



S.A.(MD)No.276 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.07.2024

PRONOUNCED ON: 02.08.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.276 of 2020

V.Meenakshi : Appellant/Appellant/
Plaintiff

Vs.

S.Selvaraj : Respondent/Respondent/
Defendant

PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 01.02.2020 passed in A.S.No.5 of 2018, on the file of the Principal Sub Court, Srivilliputhur, confirming the judgment and decree, dated 06.10.2017, passed in O.S.No.68 of 2010, on the file of the Additional District Munsif Court, Srivilliputhur.

For Appellant : Mr.N.Rahamadullah

For Respondent :Mr.A.Sivaji



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JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.5 of 2018, on the file of the Principal Subordinate Court, Srivilliputhur, confirming the judgment and decree made in O.S.No.68 of 2010, dated 06.10.2017, on the file of the Additional District Munsif Court, Srivilliputhur.

2. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

3. The appellant is the plaintiff. The case of the plaintiff is that the defendant has borrowed a sum of Rs.25,000/- on 19.10.2004 from the plaintiff's finance concern and executed a promissory note therefor agreeing to repay the said amount with interest at Rs.3/- per Rs.100/- per month either to the plaintiff or on demand, that the defendant has again borrowed a sum of Rs.10,000/- on 16.02.2005 and executed a promissory note therefor agreeing to repay the said amount with the same interest, that despite several requests and reminders to the defendant to repay the amount, he has been postponing the same on some pretext or the other



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and that therefore, the plaintiff was constrained to file the above suit for recovery of Rs.56,623/- with interest and costs.

4. The defence of the defendant is that he has never borrowed any amount from the plaintiff nor executed any promissory note therefor, that the defendant is a close friend of the owner of the plaintiff concern and the defendant helped the plaintiff in realising money due to them and at the time of purchasing the properties, that the plaintiff with the help of the signatures available in the sale deeds, has created the suit promissory notes by forging the signatures of the defendant, that the plaintiff has earlier filed a suit in O.S.No.59 of 2010 alleging that the defendant and his wife Kanagumala borrowed a sum of Rs.10,000/- and executed promissory note therefor and that the defendant has paid Rs.100/- and got necessary endorsements on 18.04.2003, 16.04.2006 and 16.07.2007 and that they have not repaid the amount, that if the defendant had really obtained loan on 20.05.2000, the plaintiff should not have advanced the present suit loans, that the plaintiff is not having any cause of action to file the suit and that the cause of action alleged is false and untenable and hence, the suit is liable to be dismissed.



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5. The learned trial Judge, after framing necessary issues and after conducting trial, passed the judgment and decree, dated 06.10.2017, dismissing the suit. Challenging the judgment and decree passed by the trial Court, the plaintiff has preferred an appeal in A.S.No.5 of 2008 and the learned Principal Subordinate Judge, Srivilliputhur, considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree, dated 01.02.2000, dismissing appeal and thereby confirmed the judgment and decree passed by the trial Court. Challenging the dismissal of the appeal, the plaintiff has filed the present Second Appeal.

6. Though the Second Appeal is pending from 2020 onwards, the same is not yet admitted and hence, the Substantial Question of Law was not formulated.

7. It is settled law that in a suit based on the promissory note, if the defendant denies the execution of the promissory note, then the plaintiff is duty bound to prove the due execution of the promissory note and only in case, if the plaintiff discharges his onus of proof and proves the execution arising of presumption under Section 118 of the Negotiable



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Instruments Act is automatic as to the passing of consideration, date, time and etc., and only in that situation, the burden of proof gets shifted to the defendant and it is for the defendant to disprove the legal presumption by setting up a probable defence. When the defendant proves his defence through tangible evidence, then the liability once again gets shifted to the plaintiff to prove that the promissory note was executed by the defendant.

