



S.A.No.137 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 08.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.137 of 2021

R.D.Venkatesh

... Appellant

Vs.

M.Bharathi Bai

... Respondent

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the judgement and decree granted in A.S.No.86 of 2017 dated 06.08.2020 on the file of the Additional District Judge, Hosur in reversing the well considered judgement and decree granted in O.S.No.39 of 2011 dated 31.01.2017 on the file of the Sub Court, Hosur.

For Appellant : M/s.S.C.Vishwanth

For Respondents : No appearance

JUDGEMENT



S.A.No.137 of 2021

The plaintiff whose decree for recovery of money granted by the Trial Court had been reversed by the Lower Appellate Court is before this Court.

2. The facts are set out herein below and the parties are referred to in the same ranking as before the Trial Court.

3. The plaintiff had filed a suit O.S.No.39 of 2011 on the file of the Sub Court, Hosur for recovery of a sum of Rs.5,26,250/- together with interest at 9% per annum on Rs.5,00,000/- from the date of the suit till the date of realization.

4. It is the contention of the plaintiff that the defendant had borrowed a sum of Rs.5,00,000/- from the him on 17.04.2010 to meet out his family expenses and discharge family debts incurred during the construction of the house. The defendant had executed a demand promissory note undertaking to repay the same with interest as and



S.A.No.137 of 2021

when demanded. The defendant despite such an assurance had not kept up his word. The plaintiff had issued a legal notice on 27.09.2010 calling upon the defendant to clear his outstanding with interest. Despite receiving the notice the defendant had not come forward to clear the loan. On the other hand, the defendant had come with a false reply notice containing incorrect and false allegations. Therefore, the plaintiff had come forward with the above suit.

5. The defendant had filed a written statement inter alia contending that she had not borrowed any amounts from the plaintiff and had denied the execution of the promissory note. The signature found in the promissory note alleged to be that of the defendant is a forged and fabricated one. The defendant would submit that she has sufficient money and she had no need for borrowing money from the plaintiff. The defendant would submit that the plaintiff had also filed a suit for specific performance in O.S.No.198/2010 on the strength of the fabricated document to which the defendant had filed a detailed reply.



S.A.No.137 of 2021

Therefore, the defendant sought to have the suit dismissed.

WEB COPY

6. The learned Sub Judge Hosur had framed the following issues:
which are being translated into English as follows:-

- 1. Is it true that the defendant had borrowed a sum of Rs.5,00,000/- from the plaintiff on 17.04.2010 and executed the demand promissory note?*
- 2. Whether the plaintiff is entitled to decree for money on the basis of this suit promissory note?*
- 3. To what other relief the plaintiff is entitled to?*

7. The plaintiff had examined himself as P.W.1 and one Mariappan and Mathaiyan as P.W.2 and P.W.3 and marked Ex.A.1 to Ex.A.3. The defendant had examined herself as D.W.1 and had not marked any documents in support of her case.



S.A.No.137 of 2021

8. The Trial Court taking into consideration the oral evidence adduced by the plaintiff's witnesses 2 and 3 who were examined to prove Ex.A.1 promissory had decreed the suit as prayed for.

9. Aggrieved by the same, the defendant had filed A.S.No.86/2017 on the file of the District Munsif, Hosur. The learned Appellate Judge on considering the documents and pleadings ultimately allowed the appeal and set aside the judgment and decree of the Trial Court stating that the plaintiff had not proved that the defendant had executed the suit promissory note.

10. Challenging the same the appellant has filed the above Second Appeal which was admitted on the following Substantial Questions of Law:-

" i. Whether the lower appellate Court is right in concluding that the attesting witness had not supported the case of plaintiff by readying a part of the cross



S.A.No.137 of 2021

WEB COPY

examination?

ii. Whether the lower appellate Court is right in reversing the well considered judgement and decree of the Trial Court based on a assumption which is not permitted under law?"

11. Heard the counsel for plaintiff/appellant. The respondent though served had not entered appearance.

12. The plaintiff's case is that the defendant had borrowed a sum of Rs.5,00,000/- and executed the suit promissory note. The defendant has not only denied the suit promissory note but also the receipt of consideration. Therefore, the onus under Section 118 of the Negotiable Instruments Act is upon the plaintiff to prove the borrowal. The plaintiff had examined P.W.3, the scribe of the promissory note and P.W.2, the attesor of the suit promissory note to prove the execution of the suit promissory note. The Lower Appellate Court had noted the



S.A.No.137 of 2021

discrepancies in the evidence of P.W.2, the attestor and P.W.1, the plaintiff with reference to the borrowal. The plaintiff's case is that the defendant had directly approached him with a request for a hand loan. However, P.W.2 would submit that he had arranged the loan for the defendant. Further, the plaintiff had issued a notice demanding repayment within 5 months from the execution of the suit promissory note i.e. on 27.09.2010 whereas P.W.2 has contended that one and half years after the execution of the suit promissory note he along with P.W.1 had demanded the payment of amounts due under the suit promissory note. P.W.2 has also contended that the scribe PW.3 had affixed his seal in the suit promissory note which is not found in Ex.A.1, promissory note. This would clearly show that P.W.2 had not witnessed either the execution of the promissory note or the payment of consideration. P.W.3, the scribe, during the cross examination had deposed that the witnesses had signed in black ink but was unable to remember the colour of the ink in which the defendant had signed. A perusal of the suit promissory note would show that the recitals of the



S.A.No.137 of 2021

suit promissory note, signatures of the attestors and scribe are in the same ink but the alleged signature of the defendant is in the different ink which creates doubt over the validity of the suit promissory note.

13. Therefore, the Lower Appellate Court has considered the contradictory evidence submitted by the scribe, the plaintiff and the attesting witness and come to the conclusion that the plaintiff has failed to prove the execution of the suit promissory note. The defendant had categorically denied the execution as well as the receipt of money. Therefore, since the plaintiff had failed to prove the execution of the suit promissory note, the Lower Appellate Court's judgement reversing the judgement and decree of the Trial Court has to necessarily be confirmed.

14. The lower appellate Court has in extenso considered the evidence of the plaintiff's side witnesses and discussed the discrepancies in the evidence of the 3 witnesses with reference to the



S.A.No.137 of 2021

execution of the suit promissory note and passing of consideration.

Therefore, the plaintiff's contention that the Lower Appellate Court has allowed the appeal relying on a part of the cross-examination is absolutely erroneous and the Substantial Question of Law No.1 is answered against the plaintiff. In the light of the above discussions, the Substantial Question of Law No.2 is also answered against the plaintiff. Consequently, the Second Appeal stands dismissed and the judgement and decree of the Lower Appellate Court is confirmed. No costs.

08.02.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
shr

To

9/11



S.A.No.137 of 2021

WEB COPY

1. The Subordinate Judge's Court at Kallakurichi
2. The II Additional District Munsif Court at Kallakurichi
3. The Section Officer,
V.R.Section,
High Court, Madras.

P.T.ASHA, J.,



WEB COPY



S.A.No.137 of 2021

shr

S.A.No.137 of 2021

08.02.2024