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S.A.No.759 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2024

CORAM:

**THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

S.A.No.759 of 2013 &

M.P.No.1 of 2013

Kandasamy

... Appellant

Vs.

Selvi

... Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure to set aside the impugned Decree & Judgment passed on 26.09.2011 in O.S.No.239/2008 by the Principal Subordinate Judge, Salem and confirming the same by a Decree & Judgment passed on 31.07.2012 in A.S.No.3/2012 by the learned III Additional District Sessions Judge, Salem.

For Appellant : Mr.V.Vijayakumar

For Respondent : Mr.V.Manisekaran

**ORDER**



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The second appeal arises against the judgment and decree of the court of the learned III<sup>rd</sup> Additional District Sessions Judge Salem, in A.S.No.3 of 2012 dated 31.07.2012 in affirming the judgment and decree of the court of Principal Subordinate Court at Salem in O.S.No.239 of 2008 dated 26.09.2011.

2. For the sake of clarity and convenience, the parties will be referred to as per their rank in the suit. The suit is one for recovery of money.

3. It is the case of the plaintiff that the defendant had borrowed a sum of Rs.1,00,000/- on 12.08.2005. Since the amounts were not paid, notice was issued on 30.06.2008. To the said notice, a reply was issued on 02.07.2008 containing false averments. Since the defendants did not pay up on the promissory note, she presented the suit.

4. The defence that was raised was that the defendant did not execute any promissory note in favour of the plaintiff, other than one finance



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company situated at Ayyoithiyappattanam. A written statement was filed denying the signature in the document. It was pleaded by the defendant that he neither borrowed the money nor had executed any promissory note in favour of the plaintiff, except in favour of one finance company which was functioning in Ayyoithiyappattinam. Further defence that has been taken was that the document itself is a result of the forgery practiced by the plaintiff.

5. Before the trial court, the plaintiff examined herself as PW1 and other witness by name Durairajan as PW2 and marked Ex.A1 to Ex.A5. The defendant entered the witness box and examined himself as DW1 and one Balakrishnan as DW2 and marked Ex.B1 to Ex.B24. After analysis of the entire evidence, the trial court decreed the suit. Aggrieved by the same, the defendant filed an appeal. The said appeal also ended in dismissal. Against the said concurrent findings, the present second appeal has been taken up.

6. This court ordered notice regarding admission on 21.08.2013.



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7. Heard Mr.V.Vijayakumar, learned counsel for the appellant/defendant and Mr.V.Manisekaran, the learned counsel for the respondent/plaintiff.

8. Learned counsel for the plaintiff would plead that Ex.A5 had not been marked either by the plaintiff or by the defendant. Therefore, reliance cannot be placed on the same. Secondly, he would argue that a complaint had been given against the plaintiff in the police station that she is not returning the blank promissory note that had been taken by her. This is stoutly resisted by the learned counsel for the defendant.

9. I have carefully considered the arguments on either side and gone through the records.

10. Irrespective of whether Ex.A5 to be relied upon or not, the



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police complaint which has been given by the defendant/appellant under Ex.B5 would disclose that he admits to the execution of promissory note in favour of Selva Ganapathy Finance of Ayyothiyapattinam. The contents of the police complaint shows that the blank promissory note had been executed in favour of Selva Ganapathy Finance, which have been found in the hands of the plaintiff/Selvi. This very complaint is sufficient for me to come to the conclusion that the defence of forgery that has been taken is a moonshine. Had the plaintiff forged the signature of the defendant on the promissory note, the complaint under Ex.B5 would have been that a fraud had been sought to be played on the defendant by creating documents. On the contrary, the evidence let in by the defendant goes on to show that he admits to the signature on the promissory note. This leads me to the conclusion, perhaps the defendant was indebted to several persons and had ventured to give a police complaint only in order to set up a defence. Unfortunately for him, he did not take the defence of the document is forged even at that stage. The defence of forgery was only taken after the suit was presented in the year



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2008. Once the signature of the document is accepted, the burden is cast upon the defendant to show that the promissory note was not supported by consideration. No such evidence has been marked by the defendant. On the contrary under Ex.A4, the defendant admits that the document had been signed and handed over to the third party. The very stand that has been taken by the defendant shows that he wants to somehow or the other ensure that the plaintiff does not see the colour of the coin.

11. I do not find any substantial question of law involved in the appeal. Unless and until, in the money suit, the defendant makes out a strong case to discharge the burden under section 118 of the Indian Evidence Act, this Court cannot re-appreciate the evidence. I do not see any perversity in the judgment of the courts below. Contrarily the judgments are well reasoned and have applied the correct law to the facts of the case.

12. In fine, this second appeal is dismissed confirming the Decree



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& Judgment dated 31.07.2012 passed in A.S.No.3/2012 by the learned III

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Additional District Sessions Judge, Salem, which confirms the Decree &  
Judgment dated 26.09.2011 in O.S.No.239/2008 by the learned Principal  
Subordinate Judge, Salem. Costs throughout.

05.01.2024

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Index : Yes/No

Speaking order/Non-speaking order

To

1.The III Additional District Sessions Judge, Salem

2.The Principal Subordinate Judge, Salem



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**V.LAKSHMINARAYANAN,J.**

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