



S.A.No.899 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 899 of 2023

&

C.M.P. No. 28790 of 2023

P.Senthilvel

...Appellant

Vs.

S.Rathinasamy

...Respondent

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 30.09.2022 in A.S.No.39 of 2020 on the file of the Additional District Judge, Udumalpet, confirming the Judgement and Decree dated 25.09.2019 in O.S.No.35 of 2010 on the file of the Subordinate Judge, Udumalpet.



WEB COPY



S.A.No.899 of 2023

For Appellant : Mr. M.Sivavarthanan.

JUDGMENT

The unsuccessful defendant before the Courts below in a suit based on a promissory note is the appellant before this Court. The facts are as follows and the parties are referred to in the same rank as before the Trial Court.

2. The plaintiff had filed a suit O.S.No.35 of 2010 on the file of the Sub Court, Udumalpet for recovery of a sum of Rs.1,12,000/- together with interest at 12% for principal amount of Rs.1,00,000/- from the date of the suit till the date of realisation.

3. It is the case of the plaintiff that on 20.03.2009, the defendant had borrowed a sum of Rs.1,00,000/- from the plaintiff for meeting his urgent family expenses and had executed a promissory note in his



S.A.No.899 of 2023

favour agreeing to repay the same with interest of Rs.1/- per Rs.100/- as and when demanded by the plaintiff to the plaintiff or his nominee.

The plaintiff would submit that despite his repeated demands, the defendant was not forthcoming, therefore the suit.

4. The defendant had filed a written statement inter alia denying having any transaction with the plaintiff. He would submit that he does not know the plaintiff. It is also his case that when he had inspected the suit promissory note, after obtaining permission of the Court he found that the signature over the revenue stamp in the promissory note did not belong to him. The defendant would submit that he is residing in SNR Nagar, Udumalpet and had no prior introduction to the plaintiff. Further, the witnesses have also not signed in his presence and he is not aware of them as well. The defendant would submit that the promissory note is a fabricated one. Therefore, he sought for the dismissal of the suit.



WEB COPY



S.A.No.899 of 2023

5. The Trial Court had framed the following issues:

“1. Whether the suit pronote is true, valid and executed for consideration?

2. Whether the plaintiff is entitled to the decree as prayed for?

3. What other relief?

6. The plaintiff had examined himself as P.W.1 and one Vadivel as P.W.2 and marked Ex.A.1 to Ex.A.4. Three documents were filed as Court documents as Ex.C.1 to Ex.C.3, which are the report of the handwriting expert. Through the third party Ex.X.1 to Ex.X.3 have been marked. The defendant had examined himself as D.W.1 and one Senthilvel as D.W.2 and no documents have been marked on the side of the defendant.

7. The learned Judge had taken note of the contradiction in the evidence of D.W.1 with reference to his financial capacity and found that his submission in the chief examination that he was financially



S.A.No.899 of 2023

well off stood disproved as in the cross examination he had admitted that he is indebted to several other persons and banks. Further, there is no explanation as to how the promissory note signed by the defendant had come to the hands of the plaintiff. Therefore, the Trial Court taking note of Ex.C.1 and other evidences held that the plaintiff had proved the execution of the promissory note and the passing of consideration and decreed the suit.

8. Aggrieved by the same, the defendant had filed A.S.No.39 of 2020 on the file of the Additional District Judge, Udumalpet. The learned Additional District Judge had also taken note of the report of the expert who has opined that the signature of the plaintiff in the admitted documents and the disputed signature matched and dismissed the appeal confirming the Judgement and Decree of the Trial Court.

9. Aggrieved over the same, the defendant is before this Court.



S.A.No.899 of 2023

WEB COPY

10. The learned counsel would submit that the Lower Appellate Court while relying upon the report submitted in Ex.C.1 has totally overlooked the cross examination of P.W.2. It is his contention that in his cross examination, P.W.2 had admitted that normally the handwriting is tested by examining how letters are placed / spaced on an imaginary line and that this is the basis for every signature. The witness would however admit that in his report he has not stated about examining the disputed signature on the basis of this imaginary line. Therefore, it is the contention of the learned counsel that the report is flawed. Further, the learned counsel would submit that this report was purely a private report and not much credence should be given to the same.

11. It is his contention that the plaintiff who was bound to prove the execution of the promissory note and passing of consideration especially when the same has been denied by the defendant has failed



S.A.No.899 of 2023

to examine the witnesses to the promissory note and has also not taken steps to send the signature for comparison and it is the defendant who had taken steps in this regard.

12. He would further submit that if the defendant had executed the promissory note, he would not have taken steps to have the signature examined. Therefore, he prayed that the appeal be admitted and be granted interim orders of stay.

13. Heard the learned counsel and perused the records.

14. Ex.C.1 is the report filed by the forensic expert. A mere reading of the report would show the seven characteristics that the expert had examined in the disputed signature and the admitted signature. In his evidence as P.W.2, the witnesses has stated that in order to analyse the signature and its characteristics, the qualities that



S.A.No.899 of 2023

are taken note of are manner of writing, placing of letters, way the words are spaced, where letters join each other, how the letters are sentenced etc.,

15. Ultimately, the expert has clearly opined that the signature in the admitted and the disputed document are one and the same, i.e., they are the signatures of the defendant. Once the signature is proved and when the plaintiff has also proved the execution and passing of consideration, the finding of both the Courts below cannot be set aside and the defendant has not made out a case for interference.

16. The Courts below have extensively considered the evidence on record both oral as well as documentary to arrive at the conclusion that the document in question has been executed by the defendant and money consideration had also passed. The defendant who claims that the plaintiff is utter stranger has not been able to explain as to how the promissory note executed by him has traveled to the hands of the



S.A.No.899 of 2023

plaintiff. The Trial Court has taken note of the contradictory stand that were taken by the defendant as D.W.1, where in his chief examination he would contend that he is a man of means, however, in the cross examination he would concede that he owes debt to several persons including banks.

17. Therefore, I see no reason to interfere with this concurrent Judgement and Decree and consequently, the Second Appeal stands dismissed for want of substantial question of law and the grounds as to how the Judgement of the Courts below are erroneous. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

18.01.2024

Index : Yes/No
Internet : Yes/No
kan



WEB COPY



S.A.No.899 of 2023

To

1.The Additional District Judge,
Udumalpet.

2.The Subordinate Judge,
Udumalpet.

P.T. ASHA, J,

kan



WEB COPY



S.A.No.899 of 2023

S.A.No.899 of 2023

18.01.2024