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SA No. 739 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-12-2025

CORAM

THE HONOURABLE MR.JUSTICE P. DHANABAL

SA No. 739 of 2015

1. D.R. Benefit Fund,
Rep By Its Chairman, D. Rajappa,
No.45 Station Road, Villivakkam,
Chennai - 49.

Appellant(s)

Vs

1. Thiru. R. Jayaraj
S/o. Ramasamy, No.882 Mth Road,
Chennai - 50.

Respondent(s)

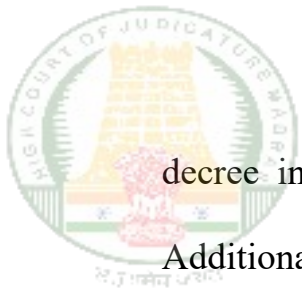
PRAYER: This Second Appeal has been preferred under Section 100 of Code of Civil Procedure praying to set aside the judgment and decree in A.S. No.188 of 2012 dated 23.03.2015 passed by the learned IV Additional Judge, City Civil Court, Chennai confirming the judgment and decree in O.S. No.8819 of 2005 dated 29.04.2008 passed by the learned I Assistant Judge, City Civil Court, Chennai.

For Appellant(s): Mr. B.Deepak Narayanan

For Respondent(s): M/s.S.N. Ravikumar

ORDER

The Second Appeal has been preferred as against the judgment and



decree in A.S. No.188 of 2012 dated 23.03.2015 passed by the learned IV Additional Judge, City Civil Court, Chennai dated 23.03.2015, wherein the appellant herein preferred an appeal as against the decree and judgment passed by the trial Court / I Assistant City Civil Court, Chennai in O.S. No.8819 of 2005 dated 29.04.2008. The said appeal was dismissed. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the appellant.

2. The appellant is the defendant in the main Suit. The Plaintiff, who is the respondent in this second appeal has filed the Suit before the trial Court for the relief of declaration declaring that whatever the acts or deeds done by the defendant contrary to the terms of mortgage loan obtained in respect of Loan account No.E109 dated 10.03.2005 is illegal, void, based on the notice dated 06.10.2005 issued by the defendant and consequential injunction restraining the defendant from dealing with the fixed deposit contrary to the terms and conditions stipulated in the fixed deposit made by the Plaintiff and his family members.

3. The *case of the Plaintiff* is that he obtained loan from the defendant for a sum of Rs.3 lakhs by mortgaging a property on 10.03.2005. In fact, the said property belonged to his principal namely Mr. Ramani Gangadharan and he executed a Power of Attorney Deed in favour of the



Plaintiff and based on the said Power Deed, the Plaintiff mortgaged the said property to the defendant. The mortgage loan was obtained by the Plaintiff only in the capacity of 'agent' of the property and the defendant has to take action only as against the property which was given as security for the mortgage. Per contra, the defendant repeatedly insisted to settle the loan amount even without completing the instalments. After obtaining the loan, the Plaintiff was unable to pay instalments and there are arrears of instalments. When the same was informed to the Principal, he informed that he would request some time to arrange the amount. In the meantime, the defendant sent a letter to the Plaintiff on 09.08.2005, 13.09.2005 and 06.10.2005 stating that they have adjusted the fixed deposit amount towards the mortgage loan and the said loan was closed as per the undertaking given by the Plaintiff. The said mortgage loan was obtained only as an agent of the principal and there is no individual liability and no such undertaking was given by the Plaintiff to the defendant and immediately after the receipt of the letter, the Plaintiff issued a notice dated 08.10.2005 informing that the defendant has no right to make any such adjustment and if anything made, those transactions are not valid. The defendant adjusted the Fixed Deposit receipts of the family members of the Plaintiff without taking any action against the property, which was mortgaged for the loan. The mortgage loan was created, as a Power Agent of the Principal and without any basis, the defendant adjusted the fixed deposit amounts for the mortgage loan and



therefore, the Plaintiff filed the Suit.

