



WEB COPY

S.A.No.206 of 2



N THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.02.2024	Pronounced on: 01.03.2024
-------------------------	---------------------------

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.206 of 2018

and

CMP. No.5240 of 2018

S.A.Subbiyah Thevar

...Appellant

Vs.

B.Subbaiyan

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and decree made in A.S.No.17 of 2014 dated 15.11.2017 on the file of the District Court, Nagapattinam reversing the judgment and decree made in O.S. No.74 of 2010 dated 11.07.2014 on the file of the Subordinate Court at Nagapattinam.

For Appellant : Mr.D.Veerasekaran

For Respondent : Mr.N.Pragasam

JUDGMENT

The plaintiff in a suit for recovery of money based on a promissory note, has preferred the present Second Appeal, aggrieved by the judgment



and decree of the First Appellate Court, reversing the findings of the trial Court, granting a decree in his favour.

WEB COPY

2. The parties are described as per their litigative status before the trial Court.

3. The case of the plaintiff is that on 01.06.2019, he lent a sum of Rs.3,00,000/- to the defendant, who executed a promissory note on the same day, evidencing the borrowing and also undertaking to repay the same, together with interest at 12% per annum.

4. The defendant filed a written statement denying the borrowing and also the execution of the promissory note. It is the case of the defendant that he used to borrow money from the plaintiff earlier, but however, the last borrowing made by the defendant was in 2006 and the said loan was also repaid in 2008 and though the plaintiff has promised to destroy the promissory notes and other papers with him and the defendant has believed the same, misusing the same, the plaintiff has created the suit promissory note, forging the defendant's signature.



5. The trial Court, based on the evidence of the witness P.W.2 and P.W.3 and the primary evidence of the plaintiff and defendant held that the defendant was liable to pay the plaintiff, the suit claim and proceeded to decree the suit.

6. However on Appeal by the defendant, the First Appellate Court reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiff has come up by way of the present Second Appeal. On 05.06.2018, the above Second Appeal was admitted on the following substantial questions of law:

“ (a) Whether the judgment and decree of the First Appellate Court is liable to be set aside for reversing the judgment and decree of the Trial Court based on the discrepancies in the evidence of P.W.1 to P.W.3?

(b) Whether the judgment and decree of the Lower Appellate Court is sustainable in law when the execution of Ex-A1 (Promissory Note) has been proved in a manner known to law and when the presumption under Section 118 of the Negotiable Instruments Act also was in favour of the same?

(c) Whether the findings of the Lower Appellate Court are sustainable in law holding that the power of comparing the signature found Ex-A1 executed by the defendant and the defendant's signature in other Court material records was not justified by the Trial Court, when the reasons to exercise such



WEB COPY



power has been given by the Trial Court in O.S. No.74 of 2010?

7. I have heard Mr.D.Veerasekaran, learned counsel for the plaintiff/appellant. Mr.N.Pragasam, learned counsel for the respondent.

8. The learned counsel for the appellant would contend that the plaintiff had proved due execution of the promissory note by examining P.W.2 and P.W.3 and thereby, the presumption of the said promissory note being for valid consideration arose and the defendant has not been able to rebut the said presumption by leading satisfactory, oral and documentary evidence. The learned counsel therefore, prays the Second Appeal being allowed, especially placing reliance on Section 118 of the Negotiable Instrument Act, 1881.

9. The learned counsel for the appellant would also place reliance on the decision of this Court *Ragina Beevi and others Vs. Arasan* in S.A.733 of 2019 dated 31.01.2022, where this Court has held that even a signature that came into existence subsequent to disputed signature can be used for comparison. He would also place reliance on S.A. No.653 of 2006 dated 01.04.2014 in the case of *Chelladurai Vs. Velmurugan*, where this Court held the Court has a power to compare the disputed signature with admitted



or otherwise proved signatures and the said power is statutorily available under Section 73 of the Indian Evidence Act, 1872. The learned counsel for the appellant placed reliance on the above decisions to justify the comparison made by the trial Court and coming to the conclusion that the signature in the promissory note was only that of the defendant.

10. Per contra, the learned counsel for the respondent Mr.N.Pragasam, would rely on the findings of the First Appellate Court and argue that taking into account the sequence of events and earlier transactions, admittedly the relationship being strained, it was improbable for the plaintiff to have lent a sum of Rs.3,00,000/- under Ex.A1 promissory note. Moreover, according to the learned counsel for the respondent, the evidence adduced on the side of the plaintiff was not cogent and in fact, contradictory and therefore, he prayed for dismissal of the Second Appeal.

