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S.A.No.374 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.374 of 2017
and
C.M.P.No.8815 of 2017

Muthathal

...Appellant

Vs.

V.Lakshminarayanan

...Respondent

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 03.02.2017 made in A.S.No.39 of 2016 on the file of the learned 1st Additional District Judge, Erode, confirming the judgment made in O.S.No.169 of 2014 on the file of the learned Principal Subordinate Judge, Erode, dated 05.04.2016.

For Appellant : M/s.R.M.Abbiraami
for M/s.P.Dinesh Kumar

For Respondent : Mr.G.Priya Vadhana
for M/s.M.Guruprasad



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JUDGMENT

The defendant who suffered a judgment and decree is the appellant. The respondent herein filed a suit for recovery of Rs.1,33,017/- based on the promissory note dated 20.12.2012. The suit was decreed by the trial Court. The First Appeal filed by the defendant was also dismissed. Hence, he is before this Court.

2. According to the respondent, the appellant had borrowed a sum of Rs.1,15,000/- for urgent family expenses from the respondent and executed a suit promissory note dated 20.12.2012, agreeing to repay the said amount on demand with interest at the rate of 12% per annum. It is further stated, inspite of several demands, the appellant failed to repay the said amount. Therefore, the respondent issued a pre-suit notice calling upon the appellant to repay the amount. The appellant sent a reply denying execution of the promissory note. Therefore, the respondent was constrained to file a suit for recovery of money.



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3. The appellant filed a written statement denying the execution of the promissory note in favour of the respondent. It was the specific case of the appellant that there was a family dispute with one Narayana Chettiar and the suit has been laid by the respondent with sole aim of helping the said Narayanan.

4. Before the trial Court, the respondent was examined as PW.1 and attester of the suit promissory note was examined as PW.2. The promissory note was marked as Ex.A1. The pre-suit notice issued by the plaintiff and the reply of the appellant were marked as Exs.A2 and A3. The appellant was examined as DW.1.

5. The Trial Court based on the evidence of attestors of the suit promissory note, came to the conclusion that the respondent duly executed the promissory note. Aggrieved by the same, the appellant has filed a First Appeal in A.S.No.39 of 2016, on the file of the First Additional District Judge, Erode and the same was dismissed. Aggrieved by the same, the appellant has come up by way of this Second Appeal.



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6. At the time of admission, this Court formulated the following substantial questions of law by order dated 13.12.2022:

“(1) Whether the Court can draw a presumption under Section 118 of Negotiable Instruments Act when the defendant had specifically denied the signatures in the promissory note under Ex.A1?;

(ii) When the defendant had denied the execution of the promissory note and the signatures in the promissory note, have the Courts correctly held that the burden of proof was on the defendant to prove that the signatures were not her signatures in the promissory note?;

(iii) Whether the burden of proof to establish the genuinenity of the signatures would lie on the plaintiff or on the defendant?; and

(iv) Whether the evidence of the attestor to the promissory note is sufficient to prove execution of the promissory note?.



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7. The learned counsel appearing for the appellant submitted that when the execution of the suit promissory note is denied by the appellant/defendant, the respondent ought to have taken necessary steps for comparison of the disputed signature of the appellant found in the suit promissory note with the admitted signature and the same has not been done in this case. It is further submission of the learned counsel for the appellant that the initial burden of proving execution of the promissory note lies on the plaintiff. In the case on hand, having failed to seek expert opinion regarding the disputed signature in the promissory note, the respondent failed to discharge the initial burden on him.

8. The learned counsel appearing for the appellant by taking this Court to the evidence of attesor to the suit promissory note, submitted that there are lot of discrepancies in the evidence of PW.2 and therefore, the Courts below ought not to have held that the execution of the suit promissory note was duly proved solely based on evidence of PW.2.