4. The *case of the defendant* is that the Plaintiff had approached the defendant seeking financial assistance and obtained loan of Rs.3 lakhs on 10.03.2005 after mortgaging the property. The Plaintiff approached the defendant and obtained loan on his personal capacity and the loan was sanctioned on his personal capacity and not as a Power Agent of his Principal. The amount was disbursed to the Plaintiff and in lieu of the same, he executed a Promissory Note and a Deed of Mortgage was executed on 14.03.2005 in his independent and individual capacity. After having enjoyed the amount borrowed from the defendant, the Plaintiff cannot say that he obtained loan on behalf of the Principal and not on his personal capacity. The Plaintiff had three Fixed Deposits with the defendant, each for a sum of Rs.60,300/- and the same was taken as security and if any default committed by the Plaintiff, the defendant automatically gains a charge over the said deposit amounts and the adjustment of the said fixed deposit amounts was informed to the Plaintiff and the same was deliberately suppressed by the Plaintiff. After several reminders caused on the Plaintiff, he came forward to execute a declaration deed dated 21.08.2005 whereby he authorized the defendant to adjust the fixed deposit amounts towards the dues payable by him. The said declaration deed was executed after the receipt of defendant's reminder dated 09.08.2005. Pursuant to the said authorization, the defendant adjusted the amount in the Plaintiff's



fixed deposits towards his dues. The Plaintiff has not approached this Court with clean hands and suppressed the material facts and therefore, the Suit is liable to be dismissed.

5. The trial Court, after perusing the pleadings, documents and hearing both sides, framed the following issues for trial.

1. *Is it true that the Suit mortgage was executed by the Plaintiff as Power of Attorney of Mr. Ramani Gangadharan.*
2. *Is it true whether the Plaintiff had deposited amount in three fixed deposits with the defendant.*
3. *Is it true that the Plaintiff had executed a declaration to authorize the defendant to adjust the fixed deposit amount towards the loan payable by him.*
4. *Whether the Plaintiff is entitled for the decree as prayed for.*
5. *To what other relief?*

6. Before the trial Court, on the side of the Plaintiff, he was examined as PW1 and marked Ex.A.1 to Ex.A.13 and on the side of the defendant, DW1 was examined and marked Ex.B.1 to Ex.B.3. After analysing the evidences adduced on both sides, the trial Court decreed the Suit. Aggrieved by the said decree and judgment, the defendant has preferred an appeal Suit in A.S. No.188



of 2012 on the file of the IV Additional Judge, City Civil Court, Chennai.

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7. The First Appellate Court after hearing both sides and perusing the records, framed the point for determination that ***whether the judgment and decree passed by the learned I Assistant Judge in O.S. No.8819 of 2005 on 02.04.2008 is liable to be set aside or not.*** During the pendency of the appeal, the First Appellate Court has marked Ex.A.14. Thereafter, the First Appellate Court, after analysing the evidences adduced on either side, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the defendant in the original Suit.

8. This Court, at the time of admitting the second appeal, has formulated the following ***Substantial Questions of Law:***

- a. ***Whether both the Courts below right in holding that the Plaintiff is entitled for the relief of declaration when he executed a declaration letter dated 21.08.2005 which was marked as Ex.B.3 by the defendant.***
- b. ***Whether both the Courts below rightly came to the conclusion that the signature found in Ex.B.3 was not the signature of the Plaintiff when the same was not disputed by the Plaintiff either in Plaint or in his chief examination.***



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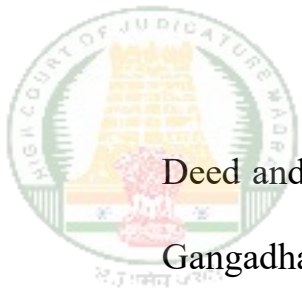
9. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.

