

S. Ganapathy Vs. P. Ganapathy

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Court : Chennai Madurai

Decided On : Nov-01-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : S.A.No. 1752 of 2000

Appellant : S. Ganapathy

Respondent : P. Ganapathy

Judgement :

(Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 05.10.1998, made in O.S.No.406 of 1996 on the file of the I Additional District Munsif Court, Tirunelveli, as reversed in A.S.No.35 of 1999, dated 19.06.2000, on the file of the Principal District Court, Tirunelveli.)

1. This Second Appeal has been filed against the judgment and decree dated 19.06.2000, made in A.S.No.35 of 1999 on the file of the Principal District Court, Tirunelveli, reversing the judgment and decree dated 05.10.1998, made in O.S.No.406 of 1996 on the file of the I Additional District Munsif Court, Tirunelveli.

2. The appellant is the defendant, who succeeded in the Trial Court, but lost in the first appellate Court.

3. Facts of the case:

(i) The respondent filed a suit in O.S.No.406 of 1996 before the I Additional District Munsif Court, Tirunelveli, for recovery of money, based on the promissory note, dated 21.06.1992.

(ii) According to the respondent, the appellant borrowed a sum of Rs.15,000/- and executed a promissory note, dated 21.06.1992. The appellant did not pay the amount to the respondent. The counsel for the respondent sent a Telegram dated 18.09.1994 calling upon the appellant to repay the amounts. The appellant sent a reply dated 21.09.1994, denying the borrowal of a sum of Rs.15,000/- and execution of the promissory note. Hence, the respondent has filed the suit.

(iii) The appellant filed written statement denying the borrowal of the amount and execution of promissory note and contended that he is not liable to pay any amount to the respondent.

4. The Trial Court based on the pleadings, framed necessary issues.

5. Before the Trial Court, the respondent examined himself as P.W.1 and one Madasamy was examined as P.W.2 and marked three documents as Exs.A.1 to A.3. On behalf of the appellant, the appellant examined himself as D.W.1 and he did not mark any document.

6. The learned I Additional District Munsif, Tirunelveli, comparing the signature in Ex.A.1 with the admitted signature in the Vakalath and written statement and also the signature in the deposition, came to the conclusion that the signature in Ex.A.1 differ from the admitted signature and held that Ex.A.1 was not executed by the appellant and that the scribe of the document was not examined and accordingly, dismissed the suit.

7. Against the said judgment and decree, dated 05.10.1998, the respondent has filed A.S.No.35 of 1999 before the Principal District Court, Tirunelveli and contended that the learned I Additional District Munsif erred in presuming that the appellant did not execute the promissory note. By the evidence of P.Ws.1 and 2, the respondent has discharged the burden of proof with regard to the execution of Ex.A.1 Promissory Note by the appellant. The appellant has not let in any

acceptable evidence to rebut the presumption as contemplated under Section 118 of the Negotiable Instruments Act [hereinafter referred to as the Act] and also contended that the non-examination of scribe is not fatal to the suit.

8. The appellant contended before the first appellate Court that by evidence of P.Ws.1 and 2, the respondent cannot prove the execution of the promissory note. The learned I Additional District Munsif, has considered the signature in Ex.A.1 Promissory Note and signature in the vakalath, written statement and deposition of the appellant and had given valid reason for his conclusion that the appellant has not executed Ex.A.1 Promissory Note.

9. The learned Principal District Judge, Tirunelveli, framed necessary points for consideration.

10. The learned Principal District Judge, Tirunelveli, considering the pleadings, oral and documentary evidence, judgment of the Trial Court, allowed the appeal on the ground that comparing admitted signature in vakalath, written statement and deposition will not lead to correct conclusion with regard to genuineness of signature of the appellant in Ex.A.1 Promissory Note. The learned Principal District Judge also held that even the Handwriting Expert may not be in a position to come to the correct conclusion as to the signature in the vakalath, written statement and deposition would be put in a conscious manner. Further, the learned Principal District Judge held that the appellant has taken inconsistent stand with regard to his signature in Ex.A.1 Promissory Note.

11. Against the said judgment and decree, dated 19.06.2000, the present second appeal is filed.

12. At the time of admitting the second appeal, this Court framed the following substantial questions of law:

(1) Whether the findings of the Courts below are vitiated by its failure to consider the discrepancies in the signature of the appellant in Ex.A.1 and the evidence of P.W.1 and the non-examination of the scribe?

(2) Whether the Courts below is right in raising the presumption under Section 118 of the Negotiable Instruments Act in the absence of any proof regarding the due execution of the promissory note?

13. The learned counsel for the appellant contended that once the signature in the promissory note and the execution of promissory note are disputed, the burden is on the respondent to prove the signature, the execution of the promissory note and the payment of consideration. The respondent failed to discharge his burden by examining the scribe of the document. The learned counsel for the appellant further submitted that the Trial Court compared the disputed signature in Ex.A.1 Promissory Note with the admitted signatures in the vakalath, written statement and deposition and came to the conclusion that there is a difference in the admitted signature and disputed signature and also considering all the materials on record, dismissed the suit. The learned counsel for the appellant also submitted that the learned Principal District Judge without giving proper reason, reversed the well considered judgment of the Trial Court and thereby, committed an error in law.

14. In support of his submissions, the learned counsel for the appellant relied on the following Judgments:

(i) M.Rani Vs. A.Bala @ Palaniammal [2015 (2) LW 381], wherein at paragraph 21, it has been held as follows:

21. While appreciating the evidence adduced before it, the Court may encounter a situation to compare the disputed signatures in a document with the admitted signatures in some documents. In such circumstances, under Section 73 of the Indian Evidence Act, Courts have been given powers to do it. It cannot be said that Courts have no such power. It is a statutory power (See N.S.Arumugam Vs. Trishul Traders and others (2006 (2) L.W. 167) and K.S.Satyanarayana Vs. V.R.Narayana Rao (AIR 1999 SCC 2544)).

