



S.A.No.455 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 21.02.2024	Judgment Pronounced on 22.03.2024
------------------------------------	--------------------------------------

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.455 of 2018
and C.M.P.No.12325 of 2018

Balasubramanian

..Appellant

Vs.

Selvam

..Respondent

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 06.04.2017 made in A.S.No.28 of 2016 on the file of the III Additional District and Sessions Judge, Cuddalore at Virudhachalam, confirming the judgment and decree dated 20.04.2016 passed in O.S.No.28 of 2008 on the file of the Sub Court, Neyveli.

For Appellant : Mr.R.Venkata Varathan

For Respondent : Mr.T.Balaji



S.A.No.455 of 2018

JUDGMENT

WEB COPY

This Second Appeal has been filed against the judgment and decree dated 06.04.2017 made in A.S.No.28 of 2016 on the file of the III Additional District and Sessions Judge, Cuddalore at Virudhachalam, confirming the judgment and decree dated 20.04.2016 passed in O.S.No.28 of 2008 on the file of the Sub Court, Neyveli.

2.The defendant is the appellant in a suit for recovery of money based on a Promissory Note.

3.The parties are described as per their litigating status before the Trial Court.

4.The plaintiff filed a suit, seeking recovery of money lent to the defendant on a Promissory Note dated 13.11.2004. The plaintiff issued a pre-suit notice on 23.05.2006, to which, the defendant sent a reply on 28.05.2006 with false allegations. Under such circumstances, the suit came to be filed.

5.The suit was resisted by the defendant, contending that the defendant



S.A.No.455 of 2018

did not borrow any amount from the plaintiff and that the plaintiff was lending money to Neyveli Lignite Corporation employees for exorbitant interest and when the defendant questioned the plaintiff with regard to his conduct, the plaintiff, in order to wreck vengeance, issued the notice raising a claim on a forged Promissory Note. The suit was therefore sought to be dismissed.

6.The Trial Court finding that the defendant had not taken any steps to send the document to the Forensic Science expert's opinion, decreed the suit. It is seen that initially, the suit was dismissed on 13.11.2009 and an appeal was preferred in A.S.No.47 of 2010 and the same was also allowed and the suit was decreed. In S.A.No.1273 of 2011, this Court allowed the Second Appeal and remanded the matter back to the Trial Court to give an opportunity to the parties to have the disputed document compared by an expert and also permitted both the parties to lead evidence. Thereafter, the suit came to be decreed by the Trial Court, after remand.

7.The defendant contended that an application was filed to receive additional document, namely a Patta Passbook in the year 2004, in order to



S.A.No.455 of 2018

compare the disputed signature in the Promissory Note and that apart, he had also taken steps to bring the service register from Neyveli Lignite Corporation to compare the signatures available in the service register and in the disputed Promissory Notes. However, the said documents could not be produced and after due diligence, the defendant was able to lay his hands on the Patta Passbook dated 16.04.2004 and it was sought to be compared with the disputed Promissory Note. The said application was resisted by the respondent on the ground that the document was very much available with the appellant and no reasons have been assigned as to why it was not produced earlier.

8.The First Appellate Court held that despite several opportunities given to the appellant, he never utilized the same to produce the relevant records, containing admitted signatures to enable comparison by a hand writing expert and dismissed the application in I.A.No.373 of 2017, filed under Order 41 Rule 27 of Code of Civil Procedure to compare the signature in the Patta Passbook and in the Promissory Note. With regard to merits, the First Appellate Court concurred with the findings of the Trial Court and noticing the evidence of P.W.2 and P.W.3, namely, the attesting witness and the scribe of the Promissory Note, regarding not only execution of



S.A.No.455 of 2018

Promissory Note, but also passing of consideration, the First Appellate Court dismissed the appeal, thereby confirming the decree passed by the Trial Court against the defendant.

