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S.A.Nos.361 to 364 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos.361 to 364 of 2017

1. Dhanuskodi (Died)
2. Gnanasundari
3. Thirunavukkarasu
4. Vasanthi
5. Ramesh
6. Thirugnanasambandam

...Appellants in all S.A.'s

Vs.

1. M. Kaliyamoorthy (Died)
2. K. Rajeshwari
3. K. Rajesh
4. K. Rajaji
5. K. Sathya

(Appellants 2 to 6 brought on record as LR's of the deceased sole appellant viz., Dhanushkodi and R2 to R5 brought on record as LR's of the deceased sole respondent viz., Kaliyamoorthy vide Court order dated 05.07.2021 made in CMP.No.9612 & 9615/2021 in SA.No.361/2017, CMP.No.9624 & 9627/2021 in SA.No.362/2017, CMP.No.9508 & 9595/2021 in SA.No.363/2017, CMP.No.9637 & 9638/2021 in SA.No.364/2017)

S.A.'s

...Respondent in all

PRAYER in S.A.No.361/2021: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.03.2016 in



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A.S.No.27 of 2005 on the file of the Principal District Court, Cuddalore, reversing the judgment and the decree dated 31.12.2004 in O.S.No.22 of 1998 on the file of the Sub- Court, Panruti.

PRAYER in S.A.No.362/2021: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.03.2016 in A.S.No.28 of 2005 on the file of the Principal District Court, Cuddalore, reversing the judgment and the decree dated 31.12.2004 in O.S.No.79 of 1998 on the file of the Sub-Court, Panruti.

PRAYER in S.A.No.363/2021: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.03.2016 in A.S.No.29 of 2005 on the file of the Principal District Court, Cuddalore, reversing the judgment and the decree dated 31.12.2004 in O.S.No.38 of 1997 on the file of the Sub-Court, Panruti.

PRAYER in S.A.No.364/2021: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.03.2016 in A.S.No.30 of 2005 on the file of the Principal District Court, Cuddalore, reversing the judgment and the decree dated 31.12.2004 in O.S.No.233 of 1996 on the file of the Sub-Court, Panruti.

For Appellants in all S.A.'s : M/s.R.Meenal

For Respondents 2 to 5 in all S.A.'s : Mr. K.Moorthy

COMMON J U D G M E N T

The unsuccessful plaintiff in a money suit based on the promissory



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notes is the appellant. The suit filed by the appellant/plaintiff was originally decreed by the Trial Court and the appeal filed by the respondent/defendant was also dismissed. Aggrieved by the same, the respondent filed second appeals in S.A.Nos.741 to 744 of 2006 before this Court. The said second appeals were allowed and remanded back to the First Appellate Court with direction to send the original promissory notes to the hand writing expert for comparison with the contemporaneous admitted documents. After remand, the said promissory notes were sent for expert opinion and after obtaining expert's opinion, the first appeals preferred by the respondent were allowed by the First Appellate Court. Aggrieved by the same, the plaintiff has come up before this Court by way of second appeals.

2. According to the appellant/ plaintiff, the respondent/defendant borrowed a sum of Rs.80,000/-, 80,000/-, 75,000/- and 75,000/- on 01.12.1993, 01.06.1994, 06.03.1995 and 09.07.1995 from the appellant/plaintiff and executed suit promissory notes namely Ex.A1, Ex.A4, Ex.A7 and Ex.A8. In spite of several demand, the respondent/defendant failed to repay the amount due. Therefore, a pre-suit notice was issued to the respondent on 08.04.1996 and again on 08.03.1997. After receipt of said



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notices, the respondent came up with false reply denying execution of suit promissory notes. Therefore, the appellant/plaintiff was constrained to file four suits for recovery of money based on four different promissory notes.

3. The respondent herein filed written statement and resisted the suits by denying execution of suit promissory notes. It was also averred by the respondent that he never borrowed any amount from the appellant and the suit promissory notes were fabricated forged documents. It was also averred by the respondent that there was strained relationship between himself and his father-in-law one Raju Padayachi and he also filed a suit in O.S.No.719 of 1994 on the file of Sub-Court, Cuddalore against said Raju Padayachi. The plaintiff is a close relative of said Raju Padayachi and hence, the plaintiff and the said Raju Padayachi colluded together and concocted the documents and filed the present suit.

4. Based on the joint memo filed by both the parties, all the four suits were tried together and evidence was recorded in O.S.No.233 of 1996. The appellant/plaintiff was examined as P.W.1. One of the attestors in all the four promissory notes namely Vijaya Kumar was examined as P.W.2. The scribe of



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Ex.A1 promissory note was examined as P.W.3. The scribes of Ex.A4, Ex.A7 and Ex.A8 were examined as P.W.4, P.W.5 and P.W.6. The respondent was examined as D.W.1. The Handwriting Expert one Jayadevi was examined as D.W.2. The reports submitted by said handwriting expert were marked as Ex.C1 to Ex.C8.