10. The learned counsel appearing for the appellant would submit that the Plaintiff obtained loan from the defendant by mortgaging his property on his individual capacity and agreed to repay the said amount with interest and he has also made fixed deposits in the appellant / defendant's benefit fund. After obtaining loan, he was irregular in paying the instalments and thereby, the appellant / defendant issued several letters to the respondent / Plaintiff and thereafter he executed an undertaking letter to adjust the fixed deposits made by the respondent / Plaintiff with the appellant / defendant. Thereby, they adjusted the fixed deposit money and closed the mortgage loan after deducting the payments due to the appellant / defendant. After executing the undertaking letter and after settlement, the respondent / Plaintiff filed the Suit by suppressing the material facts. However, the Courts below failed to appreciate the facts in a proper perspective manner and erroneously decreed the Suit. The undertaking letter given by the respondent / Plaintiff was marked as Ex.B.3. The Courts below failed to appreciate the documents marked as Ex.B.1 to Ex.B.3 on the side of the defendant. The Suit itself is not maintainable for non-joinder of the



necessary party. The Courts below came to erroneous conclusions that the Ex.B.3 is a fabricated document. The explanation of the appellant with regard to Ex.A.6 was also not considered by the Courts below. The Courts below have erroneously compared the signatures found in the vakalat filed in the Plaint with the disputed document and the same is not permissible as per law. The Plaintiff has not denied the borrowal of loan from the defendant and he has to repay the amount. The relief sought for by the Plaintiff in the Suit is not maintainable. Once mortgage deed is executed, the mortgagor and mortgagee are bound to the recitals of the mortgage deed. The Plaintiff never disputed the mortgage deed and not denied the signature found in the Ex.B3, undertaking letter. Therefore, the Courts below have committed error and therefore, the Plaintiff is not entitled for declaration, when he executed the declaration letter dated 21.08.2005 and borrowed amount in his individual capacity. Therefore, the second appeal is liable to be allowed by setting aside the decree and judgments of the Courts below.

11. The learned counsel appearing for the respondent would submit that the Plaintiff approached the defendant benefit fund for obtaining loan by mortgaging the property. The property originally belonged to one Mr. Ramani Gangadharan and he executed a Power deed in favour of the Plaintiff in respect of the property and thereafter, he obtained loan based on the above said Power



Deed and the loan was obtained on behalf of the Principal namely Mr. Ramani Gangadharan. When there was default in the payment of loan amount, the defendant without any information, adjusted the fixed deposit amount made by the Plaintiff in the defendant's finance company. The defendant is not entitled to adjust the loan amount from the deposits made by the Plaintiff in the finance company on his individual capacity. The Plaintiff stoutly denied the alleged execution of declaration deed, while so, it is the duty of the defendant to prove the said execution of declaration deed and the same has not been proved by the defendant and the defendant also failed to produce any document as to what was the loan due and how much amount was adjusted. He has only relied upon Ex.B.1 to Ex.b.3. In those documents, nowhere stated about the adjustment of amount from the deposits made by the Plaintiff and also what was the amount due on the date of closure of loan. When there is a mortgage deed executed by the Plaintiff, there is no necessity to give undertaking letter for adjusting the deposit receipts. Therefore, taking advantage of the deposit receipts deposited in the defendant's finance company, without the knowledge of the Plaintiff, they adjusted the said amount for closure of the loan and the same is against law. Therefore, the Plaintiff filed the Suit and the Courts below have correctly appreciated the facts and law and decreed the Suit. Both the Courts rendered concurrent findings and this Court need not interfere with the concurrent findings without any valid grounds and there is no substantial question of law is



involved in this case and therefore, the second appeal is liable to be dismissed.

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12. This Court heard both sides and perused the entire materials available on record.

