007, both of which are respectively filed by the alleged debtor/first respondent herein and her two purchasers. Vide a common order dated 20.12.2013, both the CMA's were allowed. Aggrieved by the same, the petitioner has approached this Court with these twin appeals.

2.1. The appellant herein has laid the aforesaid insolvency petition under Section 9 read with Section 6 of the Provincial Insolvency Act, alleging that the first respondent herein had borrowed Rs.50,000/- under Ext.P1, Promissory Note dated 21.08.2000, that she had sold the only immovable property she possessed to the respondents 2 and 3 herein on 07.04.2003 with an intend to defeat the right of the petitioner.

2.2. The contention of the first respondent was that she had created usufructuary mortgage as regards the only item of agricultural land that she owned with certain Ammasi. Ammasi is none other than first respondent's brother in law (husband of her husband's sister). When she wanted to redeem the said mortgage, Ammasi dragged his feet. Therefore, the first respondent laid OP.No.1 of 2000 presumably under Section 83



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of the Transfer of Property Act before the District Munsif Court, Sankari.

Ammasi did not contest the matter and chose to remain ex-parte.

Accordingly, on 12.07.2000, the trial Court allowed O.P.No.1 of 2000.

Pursuant to the same, the first respondent laid REP.No.40 of 2002. To

resist delivery, Ammasi would now file O.S.No.43 of 2003 for specific

performance of a sale agreement purported to have been executed by the

first respondent. The first respondent denied execution of these

documents and this was accepted by the trial Court and the suit came to

be dismissed and this decree of the trial Court was ultimately confirmed

by this Court in S.A.No.186 of 2014.

2.3. Be that as it may, about the same time when OS.No.43 of 2003 was

laid, the said Ammasi has influenced the present petitioner, who is a close

relative of his, to file the insolvency petition by fabricating Ext.P1,

Promissory Note, by utilizing the blank signed paper the first respondent

had left with Ammasi when she obtained the loan and created the

mortgage. She denied execution of the promissory note and also any

money being paid under the same.



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3.The dispute went to trial and the Insolvency Court had held that inasmuch as the first respondent had admitted the execution of Ext.P1, Promissory Note and inasmuch as its execution is proved by P.W.2 and P.W.3, who are the scribe and attestor of the document, entered a finding that she is the debtor. This was challenged by the first respondent in CMA.Nos.20 and 21 of 2007.

4.It may be mentioned, by this time the first respondent had sold the property to the respondents 2 and 3 Vide a sale deed dated 07.04.2003. The first appellate Court had taken a different view, allowed the appeals and dismissed IP.No.11 of 2003. The line of reasoning of the first appellate Court is; a) that both the petitioner, the alleged creditor under Ext.P1 and PW2 and PW3 are close relatives of Ammasi; b) that inasmuch as the first respondent had admitted her signature in Ext.P1, Promissory Note, the endeavor to ascertain whether a blank paper was utilized for preparation of promissory note, here the Court noted that above the signature of the first respondent, there is continuous line of dots, against which every line in the promissory note is written. This again raises a suspicion that possibly promissory note should have been



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prepared in a blank paper signed by the first respondent. Aggrieved by the said decision of the first appellate Court, these appeals are filed.

5.It may have to be stated here earlier the appellant had preferred CRP.Nos.187 and 188 of 2015, but that was ordered to be converted into miscellaneous second appeals by a learned single Judge of this Court, pursuant to which, the CRP's were converted and taken on record as miscellaneous appeals.

6.The core issue is whether the first respondent is a debtor. She had not denied her signature under the promissory note. However, she would state she had entrusted blank promissory note with her erstwhile mortgagee Ammasi. The point is whether this blank paper was used to fabricate Ext.P1, Promissory Note. The first appellate Court has found that there are series of dots placed one below the other along the margin of Ext.P1 and every sentence in the promissory note is retained against these dots. Now this Court finds that the suspicion of the first Appellate Court is most probable, for if only a promissory note is written in a required manner, there is hardly any need to have a set of dots one below



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the other. In other words, these dots were ideally positioned to enable the filling up of the vacant space above the signature of the first respondent in Ext.P1. That at least is a strong probability, which emerges from the material on record.

7.Since this is an issue on fact, this Court does not consider that the Appeals involve any substantial question of law. Accordingly, the Civil Miscellaneous Second Appeals are dismissed. No costs.

15.12.2023

Tsg

N.SESHASAYEE, J.,



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Tsg

To

- 1.The I Additional District Court, Salem.
- 2.The Subordinate Court, Sankari.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

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