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Sarojini Vs. Muthu Navithan

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Court : Chennai

Decided On : Jun-11-2002

Reported in : (2002)3MLJ26

Judge : M. Karpagavinayagam, J.

Acts : Evidence Act - Sections 45, 47 and 73

Appeal No. : Second Appeal No. 713 of 2002 and C.M.P. No. 5858 of 2002

Appellant : Sarojini

Respondent : Muthu Navithan

Advocate for Pet/Ap. : D. Krishnakumar, Adv.

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. The appellant/defendant having lost in both the Courts below has filed this second appeal.

2. The respondent filed a suit for recovery of Rs.12,230/- against the appellant. The suit was based on a promissory note executed by the appellant. The trial Court on considering the oral and documentary evidence adduced by both parties

decreed the suit in favour of the plaintiff, the respondent herein. In the appeal filed by the appellant, the said decree was confirmed. Hence, this second appeal.

3. I have heard the counsel for the appellant and gone through the impugned judgments and other records.

4. According to the respondent/plaintiff, the appellant obtained a loan of Rs.10,000/- and executed a promissory note on 6.9.1997. Since the amount was not paid back despite receipt of the notice, he filed a suit against the appellant. On behalf of the plaintiff, the plaintiff and one Loganathan were examined as P.Ws.1 and 2 and Exs.A1 to A3 were marked. On the side of the defendant, the defendant examined herself as D.W.1.

5. The trial Court believed the evidence of P.Ws.1 and 2, who speak about the execution of promissory note by the appellant, and rejected the defence plea by the defendant/appellant that the said promissory note was not executed by her. Further, the trial Court, on comparison of the admitted signatures of the defendant with the signature found in the promissory note Ex.A1, found that the signature found in Ex.A1 was put by the defendant. The appellate Court though would not refer to the comparison done by the trial Court under Section 73 of the Evidence Act, would elaborately discuss the oral and documentary evidence adduced by the plaintiff's side and gave the reasonings for accepting their evidence.

6. While discussing the evidence of D.W.1, both the Courts below would point out that the defendant/appellant has taken a contrary stand while deposing before the Court in the cross-examination. On going through the judgments, it is clear that the stand taken by the defendant in the reply notice and the written statement is different from the statement made before the Court during the course of cross-examination. On that score, the evidence of D.W.1 was disbelieved.

7. It is vehemently argued by the counsel for the appellant that once the defendant makes a plea that Ex.A1 was not signed by her, it is for the plaintiff to prove the contrary and that the trial Court cannot take the work of an Expert by comparing the signatures and come to the conclusion that the defendant has put the signature.

8. This submission, in my view, may not merit consideration, in view of the fact that the Court is entitled to invoke Section 73 of the Evidence Act for comparing the disputed signature with the admitted signature. Furthermore, the trial Court would observe that on a mere look at the documents would prima facie indicate that the signature found in Ex.A1 was of the defendant.

9. When P.Ws.1 and 2 have specifically stated on the strength of Exs.A1 and A2 that the defendant had executed the promissory note, there is no reason to reject their oral evidence, especially in the absence of any motive. Furthermore, the defendant for the reason best known to her did not take steps for comparison of the signature through the Expert.

10. It is pointed out that there are variations in the evidence of P.Ws.1 and 2 with reference to the time at which the promissory note was executed. This variation, in my opinion, would not be enough to discredit the evidence of P.Ws.1 and 2, especially when both the Courts below believed their evidence on the basis of the factual materials placed by those witnesses before the Court.

11. Mr. Krishnakumar, the learned counsel for the appellant would cite the decisions in BOMMA NAICKEN v. CHINNA GOUNDER AND ANOTHER 1998 (3) L.W. 407 MAD and O.BHARATHAN v. K. SUDHAKARAN in order to support his contention that the Court should, as a matter, of prudence and caution, hesitate to base its finding with regard to the identity of a handwriting, solely on comparison made by itself. He would further contend on the basis of these judgments that it is not advisable for a Judge to 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.

12. The decision rendered by this Court in 1998 (3) L.W.407 would not apply to the present facts of the case, as the said case would relate to the comparison of thumb impressions and the comparison of thumb impressions would stand on a different footing, when compared to signatures and the variations in thumb impression cannot be easily judged by the naked eye.

13. Even in : the Supreme Court while dealing with the election petition, said that when there are hundreds of signatures which are disputed, the Court ought not to have resorted to comparison by itself and the same should have been sent to the Expert to get his opinion.

14. Though 1998 (3) L.W.407 would not apply to the present facts of the case as the same would deal with thumb impressions, this Court would refer to the guidelines given by the Supreme Court in the matter of comparison of signatures in the case reported in A.I.R.1967 S.C.1326 (FAKHRUDDIN v. STATE OF M.P.) would, in my opinion, apply to the present facts of the case.

15. As pointed out by the Supreme Court, the evidence of the identity of handwriting receive treatment in three sections of the Indian Evidence Act. They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence. If it is available, the evidence of any other kind is rendered unnecessary. A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an Expert competent to the comparison of handwritings on a scientific basis. A third method under Section 73 is comparison by the Court with a writing admitted to be the writing of that person. Thus, one such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become a Handwriting Expert. This comparison depends on an analysis of the characteristics.

16. In the judgment of a Division Bench of this Court reported in 1993 (1) L.W. 186(MUNISWAMY v. PANDIARAJAN), it was held that it is open to the Court to compare the disputed signature in a document without calling for an Expert witness.

17. Therefore, as per the decision rendered by this Court as well as the Supreme Court, the Court is empowered to compare disputed signature in a document to find out the truth in the light of the other direct evidence available to show that the signature was put by the particular person.

18. In this case, both P.Ws.1 and 2 would specifically state that the signature was put by the defendant and the same has been relied upon by both the Courts below. The finding on the basis of the evidence of these witnesses and the opinion formed by the Court below in regard to signature by invoking Section 73 of the Evidence Act, cannot be said to be perverse. Hence, the second appeal in which no substantial question of law would arise, is liable to be dismissed and accordingly, the same is dismissed. Consequently, C.M.P.No.5858 of 2002 is also dismissed.

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