5. The Trial Court, on the basis on the oral and documentary evidence available on record, came to the conclusion that appellant proved execution of promissory note and passing of consideration and decreed the suit. Aggrieved by the same, the respondent preferred first appeal and the same was also dismissed. Challenging the said judgment and decree as stated earlier, the respondent filed second appeals before this Court in S.A.Nos.741 to 744 of 2006. The second appeals were allowed and remanded to the First Appellate Court with direction to send the promissory notes to handwriting expert for comparison with the admitted signatures. After remand, the First Appellate Court allowed the appeals preferred by the respondent and dismissed the suit. Aggrieved by the same, the unsuccessful plaintiff is before this Court.

6. The learned counsel for the appellant tried to assail the judgment



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passed by the First Appellate Court on the ground that the admitted signatures were made in the plain papers and whereas in the suit promissory notes, the signatures were made on the stamp. Therefore, there is every possibility for difference in the space in between the letters. The said fact has not been taken into consideration by the expert while giving his expert opinion. Therefore, the First Appellate Court ought not to have dismissed the suit based on expert's opinion. The learned counsel further submitted that the Trial Court, on appreciation of oral evidence of attestors and the scribes of the promissory notes, correctly came to the conclusion that due execution had been proved by the plaintiff and the same has been reversed by the First Appellate Court without proper appreciation of oral evidence let in by the plaintiff.

7. The certified copy of the expert opinion which was marked as Ex.B15 before the First Appellate Court was circulated by the learned counsel for the appellant at the time of arguments. The expert, in his report has pointed out seven dissimilarities between the signatures of the defendant in the questioned promissory notes and the signatures of the defendant in the admitted documents namely Ex.B11 to Ex.B14. The dissimilarities pointed out by the expert are reproduced here and the same reads as follows:-



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“The standard signatures have been freely written and they agree in the handwriting characteristics on inter se comparison. The questioned signatures have been imitated and they differ significantly from the standard in the handwriting characteristics. The characteristic differences include among other things the following.

1.The skill of writing

2.The alignment between the letters in the signatures 'மு.

கலியமூர்த்தி ' '

3.The location and manner of making vowel sign in the letters 'லி ' , 'தி ' and making dots over the letter 'ர் ' & 'த் ' ,

4. The relative sizing between the letters' மூ ' & 'ர்', 'ர் ' & 'தி ' .

5. The manner of connecting the letters 'லி ' & 'ய'

6. The manner of terminating the letters 'க ' , ' மூ '

7. In the detailed designs such as the beginning and formation of loops and curves of the letters 'மு', 'மூ', 'க ' , 'லி ' , 'ய' , 'ர் ' , 'த் ' , 'தி ' .



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8. A perusal of the opinion of expert would suggest that she had given minute details and came to the conclusion that signatures of the defendant in the questioned promissory notes are not tallying with the signatures found in the admitted documents. It is not as if expert has given opinion only based on the difference in space and alignment in the letters. She pointed out various differences in the skill of writing, manner of connecting the letters, manner of terminating the letters, formation of loops and curves of the letters and manner of making vowels sign in the letters. Therefore, the First Appellate Court is right in taking into consideration the expert's opinion while coming to the conclusion whether the suit promissory note was executed by the respondent or not.

9. The First Appellate Court considered the oral evidence of appellant, attestors of four promissory notes and the scribes of promissory notes in detail and has come to the conclusion that there are major discrepancies and contradictions in the evidence of P.W's. It is pointed out by the First Appellate



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Court that P.W.1 deposed as if defendant signed the promissory note after receiving the amount from the plaintiff. However, the other witnesses examined on behalf of the plaintiff deposed as if defendant signed the promissory note and thereafter received the amount. Therefore, by pointing out the various contradictions and discrepancies in the evidence of P.W.'s, the First Appellate Court came to the conclusion that appellant/plaintiff failed to prove due execution of promissory notes. The said conclusion of first appellate Court was corroborated by the opinion of the expert which was marked as Ex.B15 before the First Appellate Court.

10. In such circumstances, I do not find any substantial questions of law arising for consideration in these second appeals calling for interference while exercising jurisdiction under Section 100 of CPC Act.

11. In view of the discussions made earlier, the second appeals stand dismissed.

a) by affirming the judgment and decree dated 30.03.2016 in A.S.No.27 of 2005, A.S.No.28 of 2005, A.S.No.29 of 2005 and A.S.No.30 of 2005 on the



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file of the Principal District Court, Cuddalore, reversing the judgment and the decree dated 31.12.2004 in O.S.No.22 of 1998, O.S.No.79 of 1998 , O.S.No.38 of 1997, O.S.No.233 of 1996 on the file of the Sub- Court, Panruti.

S.SOUNTHAR, J.

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b) In the above facts and circumstances of the case, there will be no order as to costs.

01.11.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

1. The learned Principal District Judge, Cuddalore,
2. The learned Sub- Judge, Panruti.



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