



WEB COPY



S.A.No.870 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.870 of 2017
and
C.M.P.No.21918 of 2017

N.Jeyasheelan

... Appellant

vs.

A.Velusamy

... Respondent

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 12.04.2017 passed by the learned III Additional District and Sessions Judge, Coimbatore in A.S.No.50 of 2013 confirming the Judgment and Decree dated 30.04.2013 passed by the learned Subordinate Judge, Pollachi in O.S.No.36 of 2012.

For Appellant : Mr.A.Sriram
for M/s.L.Mouli

For Respondent : Ms.M.Annie Devadharshini
for M/s.M.N.Balakrishnan



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J U D G E M E N T

WEB COPY The unsuccessful defendant, who suffered by a money decree is the appellant. The respondent/plaintiff filed a suit for recovery of money based on suit promissory note. The suit was decreed by the Trial Court and the first appeal filed by the defendant was also dismissed by the First Appellate Court. Hence, the defendant is before this Court.

2. According to the respondent, the appellant herein borrowed a sum of Rs.1,00,000/- and executed a Promissory Note on 20.01.2009 agreeing to repay the said sum with interest at the rate of 12% per annum. In spite of several demands made by the respondent, the appellant failed to repay the said sum and therefore, the respondent issued a legal notice on 10.12.2010 calling upon the appellant to repay the said amount. The appellant came up with a false reply and hence, the respondent was constrained to file the above suit for recovery of money.

3. The appellant herein filed a written statement and resisted the suit by denying the very execution of the suit promissory note. It was the case of the appellant that he was a stranger to the respondent and he never borrowed



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any amount from the respondent and executed the suit promissory note. It was also further stated by the appellant that in the year 2006, his brother namely one Mano borrowed money from respondent and at that point of time, as a security, he signed blank promissory notes and handed over the same to the respondent and even after settlement of the loan amount by his brother, the respondent failed to return the same. On these pleadings, the appellant sought for dismissal of the suit.

4. The Trial Court on appreciation of oral and documentary evidences available on record, came to the conclusion that the execution of suit promissory note was duly proved by the respondent and consequently, granted a decree as prayer for. Aggrieved by the same, the appellant herein preferred an first appeal in A.S.No.50 of 2013 on the file of III Additional District and Sessions Judge, Coimbatore. The First Appellate Court also concurred with the findings of the Trial Court. Aggrieved by the same, the unsuccessful defendant has come up by way of this second appeal.

5. The learned counsel appearing for the appellant submitted that the respondent failed to prove the execution of suit promissory note by



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examining the attestor signed in the promissory note. The learned counsel further submitted that PW.2, who was examined by the respondent is the scribe of promissory note and he is not competent person to speak about execution of the document.

6. The promissory note is not a document, which requires compulsory attestation and therefore, the same need not be proved by examining the attestor to the document. In the case on hand, the respondent examined himself as PW.1, he deposed about due execution of the promissory note by the appellant on payment of consideration by him. The evidence of PW.1 is very well corroborated by evidence of scribe of promissory note. Both the Courts below on appreciation of evidence of PW.2 has rendered a factual finding that he clearly deposed about due execution of suit promissory note and passing of consideration. When nothing is culled out from the cross examination of PW.2 to impeach his evidence, the factual finding rendered by the Courts below based on appreciation of oral evidence of PW.1 and PW.2 cannot be interfered with while exercising power under Section 100 of Civil Procedure Code.



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7. Finding no substantial question of law arising for consideration in this second appeal, the factual conclusion reached by the Courts below that suit promissory note was duly executed by the appellant after receipt of consideration mentioned thereon, requires no interference by this Court. Accordingly, the second appeal stands dismissed.

In Nutshell:-

(i) The Second Appeal is Dismissed.

(ii) Consequently, connected civil miscellaneous petition is closed.

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

10.11.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm



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S.SOUNTHAR, J.

dm

To

- 1.The III Additional District and Sessions Judge,
Coimbatore.
- 2.The Subordinate Judge, Pollachi.

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