



S.A(MD)No.153 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:15.11.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)No.153 of 2021

K.Thanikodi

... Appellant/Respondent/Plaintiff

vs.

Jeyalakshmi

... Respondent/Appellant/Defendant

PRAYER:- Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.86 of 2019 dated 10.03.2020 on the file of the IV Additional District Court, Madurai, reversing the judgment and decree passed in O.S.No.1055 of 2017, dated 02.08.2019 on the file of the Sub-Court, Thirumangalam, Madurai.

For Appellant	:Mr.J.Gunaseelan Muthiah
For Respondent	:Mr.T.A.Ebenezer

JUDGMENT

This second appeal is filed challenging the judgment and decree, dated 10.03.2020, made in A.S.No.86 of 2019 on the file of the VI-Additional District Court, Madurai, reversing the judgment and decree, dated 02.08.2019, made in O.S.No.1055 of 2017 on the file of the Sub-Court, Thirumangalam.



S.A(MD)No.153 of 2021

2. The appellant/plaintiff filed the suit in O.S.No.1055 of 2017 seeking a relief of recovery of money on the basis of a promissory note.

The case of the appellant is that on 04.07.2017, the respondent borrowed a sum of Rs.8,00,000/- and executed a promissory note on the same day with a promise to repay the principal with interest at Rs.2/- per Rs.100/-. Thereafter, the respondent did not pay any amount despite several requests. In the said circumstances, the suit is filed.

3. The claim of the appellant/plaintiff was resisted by the respondent/defendant stating that she knows the plaintiff only through her husband. There may be difference of opinion between the plaintiff and her husband in connection with the promise made by her husband to secure employment. To wreak vengeance, this suit is filed by fabricating the promissory note. May be there was monetary transaction between her husband and plaintiff. But, she is not aware of the origin of promissory note. The signature in the promissory note is not that of her. Thus, he prayed for dismissal of the suit.

4. During the course of trial, on the side of the plaintiff, P.Ws.1 to 4 were examined and Ex.A1 was marked. On the side of the defendant, the defendant herself examined herself as D.W.1 and marked Ex.B1.



S.A(MD)No.153 of 2021

5. On considering the oral and documentary evidence, the learned trial Judge decreed the suit.

6. On appeal filed against the judgment and decree in O.S.No.1055 of 2017 in A.S.No.86 of 2019, the First Appellate Court on re-consideration of oral and documentary evidence, reversed the finding of the learned trial Judge and dismissed the suit. Thus, the appellant/plaintiff is before this Court by filing this second appeal.

7. This Court framed the following substantial question of law for consideration in this second appeal:

“Whether the lower Appellate Court was right in concluding that the plaintiff has not established the borrowing, after having found that the suit Promissory Note was executed by the defendant.”

8. The learned counsel for the appellant submitted that when the respondent denies the signature in the suit promissory note, it is for the respondent to send the promissory note along with her admitted signature to the opinion of the hand-writing expert. That was not done. By examining P.Ws.1 to 4, the appellant had proved the borrowal and



S.A(MD)No.153 of 2021

execution of suit promissory note. Without giving weight to the evidence of P.Ws.1 to 4 and when the respondent has failed to rebut the evidence of P.Ws.1 to 4, the First Appellate Court had wrongly set aside the findings of the trial Court and dismissed the suit.

9. In reply to this submission, the learned counsel for the respondent submitted that the learned trial Judge has not considered the oral and documentary evidence in proper perspective. However, in appeal, the First Appellate Court had elaborately discussed the oral and documentary evidence produced in this case and rightly reversed the judgment of the trial Court. It is for the plaintiff to establish his case. He cannot expect the respondent/defendant to disprove the case of the plaintiff. From the own evidence of appellant and other witnesses, the First Appellate Court found that the alleged borrowal of money on 04.07.2017 and execution of promissory note was not true and thus, the suit was dismissed. Thus, he prays for confirming the judgment of the First Appellate Court and for dismissal of this second appeal.

