

Muthayya Pillai Vs. Velusami

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Court : Chennai

Decided On : Oct-21-1909

Reported in : 5Ind.Cas.511

Judge : Munro and ;Abdur Rahim, JJ.

Appellant : Muthayya Pillai

Respondent : Velusami

Judgement :

1. The suit was on a promissory-note alleged to have been executed by the defendant. The defendant denied execution and contended that on the date of the note he was not at Sholavandan where the note is said to have been executed. The plaintiff and two attesting witnesses swore to the execution of the note by the defendant and to the passing of consideration, and nothing was brought out in cross-examination sufficient to throw suspicion upon their evidence. It is said that one of the attesting witnesses did not appear when summoned to appear in the District Court. The witnesses have already been cross-examined and discharged in the Sub-Court and nothing adverse to the truth of his testimony can be inferred merely because he failed to attend for fresh cross-examination. There may have been quite innocent reasons for his non-appearance and if his attendance was thought very necessary a warrant could have been issued ; nor do we think that the fact that one of the attesting witnesses on one occasion gave evidence for the other shows that there is necessarily any such connection between them as to

make them join together to give false evidence in the plaintiff's favour. On this evidence, unless satisfactorily rebutted, the plaintiff is entitled to a decree. The main defence is alibi. The defendant says in his evidence he left Madura on the 10th May 1907 and did not return till the afternoon of the 14th a statement which differs from what he said in his written statement where he alleged that he was absent till the afternoon of the 13th. He says he went to Mantapam in order to play football for the Pamban team and that the match took place on the 11th, 12th and 13th May. In support of this story the post cards Exhibits I and II have been filed. Exhibit I is a post card dated 11th May and bearing the Mandapam post mark of the 12th May. It is addressed to the defendant as a traveller staying at the Mandapam Choultry, and the defendant's 3rd witness the Brahmin cook at the Choultry was examined to show that the postman gave Exhibit I to him and that he handed it over to the defendant. Now it appears from this witness's evidence that the defendant was in the habit of going to the Choultry and that letters were addressed to him there and received by the witness. It is thus quite possible that the witness at various times handed letters to the defendant, but the question is whether he handed Exhibit I on the 12th May; and it is there the evidence fails. The witness was clearly unable to distinguish Exhibit I, for he mistook Exhibit II for it, and we do not think any reliance can be placed upon his evidence as supporting the alibi set up. The defendant's 2nd witness is the writer of Exhibit I. He says the defendant told him he was going to Pamban the day before he wrote Exhibit I and that he asked him to bring some dried fish. This being so there was absolutely no necessity for the defendant's 2nd witness to write Exhibit I and it is curious how Exhibit II, purports to be the reply written by the defendant on receipt of Exhibit I. It is dated, Mandapam, 12th May, but begins 'Your letter was received on the evening of the 12th instant' which is curious if the defendant was really writing on the 12th. Exhibit II, did not reach Madura till the 14th May as the post mark shows. We think that very grave suspicion attaches to Exhibits I & II and that, if they came into existence on the dates they bear, there is good reason for thinking they were brought into existence with a view to a future denial of the suit note. The defendant's 5th and 6th witnesses may be speaking the truth when they say the defendant played a football match at Pamban in May 1907, but no reliance can be placed upon their evidence as to the exact date. Undue importance has been

attached by the District Judge to the evidence of the defendant's 4th witness who speaks of certain conversations with the plaintiff regarding which the plaintiff was not questioned, as he certainly should have been. As to the suit note itself we see no reason for condemning it as a forgery on any ground connected with handwriting. Exhibits II and VI are sufficient to show that the defendant has a very considerable mastery of the pen and is accustomed to write in different styles. As to Exhibits B and C series we are not satisfied, they are forgeries and it is difficult to understand' why they should have been forged. We do not attach importance to the fact, if fact it is, that the amount due to Kandaswamy Servai was less than the amount mentioned in Exhibit A. The plaintiff was not concerned to ascertain the exact amount due and may have taken the defendant's word for it. We reverse the decree of the District Judge and give the plaintiff a decree for the amount claimed with interest at 12 per cent, per annum on the principal of Rs. 313 from the date of suit till this date and with interest at 6 per cent, per annum on the aggregate from this date till payment with costs throughout.

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