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S.A.No.812 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.812 of 2017
and
CMP.No.23041 of 2017

R.Venkatesan

... Appellant

Vs.

Murugan

... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 22.07.2014 in A.S.No.66 of 2012 on the file of the Court of the Principal Subordinate Judge, Villupuram, confirming the judgment and decree dated 28.02.2012 made in OS.No.11 of 2009 on the file of the Court of the Principal District Munsif, Thirukoilur and submits the same is erroneous, illegal and liable to be set aside.



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For Appellant : Mr.S.Thangavel
For Respondent : Mr.M.Himavanth
for Mr.P.V.Vasanth

JUDGMENT

The unsuccessful defendant in the suit for recovery of money is the appellant. The respondent herein filed a suit for recovery of money based on promissory note and the same was decreed. The first Appellate Court confirmed the judgment of the trial Court. Aggrieved by the same, the defendant has come up with this Second Appeal.

2. According to the respondent/plaintiff, the appellant/defendant borrowed a sum of Rs.1,00,000/- on 05.06.2006 from him and executed suit promissory note agreeing to repay the said amount with interest at the rate of 12% per annum. In spite of several demands for payment of money due under the promissory note, the appellant refused to pay the same. The respondent issued a legal notice on 10.10.2007 calling upon him to repay the amount. The appellant failed to respond to the legal notice. Therefore, the respondent was constrained to file a suit for recovery of money based on the suit promissory note.



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3. The appellant filed a written statement and denied the execution of the suit promissory note and receipt of consideration. It was further averred by the appellant that the pre-suit notice was issued by the respondent to Tamil Nadu Electricity Board Central Office at Villupuram and at the relevant point of time, the appellant was not working there. Therefore, he did not receive the pre-suit notice. Thus, by raising a specific plea that the suit promissory note was forged one, the appellant sought for dismissal of the suit.

4. Before the trial Court, the respondent was examined as PW1. The attestors to the suit promissory note were examined as PW2 & PW4. The scribe of the promissory note was examined as PW3. On behalf of the respondent two documents were marked as Ex.A1 & Ex.A2. The appellant was examined as DW1 and employee of the Tamil Nadu Electricity Board, Villupuram was examined as DW2 and Branch Manager of Tamil Nadu Transport Corporation was examined as DW3. On behalf of the appellant no documents were marked. Seven documents were marked as Ex.X1 to Ex.X7 through DW2 and one document namely Ex.X8 was marked through DW3.



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5. The trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the execution of suit promissory note was proved and hence, the respondent is entitled to recovery of money as prayed for. Aggrieved by the same, the appellant preferred an first Appeal in A.S.No.66 of 2012 on the file of the Principal Subordinate Judge, Villupuram. The first Appellate Court also affirmed the findings of the trial Court. Aggrieved by the same, the appellant is before this Court.

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

“ a) Whether the Courts below were right in picking holes in the case of the appellant/defendant for decreeing the suit, when especially the respondent failed to prove his case?

b) Whether the Courts below were right in ignoring the material facts adduced by the appellant available on records relating to lending of money and execution of suit pronote, Ex.A1, which goes to the root of the matter?

c) Whether the Courts below were right in not



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exercising its power vested in it under Sec.73 of the Evidence Act, when admittedly the signatures in the suit pronote Ex.A1 and the admitted signatures differ and that the language also differs?

d) Whether the appellant has successfully rebutted the presumption and the burden to prove the execution and payment of consideration is shifted to the respondent as per Sec.101 to 104 of the Indian Evidence Act?”

7. The learned counsel for the appellant submitted that PW1, PW2 and PW4 in their evidence clearly deposed that the suit promissory note was executed on 05.06.2006 at 7.00 P.M., however as per Ex.X8 marked through employer of plaintiff namely DW3 would suggest that the appellant was in official duty at 11.10 a.m., on 05.06.2006 and relieved only on 06.06.2006 at 11.10 a.m. Therefore, the version of PWs as if the suit promissory note was executed on 05.06.2006 at 7.00 P.M., in the house of plaintiff cannot be accepted.

8. The learned counsel for the appellant further submitted that the signature of the appellant available in their suit promissory note is dissimilar to



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the signature of the appellant available in Ex.X1 to Ex.X7 which were marked through his employer DW2. The learned counsel for the appellant further submitted that the Courts below ought to have exercised its power under Section 73 of the Evidence Act to compare the signature of the appellant found in the suit promissory note with the signature of the appellant available in Ex.X1 to Ex.X7 and consequently ought to have come to a conclusion that the signature found in Ex.A1 suit promissory note is not that of the appellant.