8. As already pointed out, the plaintiff's specific case is that the defendant has obtained two loans and executed two promissory notes therefor. The defendant has taken a specific stand disputing the borrowals and execution of the promissory notes under Exs.A.1 and A.3. In the case on hand, in order to prove the due execution of the promissory notes, the plaintiff has examined her husband as P.W.1 and exhibited 4 documents as Exs.A.1 to A.4, which includes the suit promissory notes dated 19.10.2004 and 16.03.2005.

9. The learned trial Judge, has specifically observed that P.W.1- husband of the plaintiff alone has subscribed the signature as attesting witness to the promissory notes and no other third persons has signed as attesting witness. No doubt, promissory note is not a document which



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requires compulsory attestation. But the plaintiff claiming the amounts due on the promissory note has to prove the due execution of the promissory note. No doubt, P.W.1 being the husband of the plaintiff is a competent witness to depose on behalf of his wife, but he has also deposed as attesting witness for the suit promissory notes.

10. As rightly observed by the Courts below, except the interested testimony of P.W.1, the plaintiff has not adduced any iota of evidence to prove that the signatures found in the suit promissory notes are that of the defendant. The learned Counsel for the plaintiff would submit that though they have filed an application to send the suit promissory notes to the handwriting experts for comparing the signatures found in the disputed documents along with the admitted signatures of the defendant, but the same was dismissed by the trial Court and that the plaintiff has preferred a revision before this Court and when the same was pending, the trial Court has dismissed the suit.

11. The learned appellate Judge, after perusing the records relating to the petition in I.A.No.1308 of 2015 for sending the documents to handwriting experts, has observed that the plaintiff has sought to



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compare the signature of the defendant available in the suit promissory notes along with the signatures found in the vakalat and written statement which came to be filed subsequently and on that basis, the petition came to be dismissed. It is not the case of the plaintiff that they have filed similar petition before the appellate Court and they have not offered any reason or explanation for not taking steps therein.

12. It is pertinent to note that the defendant has taken a stand that the plaintiff has earlier filed a suit in O.S.No.59 of 2010, on the file of the District Munsif Court, Srivilliputhur against the defendant for recovery of the amount due on the promissory note and obtained exparte decree. Admittedly, the plaintiff has not disputed the said factum. As rightly observed by the Courts below, if really the defendant had obtained the loan on 20.05.2000 and failed to repay the said amount, after getting exparte decree, the contention of the plaintiff that they have advanced two loans one is on 19.10.2004 and the other is on 16.02.2005 is very hard to believe.

13. Considering the evidence available on record, the Courts below have come to a right decision that the plaintiff has miserably failed



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to prove her case. It is not the case of the plaintiff that any material evidence that has been ignored by the first appellate Court nor there was evidence at all and they have also not shown that any wrong inference had been drawn by the appellate Court from the proved facts by applying the law erroneously. It is pertinent to note that the Courts below, on appreciating and re-appreciating the entire evidence available on record has come to a conclusion that since the plaintiff has miserably failed to prove his case, the same is liable to be dismissed. On a perusal of the judgments of the Courts below, as rightly contended by the learned Counsel for the defendant, no question of law much less Substantial Question of Law is made out. Moreover, it is not open to this Court to sit in appeal over the factual findings arrived at by the first appellate Court confirming the findings of the trial Court. Hence, this Court concludes that since no Substantial Question of Law is made out in this Second Appeal, the same is liable to be dismissed.

14. In the result, the Second Appeal is dismissed, confirming the concurrent judgments made in O.S.No.68 of 2010, dated 06.10.2017, on the file of the Additional District Munsif Court, Srivilliputhur and made in A.S.No.5 of 2018, dated 01.02.2020 on the file of the Principal



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Subordinate Court, Srivilliputhur. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

02.08.2024

NCC : Yes:No
Index : Yes : No
Internet : Yes : No
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To

1. The Principal Subordinate Court, Srivilliputhur.
2. The Additional District Munsif Court, Srivilliputhur.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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