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S.A. No. 778 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2024

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 778 of 2012

Mani @ Ravichandran

...Appellant

Vs.

R.P.Rajendrakumar

... Respondent

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 27.02.2012 made in A.S. No. 92 of 2011 on the file of the First Additional Sub Court, Erode, confirming the judgment and decree dated 21.03.2011 made in O.S. No. No. 287 of 2010 on the file of the Principal District Munsif Court, Erode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.Mahamani

JUDGMENT

The appellants are the defendants have filed the second appeal against the plaintiff has filed a suit for recovery of money and got it decreed before



the trial Court and confirmed it before the first appellate Court. The one and only contention raised by the appellant is that the Courts below are not justified to decree the suit by invoking the Section 118 of the Negotiable Instrument Act in the absence of an expert opinion under Section 45 of the Indian Evidence Act or by undertaking the comparative exercise under Section 73 of the Evidence Act particularly in view of the specific denial of the execution based on a promissory note by the defendant.

2. As the plaintiff has filed the suit on the basis of the promissory note, which is a Negotiable Instrument, the Court has to necessarily invoke Section 118 of the Negotiable Instrument Act when the execution is admitted. The presumption under Section 118 is in respect of passing of consideration, when the execution of the promissory note is admitted. In the instant case, the appellant /defendant had stated that the suit promissory note is a fabricated, concocted and forged document and that it is not supported by consideration.

3. In such case, the burden would be on the part of the plaintiff to prove that the suit promissory note (Exhibit A1) has been executed by the defendant and that it is supported by the consideration as to how it is written in the sale.



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4. The plaintiff has been examined as PW1 and Ex.A1 was marked through him and the scribe who has written the promissory note has been examined as PW2. Having got satisfied with the substantial evidence on the side of the plaintiff, the trial Court has recorded the finding that the plaintiff has proved the fact that the suit promissory note has been executed by the defendant for consideration.

5. In such case, the burden would shift upon the defendant to prove the contrary that the promissory note is a fabricated one and it is not supported by consideration. Even though the appellant/ defendant claims that the Court has not considered the provisions of Section 45 the Indian Evidence Act, which is with regard to Expert opinion and he did not file any application before the Trial Court for sending Ex.A1 for the report with regard to examination of handwriting. It is the discretion of the Court to make comparison of the signature in case the Court is not satisfied with the evidence adduced on the side of the plaintiff or the proof of genuineness of the promissory note. Insofar as the other provisions under Section 45 of the Indian Evidence Act is concerned, the defendant himself has not filed any petition for sending the



S.A. No. 778 of 2014

suit promissory note for getting an Expert opinion.

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6. In such case, the Courts below cannot be found fault for not invoking Section 45 or Section 73 of the Indian Evidence Act is concerned. As no ground is made out, the second appeal is dismissed. No costs.

05.11.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
Maya

To

1. The Judge, First Additional Sub Court, Erode.
2. The Judge, Principal District Munsif Court, Erode.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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S.A. No. 778 of 2011



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S.A. No. 778 of 2012

R.N.MANJULA, J.

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S.A. No. 778 of 2012

05.11.2024