



S.A.(MD) No.294 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **23.08.2024**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

S.A.(MD) No.294 of 2012

Anantharajan

... Appellant

VS.

1.Sebasthiyayee

2.Mallilka

3.Nevis

4.Punitha

5.Xavier

...Respondents

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 08.03.2011 passed in A.S.No.36 of 2008 by the Sub Court, Valliyoor reversing the judgment and decree dated 20.01.2007 passed in O.S.No.129 of 2004 by the District Munsif cum Judicial Magistrate, Nanguneri.

For Appellant : Mr.G.Prabhu Rajadurai

For R1 & R5 : Mr.H.Arumugam

For R2 to R4 : No appearance



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also handed over the document relating to the property to the plaintiff. However, contrary to the assurance, the said Santhosam did not pay either the principal or the interest. He died all of a sudden on 28.01.2000 leaving behind the first defendant his wife and the defendants 2 to 5 children as his legal representatives. Since the said Santhosam had died intestate, his property devolved on the aforesaid defendants.

3.2. After the death of Santhosam, the plaintiff had approached the defendants for repaying the said amount on 01.12.2002. However, the first defendant evaded the payment. The defendants turned hostile and the plaintiff learnt that they were attempting to sell the property by appointing a power of agent by the name of Muruganandam of Perappadi. The plaintiff would state that since the sending of the legal notice would defeat the interest of justice, the same was not sent and the plaintiff has straight away filed a suit for recovery of money.

DEFENDANTS' CASE:

4. The first defendant had filed a written statement, which was adopted by the others, in which she had denied the borrowal, the execution of the promissory note as well as the reason for the execution. The categoric case of



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the defendants is that Santhosam did not borrow any amount, nor execute any promissory note and the plaintiff is attempting to take advantage of the death of the said Santhosan. Further, Santhosam during his life time had already sold the properties contained in the suit schedule except for item Nos.2 and 3. They therefore prayed for the dismissal of the suit.

TRIAL COURT:

5. The learned District Munsif cum Judicial Magistrate, Nanguneri had framed the following issues:

- "1. வாதி கோரும் பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?
2. கடனுறுதிச் சீட்டு அமரர் சந்தோஷத்தால் எழுதிக் கொடுக்கப்பட்டதா?
3. வாதிக்கு கிடைக்கத்தக்க இதர பரிகாரம் யாது?"

6. The plaintiff had examined himself as P.W1 and marked Ex.A1 and Ex.A2. The first defendant had examined herself as D.W1 and no documents were filed on their side. The learned District Munsif cum Judicial Magistrate, Nanaguneri gave a finding that the suit promissory note had been executed by the first defendant's husband, Santhosam and she had executed the same as a witness. The learned Judge had come to the above conclusion, since the first defendant as D.W1 had denied even her signature in the Vakalat.



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APPELLATE COURT:

7. Challenging the said judgment and decree, the defendants had filed A.S.No.36 of 2008 on the file of the Sub Court, Valliyoor. The learned Judge after re-appreciating the evidence on record allowed the appeal and set aside the judgment and decree of the trial Court. The learned Judge had arrived at the conclusion on the ground that the plaintiff had failed to prove the execution of the promissory note and the passing of consideration, especially when the same had been denied by the defendants.

SECOND APPEAL:

8. Challenging the same, the appellant is before this Court and this Court has framed the following substantial questions of law:

"Whether the Lower Appellate Court is correct in law in holding that the presumption under Section 118 of the Negotiable Instruments Act is not available against the legal heirs of the deceased borrower, particularly in the circumstance that the promissory note was signed by the heirs to the estate of the deceased?"



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SUBMISSIONS:

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9. The learned counsel appearing for the appellant would submit that the defendants, who have come forward with the case that the signature in the promissory note is not that of said Santhosam, have not taken any steps whatsoever to prove the same. That apart, the plaintiff has proved the borrowal, inasmuch as the original document of title of Santhosam has been produced on the side of the plaintiff, which would go long way to confirm the case of the plaintiff that the said Santhosam had borrowed money and had deposited the document as security. The plaintiff in support of his contention would rely upon the judgment of this Court reported in **2009 3 LW 724 (Mrs.V.Venkattammal Vs. P.Ramakrishnan and another)**.

