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Court : Chennai

Decided On : Jul-19-1999

Reported in : AIR2000Mad239; 1999(3)CTC156; (1999)3MLJ710

Judge : S.S. Subramani, J.

Acts : Evidence Act, 1872 -- Sections 73; Code of Civil Procedure (CPC), 1908 -- Sections 115

Appeal No. : Civil Revision Petition No. 263 of 1998

Appellant : Somasundaram

Respondent : Palani

Advocate for Def. : Mr. M. Sriram, Adv.

Advocate for Pet/Ap. : Mr. V. Raghavachari, Adv.

Judgement :
ORDER

1. Plaintiff in S.C.No.9 of 1997, on the file of District Munsif's Court, Polur, is the revision petitioner.

2. Suit filed by revision petitioner was one for recovery of money on the basis of a promissory note alleged to have been executed by the respondent herein.

3. It is alleged that as per Ex.A.1 dated 10.1.1994, respondent herein borrowed a sum of Rs. 3,200 from plaintiff, agreeing to pay interest which is also stated in the promissory note. Demand was made under Ex.A.2, to settle the transaction, for which the defendant sent a reply denying the execution and the borrowing. The suit was, therefore, necessitated.

4. In the written statement filed by the defendant, respondent herein, he denied the execution and stated that as between himself and plaintiff, there had been earlier transactions in dealing with paddy, and plaintiff has forged his signature from the accounts and has fabricated the promissory note.

5. The trial Court examined P.W.1 (plaintiff) and also one of the attestors to Ex.A.1 as P.W.2. Defendant examined himself as D.W.1 and another witness as (scribe of Ex.A1) as D.W.2 P.Ws. 1 to 3 were marked on the side of plaintiff, and Exx.D-1 and D-2 were marked on the side of defendant.

6. The lower Court dismissed the suit, and the same is challenged in this revision.

7. One of the main reasons for dismissing the suit is that the lower Court compared the signature in Ex.A.1 with the signature of the defendant in the written statement and vakalath, and found that there is difference. The lower Court took it as a big circumstance against the plaintiff and came to the conclusion that the document is forged. Learned Counsel for petitioner submitted that the procedure adopted by the lower Court is not proper, and a decision should not have been arrived by lower court, mainly relying on the signatures. It was further argued that the comparison is only on the basis of written statement and the vakalat at which came into existence after the reply notice and after the promissory note was filed in Court. No document anterior to the transaction been filed before Court, to prove the admitted signature on the basis of which alone comparison could be made. Learned Counsel further argued that the evidence of PWs. 1 and 2 would conclusively show that the transaction is true. It was further argued that the evidence of D.W.2 should not have been relied on.

8. Learned Counsel for respondent submitted that this Court may not re-appreciate the evidence as it is a court of first appeal, as the same will be beyond the

jurisdiction of this Court under Section 115 of C.P.C. He supported the reasoning of the lower Court, and wanted the revision to be dismissed.

9. After hearing learned Counsel for both parties, I feel that the procedure adopted by the Court below is not proper. As rightly contended by Learned Counsel for petitioner, the main reason for dismissing the suit is based on a comparison of the signature. It is settled law that the Court cannot act as an expert. In a recent decision of the Honourable Supreme Court reported in O. Bharathan v. K. Sudhakaran and another, : AIR 1996 SC1140 . Their Lordships followed an earlier decision of the Supreme Court reported in State Delhi Admn. v. Pali Ram, : 1979 CriLJ17 ' and held as follows in paragraph 18. Relevant portion reads thus:

'Though it is the province of the expert to act as judge or jury after ascientific comparison of the dispute signatures with admitted signatures, thecaution administered by this Court is to the course to be adopted in suchsituations could not have been ignored unmindful of the serious repercussionsarising out of the decision to be ultimately rendered. To quote, it had been heldin Pali Ram, : 1979 CriLJ17 .

'The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing 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.'

The necessity for adhering to the said sound advice and guidance is all the more necessary in a case where hundreds of signatures are disputed, and the striking dissimilarities noticed by the court at the time of trial of the electionpetition.'

10. In an earlier decision of the Honourable Supreme Court reported in Slate of Maharashtra v. Sukhdev Singh, : 1992 CriLJ3454 , it was held thus:

'...Although the section (Section 73 of Evidence Act) specifically empowers the court to compare the disputed writings with the specimen/admitted writings shown to be genuine, prudence demands that the court should be extremely slow in venturing an opinion on the basis of mere comparison, more so, when the quality of evidence in respect of specimen/admitted writings is not of high standard. . ...'

11. Raju, J., as he then was, has also taken a similar view in the decision reported in Dhanakodi Padayachi v. Muthukumaraswami, 1997 (II) M.L.J. 37.

12. The Court below has concluded its judgment in para. 16 thus: Tamil Matter

13. It is clear therefrom that the main reason for dismissing the suit is comparison of the signatures. Even though the Court may have the power to compare the signatures, there most be some admitted signature of the defendant, on the basis of which a comparison will have to be made. In this case, a comparison has been made on the basis of signatures affixed by defendant in the vakalath and written statement, which are documents that have come into existence after the dispute arose, and after the promissory note in question was filed into Court along with plaint. A comparison should not have been made on the basis of those signatures. If that be so, it has to be held that the comparison was not made in accordance with law, even though the Court is empowered to make a comparison.

14. I have gone through the evidence of P.Ws. 1 and 2, and also perused Ex.A-1. On going by their evidence, I feel that the transaction pleaded by plaintiff is true. P.W.2 is one of the attestors to the promissory note, and he has also spoken about the execution of the promissory note and also about the passing of consideration. According to the defendant, the plaintiff might have forged the signature from the accounts maintained by plaintiff in connection with paddy transactions. P.W.1 denies having, maintained any such accounts though he admits that he had paddy dealings with defendant. Again, accounts are being maintained by plaintiff for which the signature of defendant is not necessary. It is not the case of defendant that he has affixed his signatures in the so called

accounts. If there were accounts, nothing prevented the plaintiff from producing the accounts and file the suit on that basis. The evidence of D.W.2 also should not have been relied on. If we are to act on the evidence of D.W.2, the Court will have to take him as a party to the fraud. There is no necessity for a document writer to write a promissory note, especially when Ex.A.1 is in a printed form, and, except the amount and signature, all other details are printed. The lower Court has found fault with the evidence of P.W.1 on the ground that some portions of Ex.A.1 seem to have been obliterated. It assumed that the plaintiff wanted to give a colour of genuineness for the same. I do not find any justification in coming to that conclusion when the defendant himself has no such case.

15. I find that the judgment of the Court below is illegal, and that the lower Court has not considered relevant materials, but at the same time, it has considered irrelevant materials and has based its conclusion on the same.

16. In the result, the judgment of the Court below is set aside, and the Revision is allowed. S.C.No.9 of 1997, on the file of District Munsif's Court, Polur, is decreed with costs. Revision petitioner is entitled to costs in this Revision also.

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