13. In this case, there is no dispute that the respondent / Plaintiff had borrowed money from the appellant / defendant to the tune of Rs.3 lakhs and mortgaged the Suit property. It is also not disputed that the Suit property is belonging to one Mr. Ramani Gangadharan and he executed a Power of Deed in favour of the respondent /Plaintiff. While so, the defendant knows very well that the Plaintiff is not an owner of the property and he is only a power holder of that property and the original owner is Mr. Ramani Gangadharan, thereby, he offered loan to the Plaintiff. On a careful perusal of the Mortgage Deed, it reveals that the Plaintiff executed a Mortgage Deed based on the Deed of Power of Attorney dated 31.8.2001 and the Mortgagor is the share holder of the Mortgagee / Fund and obtained loan of Rs.3 lakhs on the security of the property described in the schedule.

14. The recitals of the Mortgage Deed in Para 8 and 10 read as follows:-



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“8. It is hereby expressly agreed that should the Mortgagor fail to pay subscription towards the Regular Loan and / or interest thereon for a period of six months consecutively or on the aggregate. The Mortgagee will call upon the Mortgagor by a notice in writing to pay up all the arrears of subscription as well as interest due and that should the Mortgagor fail to do. So the Mortgagee shall after expiry of two months from the date of service of the said notice be at liberty to close the loan account and the balance amount remaining due and payable thereafter shall be treated as arrears and that such amount shall carry interest at 24.8% per annum.

10. It is also agreed and declared that the said notice for closure of account referred to in paragraph in these presents shall not be a bar to the Mortgagee's right to sell the property hereby mortgaged by public auction or private treaty as herein before provided and that the aforesaid right to sell the property hereby mortgaged by public Auction or private treaty shall also not be a bar to the institution of a regular suit for the recovery of the



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amounts due and payable under these presents if the Mortgagee so chooses”.

15. Therefore as per the recitals of the Mortgage Deed as against the Mortgage money, the defendant is entitled to sell the property by a public auction or private treaty. Nowhere it is mentioned about the deposit receipts in the name of the Plaintiff in the Mortgage Deed. In the Written statement, the defendant stated that the Plaintiff had three fixed deposits with the defendant for a sum of Rs.60,300/- each and that amount was also taken into consideration as a security, when the loan was sanctioned to the Plaintiff and on the default committed by the Plaintiff, the defendant automatically gains charge over the said deposit amounts. There are no recitals in the Mortgage Deed as about the said fixed deposits. Per contra, in the pleadings, the defendant pleaded in Para 9 of the Written Statement that the fixed deposit amounts were also taken into consideration as a security. When those deposit receipts were taken into consideration for security, what prevented the defendant to mention in the Mortgage deed about the said deposits. Once the said deposits were taken into consideration as security for the loan, why once again declaration was granted on 21.08.2005 when the mortgage was executed on 14.03.2005 has to be explained by the defendant. There is no explanation by the defendant to that regard.



16. Moreover, when the Plaintiff denied the execution of said Ex.B.3 declaration letter by authorizing the defendant to adjust the fixed deposit amounts, it is the duty of the defendant to prove that the Plaintiff had executed the said deed. Once the defendant pleaded that the Plaintiff obtained loan and the three fixed deposits were taken into consideration as security, without any recitals in the mortgage deed and after 5 months, execution of declaration deed would not arise. Therefore, the defendant failed to prove that the declaration deed was duly executed by the Plaintiff. As per the mortgage deed, the loan amount has to be repaid in 60 EMIs of Rs.8,116/- per month and the 1st instalment payable on or before 31.03.2025. But the alleged loan was closed prior to the due date of instalment. As per Ex.A4 letter from the appellant to the respondent, the loan amount was closed after adjusting the amount from the fixed deposit accounts. In the said letter, Ex.A.4 dated 06.10.2005, there is no mention about the date of closure of the loan account and details of due payable by the Plaintiff and adjusted amount for the due and details of remaining amount.

17. As per the letter dated 15.07.2005 and 09.08.2005, Ex.A7 and Ex.A8, the total amount overdue as on 09.08.2005 is Rs.55,426.55. While so, when the deposit accounts were closed and adjusted the amount to the EMI of



the loan account, what is the due on the date of closure, has not been disclosed by the defendant in the written statement. Once the defendant sanctioned the loan, based on the mortgage, it is the duty of the defendant to explain as to how he adjusted the deposits made by the Plaintiff and what was the principal amount, what was the interest and what was the deposit amount and how it was adjusted have to be explained, but there is no explanation either in the written statement or through any evidence.