(ii) Ramasamy Udayar Vs. Pavoonaamal [2014 (2) MWN (Civil) 1], wherein at paragraph 16, it has been held as follows:

16. In view of the above proposition, I am inclined to follow the decision of the Division Bench of this Court rendered in Central Bank of India v. Antony Hardware Mart (cited supra), subsequent to the decision cited by the learned Counsel for the Respondent as per which it is the duty of the Plaintiff to establish his case when the Defendant denied the execution of the Promissory Note. The Plaintiff having failed to discharge the burden cast upon him, cannot take advantage of the fact that the Court had compared the signatures and found the signature of the Defendant to be the same.

As stated earlier, the Plaintiff either should have taken out an Application to send the document to an expert and proved the execution or should have proved the execution of the document in any other means, viz., oral evidence, etc. Having failed to discharge the burden cast upon the Plaintiff, he cannot be allowed to succeed. The substantial question of law is answered accordingly in favour of the appellant.

....

(iii) M.Varadharajan Vs. V.Balasubramanian [2016 (1) MLJ 169], wherein at paragraph 18, it has been held as follows:

18. At the same time, the Court is not precluded from comparing the handwriting/signature in the disputed document with the admitted handwriting/signature in the document of the party concerned. This is possible under Section 73 of the Evidence Act. The Expert opinion under Section 45 of the Evidence Act is not conclusive proof of fact. It is only an opinion to guide the Court to arrive at a correct conclusion as to whether the disputed signature was made by the individual concerned or not. Thus, it involves an adjudication by the Court. For such adjudication, the Court can take the help of the expert or the Court itself may compare under Section 73 of the Evidence Act. If the Court finds that it is too difficult to arrive at a conclusion by mere comparison as provided under Section 73 of the Evidence Act, then, the Court may, in addition, seek opinion from an Expert so as to get the assistance of Expert. Here, in the instant case, even in the absence of Expert opinion and in the absence of comparison under Section 73 of the Evidence Act by the Court itself, the plaintiff is bound to lose the case

because, the plaintiff has failed to discharge his burden to prove the execution of Ex.A.1. For these reasons, the reversal of the decree and judgment of the trial Court by the First Appellate Court deserves to be confirmed. Thus, I do not find any merit at all in this second appeal.

15. Per contra, the learned counsel for the respondent contended that the Trial Court failed to see that there is no specific denial by the appellant with regard to execution of Ex.A.1 Promissory Note. The Trial Court ought to have seen that the appellant admitted that he signed in a blank paper and contended that the respondent fabricated Ex.A.1 Promissory Note. Once the signature in Ex.A.1 is admitted, it has to be presumed as per Section 118 of the Act and the appellant failed to rebut the said presumption.

16. In support of his submission, the learned counsel for the respondent relied on the following Judgments:

(i) V.K.Jaishankar and another Vs. G.Nambirajan and others [2007 (1) LW 509], wherein at paragraph 16, it has been held as follows:-

16. Therefore, in the absence of such specific pleading in the written statement, the oral evidence adduced by the appellants herein/defendants 1 and 2 to prove the adoption could not be looked into. It is settled law that any amount of oral evidence in the absence of pleadings, cannot be looked into.

(ii) Union of India Vs. Ibrahim Uddin and another [2012 (4) LW 359], wherein at paragraph 69(vii), it has been held as follows:-

69 (vii). The court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the Court, it is just to be ignored. Though it may be a different case where in spite of specific pleadings, a particular issue is not framed and parties having full knowledge of the issue in controversy lead the evidence and the court records a finding on it.

(iii) S.Chinnathai Vs. K.C.Chinnadura [2010 (1) LW 646], wherein at paragraph 18(5), it has been held as follows:

18 (5). The civil Court cannot direct the disputed document to be compared with the vakalat or written statement of a party.

17. I have carefully perused all the materials available on record, the judgment and decree of the Courts below and considered the arguments advanced by the learned counsel appearing for the parties.

18. The respondent filed the suit on the ground that the appellant borrowed a sum of Rs.15,000/- and executed Promissory Note and he did not repay the amount. The appellant denied the borrowal and execution of the promissory note. Contrary to the said plea, the appellant has stated that he introduced the employees of Thirumalai Mill to the respondent, who lent money to them on the basis of the Promissory Notes. At that time, the respondent took the signature of the appellant in a blank paper and subsequently, fabricated Ex.A.1 Promissory Note. From this stand taken by the appellant, it is clear that he has admitted his signature in Ex.A.1. In the circumstances, the question of comparing the signatures of the appellant in the vakalath, written statement and deposition of the appellant, does not arise. Further, these documents are not contemporaneous documents. The learned I Additional District Munsif failed to consider the admission of the appellant about the signature in Ex.A.1 Promissory Note and erred in comparing the signatures in the vakalath, written statement and deposition. Further, the respondent as P.W.1 has deposed that the appellant had borrowed money and executed the document. In these circumstances, the reasoning given by the learned I Additional District Munsif with regard to discrepancy in the signature of the appellant in Ex.A.1 Promissory Note, is invalid. Therefore, the substantial questions of law are answered against the appellant.

19. In the result, the second appeal is dismissed, confirming the judgment and decree of the first appellate Court, dated 19.06.2000, made in A.S.No.35 of 1999 and setting aside the judgment and decree of the Trial Court, dated 05.10.1998, passed in O.S.No.406 of 1996. No costs.