11. I have carefully considered the rival submissions advanced by the learned counsel on either side.

12. The defendant admits to earlier loan transactions with the plaintiff, in the written statement. It is the specific case that he used to borrow money



from the plaintiff by executing promissory note. However, according to the defendant, the last borrowal of money from the plaintiff was in the year 2006 and it was also repaid in 2008 and at that time, he believed that the plaintiff would destroy the promissory notes executed by the defendant. Further reason assigned by the defendant is that the plaintiff wanted to purchase the residential property of the defendant and since the defendant was not agreeable to the same, the plaintiff has created the suit promissory note by forging his signature and according to the defendant, no money is due and payable to the plaintiff.

13. The plaintiff has examined P.W.2, one of the witnesses who has signed Ex.A1 promissory note. He has stated that he personally knew the defendant had borrowed money from the plaintiff. He has also stated that he has signed as a witness in EX.A1, promissory note at the residence of the plaintiff at about 10.00 a.m. He also asserts that the defendant executed the promissory note in his presence and thereafter, he has signed the pro note as a witness and immediately thereafter, the plaintiff handover the money to the defendant.

14. P.W.3 is the scribe of the Ex.A1, suit promissory note. In his cross examination also he has stated that at the request of the plaintiff, he has



written Ex.A1 promissory note and a suggestion has been put to him, as to how many 500 rupee notes and how many 100 rupee notes were given to the defendant, to which, he has stated that he is not in a position to answer the same. Unfortunately, the said suggestion put to P.W.3 suicidal to the case of the defendant. It is the specific case of the defendant that he never borrowed money from the plaintiff after 2006. While so, the suggestion put to P.W.3 only goes against his own pleading and probablises the borrowing on 01.06.2009.

15. Moreover, the defendant has stated that in 2006, he borrowed a sum of Rs.2,00,000/- and repaid the same in 2008. Therefore, even according to the defendant assuming that the defendant had borrowed and repaid earlier loans, there was no strained relationship for the plaintiff to refuse another loan to the defendant.

16. The trial Court has rightly assessed the oral and documentary evidence, besides also chosen to compare the signature of the defendant in EX.A1 promissory note with the vakalat, evidence, signature of the defendant in the deposition and the written statement and found that the signatures were almost identical. However, the comparison undertaken by



the trial Court, as rightly pointed out by the learned counsel for the respondent, with the Court papers viz., vakalat, written statement etc, is not desirable, especially since the signatures have been affixed pursuant to the suit claim based on Ex.A1, the promissory note. The ratio laid down in the decisions relied on by the learned counsel for the appellant were on different set of facts and the said ratio cannot be applied to the facts of the present case.

17. However at the same time the plaintiff examined P.W.2 who is a witness to the Ex.A1, promissory note and has proved due execution of promissory note. Further the Scribe, P.W.3 has also specifically spoken about passing of sale consideration. Thus, the burden shift to the defendant to rebut the presumption of due execution and passing of consideration was not true as claimed by the defendant. The defendant has not taken any steps to get the disputed signature Ex.A1, compared with admitted signature. The defendant has failed to discharge the onus that stood shifted on his shoulder.

18. Even otherwise, presumption under Section 118 of the Negotiable Instruments Act, 1882 would enure to the benefit of the plaintiff and even



the defendant had admitted the earlier loan transactions and execution of promissory notes. Whiles the evidence of P.W.1 and P.W.2 are credit worthy and the defendant has failed to disprove the claims of the plaintiff.

The First Appellate Court has not appreciated the oral and documentary evidence in a proper perspective and has blown out of proportion, minor contradictions with regard to presence of persons at the time of execution of the promissory note, which are not germane for consideration in a suit for recovery of money. The First Appellate Court has chosen to reverse the well considered and well merited findings of the trial Court, on misapplication of pleadings and evidence.

19. I am thus constrained to interfere with the findings of the First Appellate Court, which is permissible under Section 100 of the Code of Civil Procedure Code. In view of the findings arrived at by the First Appellate Court, being based on mis-appreciation of evidence and more on surmises and conjectures.

20. In fine, I answer the above substantial questions of law in favour of the appellant and the Second Appeal is allowed as prayed for and the



judgment and decree of the Trial Court is restored. Consequently, connected

Miscellaneous Petition is closed. No costs.

WEB COPY

01.03.2024

Index :Yes/No
Internet : Yes/No
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
rkp

To

1. The District Judge, Nagapattinam.
2. The Sub Judge, Nagapattinam.

P.B.BALAJI, J.



WEB COPY

S.A.No.206 of 2



rkp

S.A.No.206 of 2018
and
CMP. No.5240 of 2018

01.03.2024