18. As per Ex.A.9 to Ex.A.12, the deposit receipts four deposit receipts were marked, each for a sum of Rs.60,500/- and the date of maturity is 18.03.2006, 19.03.2006, 20.03.2006 and 21.03.2006 respectively. The period of deposit was 12 months and rate of interest was 10%. While so, how the principal amount of Rs.3 lakhs along with interest was adjusted has to be explained by the defendant. But there is no explanation to that regard. There is no any reference in the demand letters issued by the defendant in respect of the adjustment of deposit money. Even as per the Ex.B.3 dated 21.08.2005, the authorization was given for the amount of Rs.4,06,700/- and those deposit receipts have not been produced by the defendant. On a perusal of Ex.A.9 to Ex.A.12, the maturity date is in the year 2006. But those deposits were closed prior to the maturity dates. If so, what was the interest for those deposits accounts have not been explained. The trial Court in the judgment, discussed



that the Plaintiff has mortgaged the property on his personal and individual capacity and not as a Power of Attorney agent of namely Mr. Ramani Gangadharan. However, relied upon the documents filed by the Plaintiff viz., Ex.A.4 letter dated 06.10.2005 from the defendant in respect of the information for the amount adjusted towards the loan account, Ex.A5, notice given by the defendant to the Plaintiff on 31.10.2005 and Ex.A.6, the reminder letter issued by the defendant to the Plaintiff dated 13.09.2005. If Ex.B.3 dated 21.08.2005 was executed by the Plaintiff in favour of the defendant, why the reminder letter i.e., Ex.A.6 dated 13.09.2005 was issued by the defendant to the Plaintiff. There was no reference about the declaration letter dated 21.08.2005. Further, DW1 during his cross examination stated that it is true that Ex.A.6 was issued on 13.09.2005 and he is not in a position to say as to which receipt was adjusted for the loan amount.

19. The Fixed Deposit Nos.24070, 24071 and 24072 were deposited in the name of the wife of the Plaintiff and DW1 was also admitted that the Plaintiff's wife did not sent a letter of declaration and also the trial Court has not compared the signatures found in Ex.B.3 with the signature found in the Vakalat in the Plaint and decreed the Suit and the First Appellate Court compared the signatures alone with Vakalath and Plaint. As far as the findings in respect of Ex.B.3 that it has not been proved by the defendant is based on the



evidences and the comparison of signatures is in addition to the oral and documentary evidences. Therefore, the First Appellate Court has not solely relied upon the comparison of signatures. It is not proper to compare the disputed signatures with the signatures found in the Vakalat and in the Plaint. However, the trial Court is not solely relied upon the comparison made by it. Therefore, the trial Court came to a fair conclusion that the said Ex.B.3 has not been proved.

20. The First Appellate Court also in the judgment, discussed that when the Plaintiff denied the execution of Ex.B.3, declaration letter, the burden of proof lying on the shoulder of the defendant and the mortgage deed was executed on 14.03.2005. As per Ex.A.7, the defendant informed the Plaintiff that the overdue amount for the four installments including interest and other charges is Rs.35,852.55 and again through Ex.A8 dated 09.08.2005, the defendant called upon the Plaintiff to pay 6 installment amounts with interest and overdue amount to the tune of Rs.55,426.55. While so, the stand taken by the defendant that the Plaintiff executed Ex.B.3 dated 21.08.2005 for adjusting the fixed deposit amounts to the tune of Rs.4,06,700/- is not necessary. Further, when the defendant sent a letter to the Plaintiff on 13.09.2005 without referring execution of Ex.B.3 also raises a great doubt and suspicious about the Ex.B.3 declaration and therefore, dismissed the appeal.



