



S.A(MD)No.304 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A(MD)No.304 of 2012

1.Santhi
2.Minor Manoj
3.Minor Pavithra

.. Appellants/Respondents/
Defendants

Vs.

Rengasamy

.. Respondent/Appellant/
Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the District Judge, Sivagangai in A.S.No.1 of 2011 dated 29.04.2011 reversing the judgment and decree of the Subordinate Judge, Sivagangai in O.S.No.6 of 2009 dated 24.06.2010.

For Petitioner : Mr.C.K.M.Appaji
For Respondent : Mr.V.S.Kumaraguru



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ORDER

Challenging the reversing judgment and decree passed in A.S.No.1 Of 2009 for recovery of money, the defendants are before this Court.

2.The pleadings in the above proceeding are set out herein below and the parties are referred to in the same litigative status as before the trial Court.

3.The plaintiff had filed a suit in O.S.No.6 of 2009 before the Sub-Court, Sivagangai, for recovery of a sum of Rs.4,46,000/- due on a promissory note dated 18.02.2007 with interest and cost. It is the case of the plaintiff that the plaintiff and the first defendant's husband deceased Sivalingam were known to each other and that the said Sivalingam has borrowed a sum of Rs.4,00,000/- on 18.02.2007 for meeting out his family expenses. It is further stated that on receiving a sum of Rs.4,00,000/- in the presence of a co-employee and witness Rajendran and another witness Soman, the petitioner has executed a promissory note on the very same day. In the meanwhile, the defendant died and



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therefore, the plaintiff has issued a legal notice dated 01.12.2008 to the first defendant. However, the first defendant had sent a reply containing untenable and false allegations. Therefore, the petitioner has come forward with the suit. He had restricted the rate of interest to 6%.

4.The first respondent and her minor children, defendants 2 and 3 had filed the written statement. At the outset, the first defendant had denied the execution of the promissory note and the payment of money. The first defendant would submit that the signature that is found in the promissory note is a forged signature. She had also denied the said borrowing stating that there was no necessity for her husband to borrow such a huge amount either personally or for family meet. She had also contended that the plaintiff is not entitled for any relief on the basis of the suit pro-note and sought for dismissal of the suit.

5.The trial Court had framed the following issues:

1.Whether the promissory note is true, genuine and proper consideration?



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2. Whether the plaintiff is entitled as prayed for with cost?

3. To what other relief?"

6. Before the trial Court, on the side of the plaintiff, he examined himself as P.W.1 and one Rajendran was examined as P.W.2 and 4 documents were marked as Exs.A.1 to 4. On the side of the defendants, he examined himself as D.W.1 and no document was marked.

7. The learned Sub-Judge, Sivagangai, on perusal of the evidence both the documentary and oral, held that the plaintiff had failed to prove the execution of the promissory note as well as the payment of loan to the deceased Sivalingam and dismissed the suit. Challenging the same, the plaintiff had filed the appeal suit in A.S.No.1 of 2011 before the District Court, Sivagangai. The learned District Judge, passed the judgment and decree dated 29.04.2011 reversing the well considered judgment and decree of the trial Court solely based on the evidence of P.W.2. Challenging this reversing judgment and decree, the defendants are before this Court.



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8.The above second appeal has been admitted on the following substantial questions of law are framed:

“(i)Is the plaintiff, relying on the promissory note of the deceased Sivalingam entitled to seek personal decree against his legal heirs the defendants in the suit.

(ii)Whether the Court can recognize any right to proceed against the legal heirs for the recovery of any due from the deceased father or grandfather solely on the ground of pious obligation in view of the bar under Section 6(4) of the Hindu Succession (Amendment) Act, 2005?”

9.On the basis of the submission made by both parties, the following additional substantial question of law also is framed:

Whether the plaintiff has proved the execution of the promissory note by Sivalingam and the payment of a sum of Rs.4,00,000/-.

10.Heard the learned counsel on either side.



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11.The defendants have challenged the judgment and decree of the appellate Court viz., the District Court, Sivagangai, which has reversed the judgment passed by the Sub-Court, Sivagangai, which had dismissed the suit for recovery of money. The plaintiff stated that Ex.A1-Promissory Note, which has been executed by the deceased Sivalingam as security for the loan of Rs.4,00,000/-, which, according to the plaintiff, has been paid on 18.02.2007 borrowed by him on the same day ie., on 18.02.2007. The execution of the promissory note, the payment of Rs.4,00,000/- and the withdrawal of the plaintiff has been questioned by the defendants. The plaintiff has come to the Court stating that the deceased Sivalingam and the first defendant were friends. In fact she explained the same as follows:

“வாதிக்கும் 1ம்பிரதிவாதியின் கணவர் லேட் சிவலிங்கம்
என்பவருக்கும் நல்ல அறிமுகம் உண்டு.”

12.However, P.W.2, who has been examined to prove the execution of the promissory-note-Ex.A.1, would submit that he had introduced the deceased Sivalingam to the plaintiff and in cross-examination, the



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plaintiff has also accepted the same. P.W.2, who claims to be the attestor of the witness and execution of the promissory note, has not proved the fact that both he and Sivalingam were working together and that Sivalingam was his neighbour and it is not the contention of P.W.2 that the defendants were well known to him. It is an admitted fact that the defendants are residing in Nilgiris, whereas the deceased Sivalingam was working at Sivagangai. Except the statement of P.W.2, which has also been relucted by the defendants, there is no other evidence to support the plaintiff's case that Sivalingam had executed the promissory note and received a sum of Rs.4,00,000/-. In his cross-examination, he has stated that he is a lawyer, who has been practising for 8 years. The huge sum of Rs.4,00,000/- has been paid by cash by the plaintiff, which is suspicious. The evidence of P.W.2 cannot be relied upon by reason of the fact that he has not able to prove his case. Further, when there has been a categorical denial of the signature, the fact that the plaintiff has not taken steps to have the signature of the deceased Sivalingam in the disputed promissory note as his admitted signature. Therefore, the additional substantial question of law is answered in favour of the defendants. The questions of



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law 1 and 2 are now purely an academic. The plaintiff, who seeks to recover the promissory note allegedly executed in his favour by the deceased Sivalingam from his legal heirs, has not led in any evidence to show that how they are bound to repay the money which is alleged to have been paid to the deceased Sivalingam, the husband of the first defendant and the father of the defendants 2 and 3. Therefore, these questions of law are also answered against the plaintiff.

13. In view of the above, the Second Appeal is allowed and the judgment and decree passed in A.S.No.1 of 2011 by the District Judge, Sivagangai, is set aside and the judgment and decree passed in O.S.No.06 of 2009 by the Sub-Court, Sivagangai, is confirmed. No costs.

20.09.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes



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To

- 1.The District Judge,
Sivagangai.
- 2.The Subordinate Judge,
Sivagangai.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.T.ASHA, J.
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