9. The learned counsel for the respondent by taking this Court to the evidence of PWs and admission of appellant as DW1 submitted that on appreciation of evidence available on record both the Courts below rightly came to the conclusion that due execution of promissory note was proved by the respondent/plaintiff and hence, the concurrent findings of the Courts below need not be interfered.

10. The suit for recovery of money filed by the respondent was resisted by the appellant mainly on the ground by denying the execution of the suit promissory note. Therefore, it is duty of the respondent/plaintiff to prove due execution of promissory note. In order to prove due execution of



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promissory note the respondent examined himself as PW1. The two attestors who signed in the promissory note were examined as PW2 and PW4. The scribe of the suit promissory note was examined as PW3. All of them clearly deposed that the appellant executed the suit promissory note in their presence after receiving consideration. When the appellant was examined as DW1, he clearly admitted that there was no enmity between him and PWs namely attestors and scribe. When the appellant himself admitted that there was no enmity between him and attestors to the suit promissory note absolutely there is nothing to disbelieve the version of PW2 and PW4. The evidence of PW2 to PW4 is not discredited in cross examination. In such circumstances, on appreciation of evidence of PW1 to PW4 both the Courts below rightly came to the factual conclusion that due execution of promissory note was proved by the respondent/plaintiff.

11. The learned counsel for the appellant by relying on evidence of DW3 and Ex.X8 submitted that on 05.06.2006 at the relevant point of time the respondent was in official duty and in such circumstances, there was no possibility for the appellant to execute promissory note after receiving consideration in the residence of the respondent. However, the employer of the



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respondent who was examined as DW3, in his evidence clearly deposed that the person in official duty can get permission from the Branch Manager and go out. In such circumstances, the submission made by the learned counsel for the appellant that there was no possibility for the appellant to execute suit promissory note in the residence of respondent on 05.06.2006 cannot be accepted.

12. The learned counsel for the appellant also submitted that the Courts below failed to compare the signature of the appellant found in the suit promissory note with the official documents produced as Ex.X1 to Ex.X7. A perusal of Ex.X1 to Ex.X7 would suggest that the appellant's signature in those exhibits are in English. However, the appellant signed the suit promissory note in Tamil. It is settled law that the signature of the appellant found in his pleadings and deposition cannot be compared with the disputed signature in the suit promissory note because that signature comes into existence subsequent to the dispute between the parties. The appellant failed to produce his contemporaneous signature in Tamil in order to enable the Court to make a comparison for the reasons best known by him. He only produced his signature in English under Ex.X1 to Ex.X7. When he was examined as DW1 he clearly



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admitted that he knew how to put signature in English and Tamil. The Courts below after taking into consideration the admission made by DW1, signatures found in Ex.X1 to Ex.X7, pleadings and signature in deposition, rightly came to the conclusion that the appellant is in the habit of putting his signature in Tamil and English and he used to alter his signature frequently.

13. When the appellant failed to produce his admitted contemporaneous signature in Tamil for comparison with the disputed signature in the suit promissory note, the learned counsel for the appellant's contention that the Courts below failed to exercise its power under Section 73 of the Evidence Act to compare the disputed signature with admitted signature is rejected.

14. The Courts below on appreciation of oral and documentary evidence available on record came to a factual conclusion that due execution of suit promissory note has been proved by the respondent. Once the execution of his promissory note is proved, the respondent is entitled to the benefit of presumption under Section 118 of the Negotiable Instruments Act and therefore, the Court shall presume that the appellant executed promissory note



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and received consideration from the respondent. Even otherwise PW2 to PW4 clearly deposed that the appellant executed promissory note after receipt of consideration. In such circumstances, I do not find anything to interfere with the findings rendered by the Courts below. Accordingly, the substantial questions of law framed at the time of admission are answered against the appellant and the Second Appeal is dismissed.

15. a) In the result, the Second Appeal stands dismissed by confirming the judgment and decree passed by the Courts below.

b) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

28.11.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To
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- 1.The Principal Subordinate Judge, Villupuram
- 2.The Principal District Munsif, Thirukoilur.



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S.SOUNTHAR, J.

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