amount adjusted from the fixed deposits of the Plaintiff. The above said conduct of the defendant would show that Ex.B.3 is only a created document by the defendant. Moreover, when the deposits were made for 10% interest and even if any due for the loan amount, as on date what was the amount to be adjusted from the fixed deposit receipts. When the loan amount is only for Rs.3 lakhs and the fixed deposit receipts are for the amount of Rs.4,06,000/-, how those deposits were foreclosed and what was the amount adjusted has to be explained by the defendant and there is no any evidence to that regard to explain that aspect. Therefore, execution of Ex.B.3 itself creates serious doubt and the defendant failed to prove Ex.B.3. Thereby, the Courts below are right in holding that the Plaintiff is entitled for declaration by holding that Ex.B.3 dated 21.08.2005 has not been proved. Thus, the *1st substantial question of law is answered.*

23. As far as the *2nd substantial question of law that Whether both the Courts below rightly came to the conclusion that the signature found in Ex.B.3 was not the signature of the Plaintiff when the same was not disputed by the Plaintiff either in Plaint or in his chief examination, is concerned*, the trial Court has not discussed about the signatures found in the Vakalat and the Plaint. The First Appellate Court in its judgement discussed about the comparison made by the Court. The First Appellate Court compared the



signature found in the Ex.B.3 along with the Complaint and Vakalat. It is a well settled law that as far as the comparison of signatures by the Court by invoking Section 73 of Evidence Act is concerned, the Courts have power. However, the signatures found in the Vakalat and Complaint cannot be compared with the disputed documents and the admitted signatures should be compared with the disputed signature for a contemporary period. Therefore, the First Appellate Court should not compare the signatures found in the Vakalat and Complaint with the disputed document, Ex.B.3. However, the First Appellate Court has not come to the conclusion that only based on the comparison of signatures. The Appellate Court categorically discussed about Ex.A6 and Ex.B.3 is prior to Ex.A6, reminder letter. But in the Ex.A.6, there is no mention about the execution of Ex.B.3 and also discussed about the other circumstances and held that Ex.B.3 has not been proved. Therefore, the First Appellate Court has not come to a conclusion only based on the comparison of signatures, but based on the oral and documentary evidences.

24. At this juncture, the learned counsel appearing for the appellant has relied upon the following judgments:

(I) M.A. Velappan v. Karthic Worms, A Partnership Firm, rep. By its Partner A. Rathinagiri and others reported in 2011 (1) MWN (Civil) 843.

(ii) M. Gandhimathi and another v. P. Baskaran and another



reported in 2018 SCC OnLine Mad 12525.

(iii) P. Eswaramoorthy and another v. S. Chinnadurai in C.R.P.

(PD) No.2173 of 2015.

25. On a careful perusal of the above judgments, it is clear that disputed signatures cannot be compared with Vakalat and pleadings and the Court as a matter of Prudence and caution, should be hesitant in giving its findings with regard to the identity of the disputed signatures and the admitted signatures and it is not advisable on the part of the Court to take upon itself the task of comparing the admitted signatures with the disputed one to find out whether the two agree with each other and the prudent course is to obtain the opinion and assistance of an expert. In the case on hand also, the First Appellate Court compared the signatures found in the Vakalat and Plaint along with the disputed document, but the First Appellate Court has not come to a conclusion solely based on the comparison of signatures, but mainly relied upon the oral and documentary evidences adduced by both the parties. Therefore, the above said case laws are noway helpful to decide the case in favour of the appellant / defendant.

26. Therefore, the Courts below came to fair conclusions and decreed the Suit. Both the Courts have rendered concurrent findings and there are no



grounds to interfere with the concurrent findings of the Courts below. Therefore, this Court need not interfere with the judgments and decree of the Courts below.

27. In view of the above discussions made supra and the answers to the substantial questions of law, this Court is of the opinion that this second appeal has no merits and deserves to be dismissed.

28. Accordingly, the second appeal is *dismissed. There shall be no order as to costs.*

11-12-2025

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Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No



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