

Ramiah Vs. Manickavasagam

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Court : Chennai

Decided On : Aug-08-2000

Reported in : 2000(4)CTC675

Judge : K. Sampath, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) -- Sections 100; [Evidence Act, 1872](#) -- Sections 72

Appeal No. : S.A. No. 679 of 1989

Appellant : Ramiah

Respondent : Manickavasagam

Advocate for Def. : Mr. R. Kannan, Adv.

Advocate for Pet/Ap. : Mr. Y.K. Rajagopal, Adv.

Judgement :

ORDER

1. The defendant in O.S.No.266 of 1987 on the file of the District Munsif, Thirumangalam, is the appellant in the second appeal. The respondent herein filed the suit against the appellant for recovery of moneys due under a promissory note alleged to have been executed by the appellant on 27.4.1984.

2. The defence set up by the appellant was that he had not received any amount from the respondent; he had not executed any promissory note in his favour; his signature had been forged and the suit promissory note had been created. The further case of the appellant was that the respondent was having a cloth shop. The appellant had introduced many customers to him. His business had become dull and he was under the impression that only at the instigation of the appellant, the customers were not purchasing from his shop. The respondent had therefore come forward with the false claim.

3. The learned District Munsif framed the necessary issues and on the basis of the materials produced, held that the respondent had not proved that the appellant had executed the suit promissory note and so holding he dismissed the suit by judgment and decree dated 29.10.1987. The respondent filed appeal A.S.No.189 of 1988 before the District Court, Madurai. The learned District Judge by judgment and decree dated 10.1.1989 reversed the decision of the trial Court, found that the appellant had executed the suit promissory note and that there was passing of consideration and allowed the appeal and decreed the suit. Aggrieved, the present second appeal has been filed.

4. At the time of admission the following substantial questions of law were framed for decision in the second appeal:

(1) Whether the plaintiff has discharged the burden of proving Ex.A-1 and

(2) Whether the non-examination of the scribe and the witness is not fatal to the case

5. On the side of the respondent/plaintiff he had examined himself as P.W.1 and marked the suit promissory note. On the side of the appellant he had examined himself as P.W.1. He had not filed any document. The specific case of the appellant was that he did not execute a promissory note and it was a forged document. The onus was entirely on the respondent to prove that it was a genuine document. Before the trial Court the learned District Munsif directed the appellant to put his signature on a blank paper and after comparing the signature thus obtained with the disputed signature, found that the document had not been

executed by the appellant. However, the lower Appellate Court placed reliance on the solitary testimony of the respondent/plaintiff as P.W.1 and found that the promissory note had indeed been executed by the appellant.

6. When the appellant had specifically disputed the execution of the promissory note and when even according to the respondent, the scribe and the two attestors were very much available, the respondent ought to have examined them. It is worthwhile extracting the reasoning of the learned District Judge in this regard. It is contained in paragraph 9 of the judgment.

'9. The plaintiff has not examined the attesor of the Ex.A-1. P.W.1 has stated that attesor Pandiyaraj is at Tallakulam, that he is in inimical terms with him and so he refused to come and tender evidence, that Alagaraj is in Kerala, that he does not come and that Mariappa Pillai who had written his pronote has undergone an eye operation and is taking treatment in Aravind Hospital. Thus, he is not in a position to examine the attestors. While so, it would not be fair to criticize the plaintiff for non-examination of any of the attestors on the scribe of the pronote.'

7. The reasoning of the learned District Judge, in my view, is clearly erroneous. When one of the attestors and the scribe were available, they should have been summoned and examined, particularly when the appellant had disputed the very execution of the promissory note. The omission to examine the two persons, in my view, is rather serious and the mere ipse dixit of the respondent as P.W.1f should not have been accepted by the learned District Judge. The learned District Judge relied on the judgment of a learned Single Judge of this Court reported in *Karupiah Moopanar v. Muthukaruppan Servai*, : AIR1975 Mad221 for coming to the conclusion that the document could be accepted without examining either the attesor or the scribe. In my view, the decision has no application to the facts of the present case. That was a case where the executant admitted his signature and it was found totally unnecessary to examine either the attesor or the scribe. The learned Judge who decided that case also adverted to the provisions of Section 72 of the Evidence Act which is to the effect that an attested document not required by law to be attested may be proved as if it was unattested. In the present case execution is not admitted. May be the promissory note does not require to be

attested. But then the specific case of the appellant being that it is a forged document, something more was required of the respondent to prove the document. Thus, I am clearly of the opinion that the conclusion reached by the learned District Judge cannot at all be supported, in the absence of the examination of the attestor and the scribe. It is no excuse to say that one is not traceable and the other has undergone some operation. The respondent has to pay the penalty for this egregious omission.

8. I myself perused the disputed document as also the signatures of the appellant obtained in Court. There is some vague reference in the evidence that the appellant fell down from a tree and sustained injuries. That was about 10 years prior to the date on which he was giving his evidence. The promissory note is dated 27.4.1984 and the appellant was examined on 26.10.1987. That he sustained injury about 10 years prior to 1987 would not mean anything. That mattered little when it came to deciding whether the signature was his or not. The signature in the disputed document and the signatures obtained in Court are all only subsequent to the alleged fall from the tree by the appellant. It is in evidence that he is an illiterate and he learnt to put his signature some 10 years back. A comparison of the disputed signature with the signature put by him in Court leaves me with absolutely no doubt that the suit promissory note is a concocted and a forged document. The signature in the promissory note is the handiwork of a forger. The learned District Judge clearly erred in reversing the decision of the trial Court and decreeing the suit.

9. In view of the discussion above, the substantial questions of law raised for decision are answered against the respondent and in favour of the appellant. The second appeal will stand allowed, the judgment and the decree of the lower Appellate Court are set aside and those of the trial Court restored. There will be no order as to costs.