9.The above Second Appeal was admitted by this Court on 13.11.2018, on the following substantial question of law:

"Whether the Courts below are correct in law in shifting the burden of proof upon the defendant/appellant when the appellant had denied the execution of the suit Promissory Note and the consequent receipt of money, especially when the appellant had examined the witnesses to show that at the time of execution as claimed by the respondent, he was not present at the place of execution of the Promissory Note."

10.Mr.R.Venkata Varathan, learned counsel for the appellant would submit that the only witness examined by the plaintiff, namely the attester and scribe were both interested witnesses and their evidence could not be relied on. He would also place reliance on the evidence of D.W.2 and D.W.3, who are co-workers, who were examined to prove that the plaintiff was in the business of money lending to the employees of Neyveli Lignite Corporation and that he was also collecting exorbitant interest. He would therefore, pray



S.A.No.455 of 2018

for the Second Appeal being allowed.

WEB COPY

11.Per contra, Mr.T.Balaji, learned counsel for the respondent would submit in support of the findings arrived at by the First Appellate Court, contending that the attempt to produce additional evidence in the form of a Patta Passbook was also rightly rejected by the First Appellate Court, after noticing the several opportunities that were available to the appellant to disprove the genuineness of the Promissory Note. He would also state that the Courts below have rightly appreciated the evidence of the witnesses P.W.2 and P.W.3 and thereby the plaintiff had proved the due execution of the Promissory Note and also passing of consideration and shifted the burden to the defendant to rebut the presumption that the Promissory Note was duly executed and was for lawful consideration. He would therefore pray for dismissal of the Second Appeal since the concurrent findings do not warrant any interference.

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

13.Originally, the suit was dismissed by the Trial Court and the First Appellate Court reversed the judgment and decree and decreed the suit.



S.A.No.455 of 2018

However, in Second Appeal, this Court remanded the matter back to the Trial Court on 29.11.2012 in S.A.No.1273 of 2011, directing the Sub Court, Neyveli, to decide the suit afresh, after giving opportunity to the parties to have the disputed documents compared with the documents containing admitted signatures of the defendant, with the help of the hand writing expert and also permitted the parties to lead evidence. Thereafter, before the Trial Court, the defendant has filed Interlocutory Applications in I.A.Nos.7 & 107 of 2014 and 420 of 2015 and despite his applications being entertained, the appellant was unsuccessful in producing the records containing the admitted signatures for enabling the hand writing expert to compare the same with the disputed Promissory Note.

14. Even pending appeal, an application was taken out under Order 41 Rule 27 Code of Civil Procedure to compare the signature of the defendant in Patta Passbook with that of the signature in the Promissory Note. After elaborately discussing the contentions put forth in the said application, the First Appellate Court categorically held that the additional document cannot be received since the said document was very much available with the defendant earlier and no steps were taken by him to produce the said document and the attempt was only to fill up the lacuna on the part of the



S.A.No.455 of 2018

appellant.

WEB COPY

15.The Courts below have rightly discussed the oral evidence and held with regard to the presence of the defendant at the time of execution of the Promissory Note. The First Appellate Court rightly found that not even a suggestion was put to P.W.1 to P.W.3, plaintiff and the two witnesses, that the defendant was on duty and therefore, he could not have been present in the STD Booth. Further, The First Appellate Court has rightly found that such a plea was never taken at the earliest point of time, in the written statement and therefore, the examination of the co-worker, namely, D.W.3 was of no avail. I do not find the findings of the Trial Court as well as the First Appellate Court being illegal, perverse or materially irregular. I do not find the substantial question of law to be answered in favour of the appellant.

16.In the result, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

22.03.2024

Index : Yes/No

Speaking Order/Non-Speaking Order



S.A.No.455 of 2018

To

- 1.The III Additional District and Sessions Judge, Cuddalore, Virudhachalam.
- 2.The Sub Court, Neyveli.
- 3.The Section Officer, V.R.Section, High Court, Madras.

P.B.BALAJI., J.

ata



WEB COPY



S.A.No.455 of 2018

Pre-delivery judgment made in
S.A.No.455 of 2018
and C.M.P.No.12325 of 2018

22.03.2024