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9. In support of her contention, the learned counsel of the appellant relied on the following judgments:

(i) ***Kundan Lal Rallaram Vs. The custodian, Evacuee Property Bombay*** reported in ***AIR 1961 SC 1316***;

(ii) ***Perumal Vs. Dhanalakshmi Ammal*** reported in ***MANU/TN/6205/2020***

10. The learned counsel appearing for the respondent by relying on the evidence of PW.2, attester of the suit promissory note, submitted that the initial burden of proving the execution of promissory note has been discharged by the respondent and therefore the burden is shifted to the appellant to take necessary steps for comparison of disputed signature by furnishing the admitted signature. Having failed to take out any application for getting expert opinion regarding the disputed signature, it is not open to the appellant to say that finding rendered by the Courts below based on the evidence of attester, is not reliable.

11. The plaintiff, in order to prove due execution of the



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promissory note examined himself as PW.1 and deposed in support of the averment found in the plaint. Further, he examined one Balasubramanian who attested the suit promissory note as PW.2. The said witness clearly deposed that the appellant borrowed a sum of Rs.1,15,000/- from the respondent and executed suit promissory note.

12. Though the learned counsel appearing for the appellant submitted that PW.2 deposed that the respondent put his signature in the suit promissory note, the signature of the respondent does not find place in the suit promissory note. On the other hand, he had written his name in the said document. Therefore, the evidence of PW.2 is vitiated by material contradictions. The contradictions mentioned by the learned counsel for the appellant are not material and the same will not affect the evidence of PW.1 with regard to the execution of the suit promissory note. In the chief examination, it is clearly deposed that the appellant borrowed a sum of Rs.1,15,000/- and executed the suit promissory note and the same has not been discredited in the cross examination by counsel for appellant. The suit promissory note is not a document which requires compulsory attestation. However, in the case on hand, the suit promissory note was attested by one



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attesting witness and the said witness has been examined as PW.2. Therefore, initial burden has been successfully discharged. In such circumstances, the submission made by the learned counsel appearing for the appellant that the respondent failed to take steps to compare disputed signature with the admitted signature of the appellant is not acceptable to this Court.

13. In *AIR 1961 SC 1316* cited by the learned counsel for the appellant, the Apex Court on the facts of that case, held that in view of the evidence available therein, statutory presumption under Section 118 of Negotiable Instruments Act got discharged. However, in the case on hand, there is no such evidence available on record to rebut the statutory presumption regarding passing of consideration. The attestor to promissory note namely PW.2 talks about the passing of consideration. In such circumstances, the judgment relied on by the learned counsel for the appellant is not applicable to the facts of the present case.

14. The learned counsel for the appellant by relying on the judgment of this Court in *Perumal Vs. Dhanalakshmi Ammal* submitted that when execution of a promissory note is disputed by the defendant, the plaintiff



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should have taken steps to compare the signature in the promissory note with any other admitted signature. In the above mentioned case law, the attesor of the suit promissory note was not examined by the plaintiff. In such circumstances, this court observed that the plaintiff should have taken steps to compare the signature found in the promissory note. In the case on hand, the attesor of the suit promissory note has been examined by the plaintiff and proved the execution. Therefore, the initial burden on the plaintiff got discharged and onus is shifted to the defendant. In such circumstances, the above said decisions relied on by the learned counsel for the appellant is not applicable to the facts of this case.

15. In view of the discussions made earlier, both the questions of law framed at the time of admission are answered against the appellant and consequently the Second Appeal stands dismissed.

16. In these circumstances,

(a) The Second Appeal is dismissed by confirming the judgment and decree passed in A.S.No.39 of 2016, on the file of the learned 1st



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Additional District Judge, Erode, dated 03.02.2017 confirming the judgment and decree in O.S.No.169 of 2014, on the file of the learned Principal Subordinate Judge, Erode, dated 05.04.2016.

b) In the facts and circumstances of the case, there shall be no order as to costs; and

c) consequently, connected Miscellaneous Petition is closed.

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

1. The 1st Additional District Judge, Erode.
2. The Principal Subordinate Judge, Erode.



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S.SOUNTHAR, J.

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