



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2025

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

S.Santhosh Kumar

... Appellant

Vs.

V.Sakthivel

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 28.06.2016 in A.S. No.72 of 2009, on the file of the I Additional District Court, Coimbatore, reversing the decree and judgment dated 04.11.2006 in O.S.No.343 of 2005, on the file of the Principal Sub Court, Coimbatore.

For Appellant : Mr.C.Veeraraghavan

For Respondent : No appearance



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

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JUDGMENT

The appellant is the defendant in O.S.No.343 of 2005, on the file of the Principal Sub Court, Coimbatore. The respondent / plaintiff filed the suit for recovery of a sum of Rs.1,15,000/- from the appellant / defendant together with interest at the rate of 12% per annum on the principal amount of Rs.1,00,000/- from the date of plaint. The suit is based on the promissory note dated 29.04.2004 (Ex.A1).

2. For the sake of convenience, the parties are referred to as per their rank in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3.The case of the plaintiff in a nutshell is as follows :

The defendant borrowed a sum of Rs.1,00,000/- from the plaintiff on 29.04.2004 and executed a promissory note (Ex.A1) on the same day promising to repay the principal together with interest at the



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

rate of 12% per annum on demand by the plaintiff or to his order. Though the plaintiff made repeated demands to the defendant to repay the amount due under the promissory note (Ex.A1) together with interest, the defendant did not come forward to make good the payment. Therefore, the plaintiff was constrained to issue a legal notice dated 09.12.2004 (Ex.A2) to the defendant calling upon him to pay the amount due under the promissory note (Ex.A1). The defendant received the said notice on 30.12.2004 as is evidenced by the postal acknowledgment card (Ex.A3) and sent a reply dated 07.01.2005 (Ex.A4), with false allegations. Therefore, the plaintiff issued a rejoinder dated 24.01.2005 (Ex.A5) and thereafter, filed the present suit.

4. The suit was resisted by the defendant on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. The defendant did not borrow any amount from the plaintiff.
- iii. The defendant did not execute the suit promissory note as alleged by the plaintiff.



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

WEB COPY

iv. One Mahalingam, brother of the plaintiff used to lend money to various persons in the village where the defendant is also residing. One Sivalingam borrowed a sum of Rs.5,000/- from Mahalingam and repaid the amount with interest. However, Mahalingam was demanding more money from Sivalingam, due to which, there was a clash between two groups of the villagers. Since the defendant supported Sivalingam, the plaintiff has filed the suit against him by pressing into service a forged promissory note.

5. On the basis of the above pleadings, the trial Court framed the following issues :

"(i) Whether the suit promissory note is executed for valuable consideration ?

(ii) Whether the plaintiff is entitled to the suit amount ?

(iii) To what other relief the plaintiff is entitled ?"



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

WEB COPY

6. In the trial Court, the plaintiff examined himself and one another witness and marked Ex.A1 to Ex.A7. The defendant examined himself and one another witness and marked Ex.B1 to Ex.B5. The Secretary of Pichanur Primary Agricultural Cooperative Bank was examined as C.W.1 and the Manager of the Indian Overseas Bank, Thirumalaipalayam Village was examined as C.W.2. Ex.C1 to Ex.C7 which contained the admitted signatures of the defendant were marked through them.

7. The learned trial court judge, on considering the evidence on record, dismissed the suit filed by the plaintiff, vide his decree and judgment dated 04.11.2006, on the following grounds:

- i. The plaintiff has not proved that the defendant executed the suit promissory note (Ex.A1).
- ii. The defendant is a stranger and the contention of the plaintiff that he lent a sum of Rs.1,00,000/- to the defendant that too without



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

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iii. The signatures of the defendant found on Ex.C1 to Ex.C7 are totally different from that on Ex.A1.

8. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiff filed an appeal in A.S. No.72 of 2009, before the I Additional District Court, Coimbatore. The learned I Additional District Judge, Coimbatore, vide his decree and judgment dated 28.06.2016, reversed the findings recorded by the trial court judge and decreed the suit by observing thus :

"13) Since the defendant disputes the signature in the suit promissory note it is the duty of the plaintiff to prove that the signature in the promissory note is that of the defendant. For that the plaintiff has summoned CW.1 and C.W.2. C.W.1 is the Secretary of Pichanur Primary agricultural cooperative bank. He has produced Ex.C.1 to Ex.C.7 containing the signature of defendant. The defendant also not disputed those documents. C.W.2 is the Manager working in the Indian Overseas Bank, Thirumalaipalayam



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

WEB COPY

*village. He has produced Ex.C.8 and Ex.C.9 which contains the signature of defendant. This documents also contains the signature of the defendant. This court has compared the signature found in Ex.C1 to Ex.C.9 with Ex.A.1. The signature in Ex.A.1. found to be the same as in Ex.C.1 to Ex.C.9. That could not be any 2nd opinion or doubt in the signatures. Hence, the signatures found in Ex.A.1 was identical and resemblance the signature in Ex.C.1 to Ex.C.9. This court has come to the conclusion that the signature found in the Ex.A.1 is that of defendant. The findings of the trial court that unless the document is sent for expert opinion the court cannot come to the conclusion that the signature in Ex.A.1 is that of defendant is not correct. It is very clear by seeing those documents in the naked eye and the court can very well come to the conclusion that both are same. The law also laid that it is not necessary to sent documents for expert opinion like Hand writing expert. The judgment relied by the plaintiff reported in **2009 1 MLJ page 979** is very relevant to mention here.*

14) The defence that the signature found in Ex.A.1 is forged has to be proved by the defendant. He has not let in any evidence or produced any document to show that the



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

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9. Aggrieved over the decree and judgment passed by the first appellate court, the present second appeal is filed by the defendant.

10. Though the second appeal is filed in the year 2018 it has not been admitted till date.

11. Heard Mr.C.Veeraraghavan, learned counsel for the appellant.

12. The case of the plaintiff is that the defendant borrowed a



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

sum of Rs.1,00,000/- on 29.04.2004 and executed the promissory note (Ex.A1) promising to repay the principal together with interest at the rate of 12% per annum on demand by the plaintiff or to his order. It is also the case of the plaintiff that despite repeated demands made by him, the defendant did not pay the amount due under the promissory note (Ex.A1). Therefore, the plaintiff issued a legal notice dated 09.12.2004 (Ex.A2).

13. The defendant had denied the execution of the promissory note (Ex.A1). In order to prove the execution of the promissory note, the plaintiff relied on his oral evidence as well as the evidence of one of the attestors to the promissory note (Ex.A1). Since the defendant had denied his signature on the promissory note, the trial court had summoned the documents (Ex.C1 to Ex.C7) containing the admitted signatures of the defendant, from Pichanur Primary Agricultural Cooperative Bank and Indian Overseas Bank, Thirumalaipalayam Village to make a comparison. While the trial court had found that the signature of the defendant in the suit pro-note (Ex.A1) does not match with his admitted



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

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signatures, the first appellate court had observed that the signature of the defendant on Ex.A1 is not forged.

14. It is pertinent to point out that the defendant in his written statement had averred that the plaintiff had forged his signature on the pro-note (Ex.A1) since he (defendant) supported one Sivalingam who borrowed money from the defendant. In order to prove this, he relied on the evidence of DW2. However, DW2's evidence is not useful to prove the case of the defendant. On the contrary, the evidence of the plaintiff (PW1) and the attester (PW2) of the pro-note are reliable and nothing useful was suggested to them during the course of cross examination to discredit or disbelieve their versions.

15. Moreover, a careful comparison of the admitted signatures of the defendant on Ex.C1 to Ex.C9 with the signature on Ex.A1 shows that the defendant signed on the suit pro-note and there is similarity in signatures. In the circumstances, I do not see any reason to interfere with the findings recorded by the first appellate court. In fact, there is no substantial question of law in the present second appeal and therefore, it



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

deserves to be dismissed.

16. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.
- ii. the decree and judgment dated 28.06.2016 passed in A.S. No.72 of 2009, on the file of the I Additional District Court, Coimbatore, is upheld.
- iii. the decree and judgment dated 04.11.2006 passed in O.S.No.343 of 2005, on the file of the Principal Sub Court, Coimbatore, is set aside.
- iv. the suit in O.S.No.343 of 2005, on the file of the Principal Sub Court, Coimbatore, is decreed with costs.

12.02.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

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To

1. The I Additional District Court, Coimbatore.
2. The Principal Sub Court, Coimbatore.
3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

R. HEMALATHA, J.

mtl

S.A.No.105 of 2018
and C.M.P.No.2257 of 2018

12.02.2025