10. I have considered the rival submissions and perused the records.



S.A(MD)No.153 of 2021

11. It is seen from the case of the appellant that the respondent borrowed a sum of Rs.8,00,000/- on 04.07.2017 and executed the suit promissory note. This case of the appellant is stoutly denied by the respondent stating that she has not borrowed any money from the appellant and the signature in the suit promissory note is not that of her. That apart, it is further stated that the suit promissory note might have been fabricated on account of the enmity between her husband and appellant in connection with an issue to secure an employment. As already stated, the trial Court on the basis of the evidence of P.Ws.1 to 4, D.W.1 and Ex.A1 and B1, decreed the suit. In appeal, on re-consideration of oral and documentary evidence, the finding of the trial Court was reversed.

12. The reason for reversal as per the judgment of the trial Court is that there are material contradictions in the evidence of the appellant and the witnesses examined on the side of the appellant as follows:

(i) it was claimed in the plaint that the respondent borrowed a sum of Rs.8,00,000/- on 04.07.2017, but in oral evidence, P.W.1 stated that he lent a sum of Rs.4,50,000/- as a first instalment, after one week, another sum of Rs.3,50,000/- was lent and fifteen days thereafter, the suit promissory note was executed.



S.A(MD)No.153 of 2021

(ii) In Ex.B1, it was claimed that Ex.B1 was executed for the money borrowed by the respondent's husband.

(iii) There is also contradiction in the evidence of P.W.1 and other witnesses, with regard to the place where promissory note was executed. P.W.1 claimed that promissory note was executed in front of P.W.1's house and in the street, whereas, P.W.2 claimed that the suit promissory note was executed in Advocate's office.

13. It is evident from the oral and documentary evidence that P.W.1 has given contradictory evidence with regard to the date of borrowal, the place of execution of promissory note. When it is categorically stated that on 04.07.2017, the respondent borrowed a sum of Rs.8,00,000/- in the plaint, P.W.1 gives a contradictory evidence stating that this amount was paid in two installments, ie., Rs.4,50,000/- as a first instalment and Rs.3.50,000/- as a second instalment and fifteen days thereafter, the suit promissory note was executed. Thus, the evidence of P.W.1 is in total contrast to the plaint averments with regard to the quantum of money borrowed on 04.07.2017 and the date of execution of promissory note. Though Ex.B1 was not registered, it is found from Ex.B1 that this document was executed for the borrowal made by the respondent's husband. There is a contradiction in evidence of P.Ws.1 and



S.A(MD)No.153 of 2021

2 with regard to the place where the promissory note executed. Thus, this Court finds that on proper and correct appreciation of oral and documentary evidence, the learned First Appellate Judge found that the appellant/plaintiff has not established the borrowal of Rs.8,00,000/- on 04.07.2017 and execution of promissory note.

14. In this view of the matter, this Court answers the substantial question of law that the first appellate Court has rightly reversed the finding of the trial Court and dismissed the suit. This Court finds no valid reason for having a different view of the matter than that was taken by the learned First Appellate Judge.

15. In the result, this second appeal is dismissed and the judgment and decree, dated 10.03.2020, made in A.S.No.86 of 2019 on the file of the VI-Additional District Court, Madurai, reversing the judgment and decree made in O.S.No.1055 of 2017, dated 02.08.2019 on the file of the Sub-Court, Thirumangalam, Madurai, is confirmed. No Costs.

15.11.2023

pm

Index:Yes/No

NCC:Yes/No



S.A(MD)No.153 of 2021

To,

- 1.The IV Additional District Court,
Madurai.
- 2.The Sub-Court, Thirumangalam,
Madurai.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



S.A(MD)No.153 of 2021

G.CHANDRASEKHARAN, J.

pm

S.A(MD)No.153 of 2021

15.11.2023