



S.A. No. 498 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

**S.A. No. 498 of 2011
and M.P. No.1 of 2011**

R. Anitha ... Appellant / Appellant/ Defendant

Vs.

R. Soundarapandian ... Respondent/ Respondent/ Plaintiff

Second Appeal filed Under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 19.11.2010 passed in A.S. No.20 of 2009 by the Subordinate Judge, Chidambaram thereby confirming the Judgment and Decree dated 14.03.2007 passed in O.S. No.55 of 2004 by the Additional District Munsif, Chidambaram.

For Appellant : M/s. S. Jaiganesh

For Respondent : M/s. R. Subramanian



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JUDGMENT

This second appeal has been filed challenging the concurrent finding of the Courts below decreeing the suit in favour of the plaintiff for recovery of a sum of Rs.40,000/- along with interest @ 12% from the defendant.

2. The case of the plaintiff/ respondent herein is that on 09.05.2001, the defendant/ appellant herein had borrowed a sum of Rs.40,000/- as a loan at an interest @ 12% and for which, she had also come forward to execute a promissory note on the same day for repayment of the said loan amount. Since, the defendant had not come forward to repay the same even after repeated demand made by the plaintiff, had issued a legal notice on 22.12.2003 calling upon the defendant to pay the amount along with the interest, but the defendant had not come forward to repay the loan, hence the plaintiff filed a suit.

3. The defendant has filed a written statement and taken a stand that the said promissory note was executed by her and her husband alone is the witness to the said promissory note. Whereas the promissory note has been



materially altered by putting the signature of the plaintiff's brother in law as another witness. Notice issued to the defendant was replied, by stating the above facts.

4. The Trial Court based on the pleadings made on both sides framed the following issues:

1. *whether the plaintiff is entitled for relief as claimed for?*
2. *To what relief, the plaintiff is entitled for?*

5. The Trial Court after considering the representations made on both sides and evidence placed on record, has decreed the suit in favour of the plaintiff. Aggrieved over the same, the defendant had filed an appeal in A.S. No.20 of 2009 on the file of the Sub Court, Chidambaram and the lower Appellate Court after considering the facts, submissions and evidence placed on record, accepted the finding of the Trial Court and dismissed the appeal.

6. Aggrieved over the concurrent finding of the Court below, the defendant has come forward with this appeal on the ground that the plaintiff has failed to discharge his dues in execution of the promissory note and the

presumptions of execution was also improperly considered by the Appellate Court. This Court has ordered notice before admitting this appeal, to the Respondent herein.

7. This Court had heard the parties and considered the submissions made on both sides.

8. The plaintiff has examined himself as P.W.1 and one of the attesting witness was also examined as P.W.2 and it is admitted case that the defendant had executed the promissory note. The defendant has made her defence that the promissory note was materially altered by obtaining the signature of the P.W.2 as one of the witness in the said promissory note. Further it is admitted by her that her husband alone is the witness to the said promissory note and it was executed after receiving Rs.20,000/- only, hence having accepted the execution of promissory note, burden of proving the material alteration in the promissory note - Ex.A.1 is on the defendants.

9. In the cross examination of plaintiff's side evidence, P.W.1 and P.W.2, it was only suggested by the defendant side that, entire payment was



settled by way of issuance of cheque. This suggestion was denied by the plaintiff. No proof or documentary evidence adduced on the side of the defendant to prove the issuance of a cheque or by way of any other mode of payment. The Trial Court observed in the judgment that the defendant was working as a Headmistress of School and she is not entitled to contend that she has subscribed her signature in Ex.A.1 - promissory note for the value of Rs.40,000/- for receiving Rs.20,000/-. The defendant was not able to establish the fact of receipt of Rs.20,000/- and execution of Ex.A.1.

10. To prove her other defence that, the promissory note was materially altered, she relied on Ex.A.2 - photocopy of Ex.A.1, in which the signature of P.W.2 was not found. This Ex.A.2 was not marked by the defendant and it was marked by the plaintiff. According to him, the photocopy was taken before P.W.2 had subscribed his signature and in the presence of defendant, P.W.2 subscribed his signature and P.W.2 also deposed in very same line. The Trial Court further held that the promissory note does not require any attestation or any mandatory witness, especially in the background of the fact that the signature, consideration or other particulars in the promissory note are not altered. The Appellate Court has also considered



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the very same issue and held that the execution of the promissory note is already been accepted by the defendant and one of the witness to the said promissory note is her husband and defendant failed to probabilize her case and confirmed the judgment and decree of the Trial Court.

10. This Court is of the view that, both Courts below properly appreciated the evidence and have not misdirected themselves in considering the facts and evidence and concurrently found that the plaintiff has proved the execution of Ex.A.1 and decreed the suit. This Court finds no reason to interfere and no substantial question of law is involved in this appeal.

11. Accordingly, this second appeal is dismissed, consequently connected miscellaneous petition stands closed. No costs.

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Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No



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To:

1. The Section Officer,
VR Section,
High Court,
Madras.



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K. RAJASEKAR, J.

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