



S.A.No.90 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.90 of 2024

and

C.M.P.No.2302 of 2024

Jawahar Babu

...Appellant

Vs

Karunamurthy

...Respondent

Prayer: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree of the Principal District Court, Tiruvannamalai dated 30.11.2018 passed in A.S.No.8 of 2017 confirming the judgment and decree dated 28.11.2016 passed by the Additional Subordinate Judge, Tiruvannamalai.

For Appellant : Mr.Suchit Anant Palande

For Respondent : Mr.A.K.Rajaraman



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JUDGMENT

The defendant in a suit for recovery of money is the appellant before this Court. He seeks to challenge the decree passed in O.S.No. 240 of 2015 by the learned Additional Subordinate Judge, Thiruvannamalai which was confirmed by the learned Principal District Judge, Thiruvannamalai in A.S.No.8 of 2017.

2.The respondent herein had filed the above referred suit for recovery of a sum of Rs.2,47,200/- together with subsequent interest on the amount and costs. It is his case that the defendant had borrowed a sum of Rs.2,00,000/-from him for meeting certain family expenses and executed a promissory note dated 21.11.2012 promising to repay the said sum on demand.



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3.The respondent would further contend that the appellant had defaulted in payment of the amounts despite repeated requests. Therefore, the respondent had issued a pre-suit notice dated 22.06.2015 calling upon the appellant to re-pay the suit debt. However, the appellant had issued a reply notice dated 27.06.2015 setting out false facts. In his reply, the appellant had contended that the respondent was not a man of means and further, there was no necessity for the appellant to borrow money from the respondent. Further, he would submit that the appellant and the respondent were inimically disposed since 2009, when there was a series of exchange of notices between the two. In these circumstances, there is no question of the appellant borrowing money from the respondent. The respondent had contended that he is doing money lending business for several years and he owns properties. Therefore, he has the necessary wherewithal to give a loan to the appellant. Taking note of the reply, the respondent had filed the suit in question.



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4. The appellant had filed a written statement *inter alia* denying the very execution of the promissory note as also the receipt of money. The appellant would submit that the respondent is not a man of means and he could not have given such a huge sum of Rs.2,00,000/- to him. The appellant would submit that the true fact was that the respondent had earlier issued a notice dated 07.03.2009 calling upon him to pay a sum of Rs.5,00,000/- as compensation for the loss of his vehicle. The respondent had alleged that the appellant was responsible for the loss of the vehicle which was caused by one Raghuraman, who was a close friend of the appellant and therefore, the appellant had to compensate him. The appellant had issued a detailed reply dated 11.03.2009, putting forward the fact that he was in no way responsible for the respondent's vehicle having been given to Raghuraman. The appellant would contend that the respondent was angered by the response, notice in a present suit had been issued on 22.06.2015 and the appellant had requested the respondent to provide a xerox copy of the



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demand notice so as to enable him to initiate proceedings against the respondent. Immediately, the respondent had rushed to the Court and filed the instant suit. The appellant would state that he has not borrowed any amount from the plaintiff nor executed a promissory note in his favour and that there is no cause of action for filing of the suit.

5.The trial Court had framed the following issues:

- (i) Whether the suit pronote is a forged and fabricated one?*
- (ii) Whether the plaintiff is entitled to get relief as prayed in the plaint?*
- (iii) To what relief?*

6. The respondent had examined himself as P.W1 and one Raja, the witness to scribe as P.W2, since the attesting witness (Natarajan) was no more and Exs.A1 to A4 were marked. The appellant had



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examined himself as D.W1 and marked Exhibits B1 and B2. The learned Judge held that by examining Ex.P.W2 the respondent had proved the execution of the promissory note. The onus shifted to the appellant herein under Section 118 of the Negotiable Instruments Act to prove that the consideration had not passed and that he had not signed the document-Ex.A1 and received the consideration. Further, the Court held that the respondent, who had come forward with the defense that both he and the appellant were inimically disposed to each other on account of the loss of a vehicle, has not chosen to prove the said statement. In fact, the respondent had issued a reply notice dated Ex.B2 dated 11.03.2009. Ultimately, the suit was decreed as prayed for. Challenging the same, the respondent had filed an appeal before the Principal District Judge, Thiruvannamalai in A.S.No.8 of 2017. The learned Judge had also confirmed the judgement and decree of the trial Court. Aggrieved by the same, the appellant has filed the above second appeal.



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7.The appeal had been filed with the delay of 1441 days and the same had been condoned by the orders of this Court dated 04.01.2024.

8. The learned counsel for the appellant would submit that the signatures have not been proved since there were discrepancies in the signatures found in Ex.A1. He would submit that D.W2, the scribe, had signed the deposition in English, whereas in the promissory note he has signed in the vernacular. There is no explanation for the above. He would submit that a mere perusal of Exs.B1 and B2 would clearly demonstrate that, as early as in 2009, the respondent and the appellant were not having a good relationship and therefore, the possibility of the promissory note being fabricated is higher. Despite the fact that the appellant had denied the execution of the promissory note, the respondent has not taken steps to have the disputed signature examined by an expert with the admitted signatures. He would further submit



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that the appellant had clearly pleaded that he was not in any kind of financial constraint which required him to take a loan, but on the contrary, it is the respondent who does not have the necessary wherewithal to give such a huge sum as a hand loan. He would further submit that despite the fact that the respondent had raised a plea that the appellant did not have the wherewithal to extend the loan of Rs.2,00,000/-, the respondent has not let in any evidence to prove the same. He would submit that the concurrent judgment and decree require to be set aside.

9.Heard the learned counsel for the appellant and perused the material available on record.

10. The respondent, who has come to Court seeking recovery on the basis of a promissory note, has examined P.W2 the scribe, to prove the execution as well as the passing of the consideration since the



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Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
srn

To

1. The Principal District Judge, Tiruvannamalai
2. The Additional Subordinate Judge, Tiruvannamalai.
3. The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

srn

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