10. The learned counsel appearing for the respondents would submit that the Court could have compared the signature as contemplated under Section 73 of the Indian Evidence Act, 1872. The respondents would submit that the onus is on the plaintiff to prove the execution of the promissory note and only if that onus is discharged, the presumption under Section 118 of the Negotiable Instruments Act, 1881, would shift upon the defendants to prove that no consideration has passed. The defendants had clearly and categorically denied the signature as well as the borrowal. Therefore, there is a bounden duty on the



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part of the plaintiff to prove the same. Except for examining himself, the plaintiff has not examined any other person to prove the case. Therefore, he would submit that the judgment and decree of the learned Subordinate Judge cannot be called in question.

11. Heard the learned counsel on either side and perused the documents.

DISCUSSION:

12. The plaintiff has approached the Court for recovery of money on the basis that the deceased Santhosam on 28.12.1999 had borrowed a sum of Rs. 60,000/- from the plaintiff and on the very same day had executed the suit promissory note. In the course of the arguments, the learned counsel has stated that the execution of the promissory note has been witnessed by the first defendant. The plaintiff's case is that the amount has been borrowed for meeting the wedding expenses of Mallika, the elder daughter of Santhosam. To substantiate the above, neither is there an oral evidence nor documentary evidence. In the plaint, nowhere it has been stated that the execution of Ex.A1, promissory note, had been witnessed by the first defendant, the wife of late Santhosam.



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13. A perusal of Ex.A1 does not indicate that the defendants have executed the document as a witness. The signature of the first defendant in Ex.A1 has been disputed by her. That apart, if the signature of the said Santhosam is compared with the signature in Ex.A2, the partition deed, it is seen that the said Santhosam has signed the partition deed using the word as "G.சந்தோசம்", whereas, in Ex.A1, the name is signed as "G.சந்தோஷம்".

14. In the cross-examination of D.W1, she has admitted the signature in Ex.A2, the partition deed. However, she had categorically denied that the signature contained in Ex.A1 as that of her husband. She has also stated that her husband is not in the habit of affixing his thumb impression, but would only affix his signature on the documents. Even in the cross-examination of D.W1, the plaintiff has not been able to elicit an admission regarding the signature found in Ex.A1. In fact, no question with reference to the borrowal being used to meet the expenses incurred for the wedding of the second defendant has been asked. In his cross-examination, the plaintiff has stated that from 1997 to 2000, he has been living in the State of Karnataka on account of his work. The promissory note was executed in the year 1997.

15. That apart, the defendants would submit that there were issues



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between the plaintiff's mother and the first defendant's husband in respect of certain money transactions. The plaintiff has therefore failed to prove the execution of the documents and also the passing of consideration. The lower appellate Court has not proved the execution of the promissory note.

16. To add to the above, the plaintiff would submit that the promissory note was handwritten by Santhosam. This factum had not been proved by the plaintiff and the fact that the steps have not been taken to verify the signature and handwriting would also clearly go to show that the signature contained therein is not that of late.Santhosam. The judgment relied on by the learned counsel for the appellant relates to a case of mortgage by deposit of title deeds and not to a promissory note. The suit is not a one based on the mortgage by deposit of title deeds, but is a suit based on the promissory note. Despite the categorical denial in the written statement and even after the cross-examination of D.W1, wherein she has reiterated the denial that steps have not been taken to send the signature for an expert opinion, the findings of the lower appellate Court has to necessarily be upheld. Therefore, the substantial question of law is answered against the plaintiff.



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17. In the result, the Second Appeal stands dismissed. No costs.

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Internet : Yes/ No

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To

1.The District Munsif cum Judicial Magistrate,
Nanguneri.

2.The Subordinate Judge,
Valliyoor.

3.The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.T.ASHA, J.

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