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S.A.(MD)No.322 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A.(MD)No.322 of 2023
and
C.M.P(MD)No.7210 of 2023

P.Murugan

... Appellant / Defendant

Vs.

P.Rajaram

... Respondent / Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 22.08.2022 in A.S.No.37 of 2020 passed by the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur, confirming judgment and decree dated 10.07.2019 in O.S.No.172 of 2015 passed by the Additional Sub Court, Srivilliputtur.

For Appellant : Mr.S.Muniyandi

For Caveator : Mr.M.Thirunavukkarasu



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JUDGMENT

This Second Appeal is filed against the judgment and decree dated 22.08.2022 made in A.S.No.37 of 2020 on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputtur, confirming the judgment and decree dated 10.07.2019 passed in O.S.No. 172 of 2015 on the file of the Additional Subordinate Court, Srivilliputtur.

2. The brief facts of the case:

The respondent as the plaintiff filed the suit for recovery of money against the appellant/defendant in O.S.No.172 of 2015 on the file of the Additional Subordinate Court, Srivilliputtur. It is the case of the respondent/plaintiff that on 10.11.2013 the appellant/defendant borrowed a sum of Rs.2,00,000/- and executed a promissory note in the presence of witnesses agreeing to repay the said amount along with interest at the rate of 12% p.a. But, the appellant/defendant had not repaid the loan amount in spite of several demands. Hence, after issuance legal notice dated 13.05.2015 and no reply from the appellant/defendant, the respondent plaintiff filed the suit. The appellant/defendant filed detailed written statement contending that he borrowed only Rs.25,000/- in the year 2003 by executing unfilled and signed promissory note in favour of



plaintiff and he repaid the same by several installments during the period from 2003 to 2006 and that there was no connection between the plaintiff and the defendant from 2006. It is further alleged that in the year 2013, the appellant/defendant met the plaintiff and asked return of unfilled pronote, in turn, the plaintiff assured to return the same soon, it was known to one Santhakalai, but the plaintiff filed the suit with the fraudulent promissory note. Both sided let in oral evidences and plaintiff let documentary evidence, the defendant did not let any documentary evidence. After hot contest, the Trial Court partly decreed the suit. Aggrieved by the judgment and decree of the Trial Court, the appellant/defendant filed Civil Appeal in A.S.No.37 of 2020 before the First Appellate Court/Principal District Court, Virudhunagar at Srivilliputtur. Along with appeal petition in I.A.No.3 of 2021 under Order 41 Rule 27 of the Civil Procedure Code filed by the appellant/defendant to adduce evidence. The First Appellate Court, after considering both side arguments and both side evidences, dismissed the appeal as well as the I.A.No.3 of 2021. Aggrieved by the judgment and decree of the First Appellate Court the appellant / defendant preferred this Second Appeal.

3.Heard the learned counsel for the appellant and perused the records.



4. The learned counsel for the appellant/defendant has argued that the defendant borrowed only Rs.25,000/- in the year 2003 by executing unfilled and signed pronote and it was repaid by him during the years 2003-2006. There was no connection between them after 2006. When he met plaintiff in the year 2013, he demanded return of unfilled and signed pronote, but the plaintiff assured that he would not take any further action. This fact was known to one Santhakalai. Further it is argued that the stamp affixed in the pronote was supplied by the Postal Department during the year 1993 and it was used in the year 2013. This facts were not considered by the Trial Court as well as by the First Appellate Court even the appellant/defendant filed the petition under Order 41 Rule 27 of the Civil Procedure Code. The Trial Court has not framed any issue with regard to limitation upon the pronote and so, the appellant/defendant was not able to adduce evidence. The First Appellate Court has also not considered the petition filed under Order 41 Rule 27 of the Civil Procedure Code and dismissed the same without any elaborate discussion. Therefore, the appellant/defendant has fair chance in this Second Appeal and there is substantial question of law in favour of the appellant/defendant in this Second Appeal. Therefore, the Second Appeal may be admitted to file.



5. On hearing the learned counsel for the appellant and on perusal of records, it is clear that the appellant / defendant admitted his signature in the promissory note in question, which was issued to the plaintiff. On perusal of material records and judgments of the Trial Court as well as the First Appellate Court, it is clear that the respondent/plaintiff has examined himself as P.W.1 and examined one attesting witness to the pronote as P.W.2 and produced the pronote and other exhibits. Once the signature is admitted, it is for the defendant to disprove the same that the signed pronote was given as unfilled and later the contents were filled by examining the witnesses. The appellant/defendant specifically stated that the said fact was known to one Santhakalai, but he failed to examine the said witness before the Trial Court. Further on perusal of records, the defendant stated before the Trial Court that he borrowed only Rs.25,000/- from the respondent/plaintiff in the year 2003, but he stated before the First Appellate Court in the I.A that he borrowed Rs.25,000/- from Finance Company. He took contrary statements before the Courts below. The First Appellate Court has discussed the petition to adduce additional evidence and dismissed the same. Further, the appellant alleged that the stamp found in the pronote is of the year 1993 and it was used in the year 2013. The appellant/defendant has not taken such kind of defence before the Trial Court by stating the same in his written statement. On perusal of



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records, the respondent/plaintiff has examined himself and one attesting witness to the pronote to substantiate his case, but the appellant/defendant failed to let rebuttal evidence to disprove the case of the plaintiff even by examining the alleged Santhakalai before the Trial Court. Therefore, in such circumstances, the appellant/defendant has no valid ground to file Second Appeal. Considering the facts, there is *prima facie* no question of law arisen in this Second Appeal against the concurrent findings of the Courts below. Therefore, considering the above facts and circumstances, this Court is of the opinion that this Second Appeal is liable to be dismissed in the admission stage itself.

6.In the result, as there is no substantial question of law involved in this appeal, this Second Appeal is dismissed at the admission stage itself. No costs. Consequently connected Miscellaneous Petition is closed.

22.09.2023

NCC : Yes / No
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To

- 1.The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputhur.
- 2.The Additional Sub Court,
Srivilliputtur.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

ORDER MADE IN
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