



S.A.(MD) No.632 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **01.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.CHANDRASEKHARAN**

S.A.(MD) No.632 of 2023

Packiam

..Appellant

Vs.

Arumugam

...Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree in A.S.No.15 of 2021 on the file of the Sub Court, Aruppukkottai dated 11.08.2022 confirming the judgment and decree in O.S.No. 103 of 2017 on the file of Principal District Munsif Court, Aruppukkottai dated 07.02.2020.

For Appellant

: Mr.M.Ramu

For Respondent

: Mr.R.Alagumani

JUDGMENT

Challenging the concurrent judgments in A.S.No.15 of 2021 on the file of the Subordinate Court, Aruppukkottai in O.S.No.103 of 2017 on the file of the Principal District Munsif Court, Aruppukkottai, this appeal is filed.



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2.The appellant/plaintiff filed a suit for recovery of money on the basis of a promissory note said to have been executed by the respondent/defendant. The case of the appellant is that on 05.05.2015, the respondent borrowed a sum of Rs. 40,000/- for urgent family expenses and executed the promissory note undertaking to repay the principle amount with interest at 1% per month. Thereafter, the respondent had not paid any amount either towards principal or interest. The appellant sent a legal notice dated 05.06.2017 demanding the payment. After receiving the notice, the respondent had neither paid the amount nor sent any reply. Thus, the suit was filed.

3.The case of the appellant is contested by the respondent stating that the appellant is stranger to the respondent. He had never borrowed any money from the appellant. In fact, the appellant is the son-in-law of one Chelliah, from whom he borrowed a sum of Rs.20,000/-, 7 years prior to the filing of the suit. He had repaid the amount. Thereafter, there was no monetary transaction between the respondent and Chelliah. Chelliah's main vocation is lending money for huge interest. 6 months prior to the filing of the suit, he met the respondent and asked him whether he wanted to borrow money, for which the respondent replied that he did not require any money. Chelliah called him by his caste name and told him that he would see to him. Thereafter, it appears that Chelliah and the appellant had colluded and fabricated the suit promissory note. After appearing before the Court



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and with the permission of the Court, the respondent had looked at the promissory note and found that his signature was forged in the promissory note.

Therefore, he gave a complaint dated 17.08.2017. However, due to the influence of Chelliah, no further action was taken on his complaint. Since the promissory note was forged and fabricated, the suit is liable to be dismissed.

4.After trial, the trial Court found that when the respondent had taken a specific plea that the appellant is stranger to him and that the suit promissory note was fabricated and forged by the appellant with the help of his uncle P.W2, Chelliah, the appellant failed to prove the execution of the promissory note by examining the other attesting witness and scribe. Thus, the trial Court on the basis of the evidence and on the aforesaid reasonings concluded that the appellant failed to prove the borrowal and execution of the promissory note and dismissed the suit. The learned first appellate Court also concurred with the findings of the trial Court and dismissed the appeal filed in A.S.No.15 of 2021. Challenging the same, the appellant filed this second appeal.

5.It is the submission of the learned counsel for the appellant that the evidence of P.W1 and P.W2 is enough to conclude positively that the respondent borrowed a sum of Rs.40,000/- from the appellant on 05.05.2015 and executed the promissory note. It is not necessary to examine all the attesting witnesses and



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scribe to prove the promissory note. Respondent claimed that he sent a complaint to the police through Ex.X1 to Ex.X3, but had not appeared for the enquiry conducted by the police resulting in closure of the complaint. It shows that the plea taken by the respondent that the suit promissory note is forged and fabricated is not correct. Thus, he submits that both the Courts below have not properly appreciated the evidence and recorded the finding against the evidence.

6.In response, the learned counsel appearing for the respondent submitted that the respondent did not borrow money from the appellant. The suit promissory note was forged and fabricated document and therefore, the suit was rightly dismissed by both the Courts below. The police has not conducted proper enquiry on his compliant and closed the complaint.

7.Considered the rival submissions and perused the records.

8.From the narration of facts elucidated from the pleadings in the plaint and the written statement, submissions of the learned counsel appearing for the parties and the judgments of the Courts below, it is seen that the suit was filed by the appellant against the respondent claiming a sum of Rs.50,413/- on the basis of the promissory note said to have been executed by the respondent on 05.05.2015.



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9.It is the consistent case of the respondent that the appellant is stranger to him and he never borrowed any money from the appellant. There was a previous monetary transaction between him and P.W2, the uncle of the appellant. When P.W2 asked him to take further loan and when that was refused by the respondent, P.W2 in collusion and connivance with the appellant had created the suit promissory note and filed the suit. The signature in the promissory note is not that of him and it is a forged signature.

10.This Court finds from the judgments of both the Courts below that the respondent filed I.A.No.991 of 2018 for sending the suit promissory note to the handwriting expert's opinion, however, on the basis of the opposition raised by the appellant, that petition was dismissed, on the premise that it is for the appellant to prove the borrowal and execution of the suit promissory note.

11.It is not in dispute that the appellant and P.W2 are close relatives. Apart from P.W2, there is one more attesting witness and scribe. It is no doubt that primarily it is for the appellant/plaintiff to prove his case on the basis of the oral and documentary evidence in support of his case. When a specific defense is taken by the respondent/defendant that the suit promissory note is forged, it is all the more necessary for the appellant to examine the necessary witnesses including the other attesting witness and scribe. When P.W1 and P.W2 were examined, they



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were cross-examined denying the borrowal and execution of promissory note. In that case, the appellant was expected to examine the other attesting witness and scribe. Having not done, the Courts below on the basis of certain inconsistent evidence of P.W1 and P.W2 and reliability of evidence of respondent concluded that the appellant had miserably failed to prove the borrowal and execution of the promissory note. This finding of the trial Court was confirmed by the first appellate Court.

12.This Court is also of the view that in the facts and circumstances of the case, where the appellant had not taken any steps for sending the promissory note for comparing the signature of the respondent with his admitted signature, the respondent filed I.A.No.991 of 2018 for the said purpose and that was objected by the appellant resulting in dismissal of the petition. Respondent had taken steps for disproving the case of the plaintiff, when the appellant has not taken proper steps for examining the necessary witnesses for proving his case. Therefore, this Court finds that there is no infirmity or inconsistency or perverse in the findings of both the Courts below in coming to the conclusion that the appellant had failed to prove the borrowal and execution of the suit promissory note.



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13.In *Sir Chunilal V. Mehta and Sons v. The Century Spinning Co.*

Ltd., 1962 reported in *AIR 1962 SC 1314*, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties *and if so*,
3. Whether it is *either* an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) (*or*)
4. The question is not free from difficulty and calls for discussion of alternative views.

14. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

15. In fine, this Second Appeal is dismissed. No costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

- 1.The Sub Judge,
Aruppukkottai.
- 2.The Principal District Munsif,
Aruppukkottai.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

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