



S.A.No.468 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.02.2024	Pronounced on: 01.03.2024
-------------------------	---------------------------

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.468 of 2018
and
CMP. No.12613 of 2018

P.Ramalingam

...Appellant

Vs.

K.Sundarraaj

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 29.06.2017 made in A.S. No.20 of 2013 on the file of the III Additional District and Sessions Court, Coimbatore, confirming the Judgment and Decree dated 30.11.2012 made in O.S. No.77 of 2005 on the file of the Subordinate Court, Pollachi.

For Appellant : Mr.P.Saravana Sowmiyan

For Respondent : No Appearance

JUDGMENT

The defendant in a suit for recovery of money based on promissory



note is the appellant.

WEB COPY

2. The appellant has suffered concurrently before the trial Court as well as the First Appellate Court.

3. The brief facts that are necessary to adjudicate the present Second Appeal are as follows:

3.1. According to the plaintiff, on 19.05.2003, the defendant borrowed a sum of Rs.3,00,000/-, promising to repay the same with interest at 1% per hundred, per month and evidencing the said borrowing and undertaking to repay the principal and interest, on demand, executed a promissory note on the same day. As the defendant did not come forward to pay even interest, the plaintiff caused a lawyer's notice on 06.05.2005. The defendant sent a reply stating that the plaintiff was a stranger to him and he never borrowed any money, much less executed the promissory note as claimed by the plaintiff. Despite a rejoinder sent by the plaintiff reiterating the demand in the earlier lawyer's notice, the defendant having not come forward to pay any amount, the plaintiff filed the suit seeking recovery of money.



4. The defendant filed a written statement contending that he never borrowed any money, much less Rs.3,00,000/- from the plaintiff. The defendant also denied the execution of promissory note and according to the defendant, his signature was forged in the suit promissory note.

5. The trial Court, held that the evidence of witnesses P.W.2 and P.W.3 were credible and refusing to place reliance on the handwriting expert's opinion, proceeded to decree the suit. On Appeal, the First Appellate Court answering the grounds raised by the defendant that the trial Court had erroneously rejected the handwriting expert's reports, that is C.1 to C.3, especially when he has been examined D.W.1 as well, found that the handwriting expert's reports were based on Ex.B1, which was of the year 1996 and would not be a contemporaneous document to Ex.A1, suit promissory note and therefore, proceeded to dismiss the Appeal.

6. The defendant, aggrieved by the said concurrent findings, has preferred the present Second Appeal. On 13.11.2018, the above Second Appeal was admitted on the following substantial questions of law:-

“ (1) Whether the presumption under the Section 118 of the Act can be used against the Appellant when the plaintiff



WEB COPY



S.A.No.468 of 2016

failed to discharge the initial burden upon him to show that the consideration was passed to the Appellant under the suit promissory note?

(2) Whether the burden of proof lies upon the Plaintiff when the Appellant has specifically pleaded that the Suit Promissory Note was forged and no consideration was passed under the Suit Promissory Note?

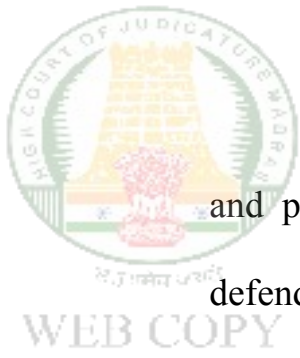
(3) Whether the expert opinion under Exhibit –C1 to Exhibit –C3 can be relied upon to conclude that Exhibit –A1 is forged one?

7. The learned counsel for the appellant/defendant would primarily contend that the plaintiff has failed to establish that the defendant had executed the suit promissory note in Ex.A1 and that there was valid consideration for the said promissory note alleged to have been executed by the defendant. That apart, the learned counsel would also state that even though it was the burden of the plaintiff to establish due execution of the promissory note and passing of consideration, the defendant volunteered to have the signature in the disputed promissory note compared with Ex.B1 and the handwriting expert has also opined that the signatures are different and not identical. In such circumstances, according to the learned counsel for the appellant/defendant, the Courts ought to have rejected the evidence

of P.W.1 and P.W.2 who have been examined on the side of the plaintiff to prove due execution of the promissory note, which alone would lead to a presumption of passing of consideration.

8. I have carefully considered the arguments of the learned counsel for the appellant. In order to establish due execution of the promissory note, the plaintiff has examined P.W.2 and P.W.3 who have attested the suit promissory note and they have categorically stated that the defendant has executed the said promissory note and further, it is also seen that the appellant/defendant admitted in cross examination that he has borrowed money from others in the past and he has taken similar defence in the earlier suits filed by the persons who had lent him money. Moreover, the Courts have also rightly found that the defendant's signature in Ex.B1 was relating to the year 1996 and the suit promissory note was executed in the year 2003, clearly 7 years after the signature was affixed in Ex.B1.

9. The Courts have rightly not considered the report of the handwriting expert and his evidence as the signature in Ex.B1 was not contemporaneous to the disputed signature in Ex.A1. The Courts below have rightly assessed the oral and documentary evidence available on record



S.A.No.468 of 2016

and proceeded to decree the suit and dismissed the appeal filed by the defendant respectively.

10. I do not find any irregularity or perversity in the findings arrived at by the Courts below and the substantial questions of law are necessarily to be answered against the appellant, since the plaintiff, by examining P.W.2 and P.W.3 has discharged the initial burden upon him and thereafter, the burden was only on the defendant to prove his defence of forgery, which he has miserably failed to discharge.

11. In fine, there is no merits in the Second Appeal and accordingly, the same is dismissed. Consequently There shall be no order as to costs.

01.03.2024

Index : Yes/No

Internet : Yes/No

rkp

To

1. The III Additional District and Sessions Judge, Coimbatore

2. The Subordinate Judge, Pollachi



WEB COPY



S.A.No.468 of 2018

P.B.BALAJI, J.

S.A.No.468 of 2018
and
CMP. No.12613 of 2018

01.03.2024