

Madras High Court

Perumal vs V.Balasubramanian on 31 January, 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.01.2011

Coram:

THE HONOURABLE MR.JUSTICE G.RAJASURIA

S.A.No.1421 of 2010 and
M.P.No.1 of 2010

Perumal .. Appellant

vs.

V.Balasubramanian .. Respondent

This second appeal is filed against the judgment and decree dated 21.08.2008 in

For Appellant	: Mr.R.Sunil Kumar
For Respondent	: Mrs.R.Meenal

J U D G M E N T

This second appeal is focussed by the original defendant animadverting upon the judgement and decree dated 21.08.2008 passed in A.S.No.8 of 2008 by the learned Subordinate Judge, Panruti confirming the judgment and decree of the learned District Munsif, Panruti in O.S.No.193 of 2006. The parties are referred to hereunder according to their litigative status and ranking before the trial Court.

2. The factual matrix relating to this case could tersely and briefly be set out thus:

- (a) The plaintiff filed the suit for recovery of a sum of Rs.50,000/- based on the suit promissory note.
- (b) The written statement was filed denying the signatures in the promissory note by the defendant.
- (c) Whereupon issues were framed by the trial Court.

(d) The plaintiff/Balasubramanian examined himself as P.W.1 along with P.W.2/Subramanian and P.W.3/Ramalingam and Exs.A1 to A4 were marked. The defendant/Perumal examined himself as D.W.1 along with D.W.2/Sezhian and D.W.3/Prabhakaran and Exs.B1 to B15 were marked.

(e) Ultimately the trial Court decreed the suit, as against which appeal was filed for nothing but to be dismissed confirming the judgment and decree of the trial Court.

3. Challenging and impugning the judgments and decrees of both the Courts below, this Second Appeal has been filed on various grounds inter alia to the effect that both the Courts fell into error in not appreciating the oral and documentary evidence establishing unambiguously and unequivocally the plea of alibi as put forth before the Courts by the defendants.

4. The following proposed substantial questions of law are found suggested in the memorandum of Second Appeal:

"(1) Whether the courts below did not err in not considering the fact that a fair presumption arises that the entries made in the ordinary routine of business are correct since such entries usually form a link in the chain of circumstances which, mutually corroborates each other; most entries made in the course of the duty are subject to inspection and scrutiny of several persons including public authorities?

(2) Whether the courts below did not err in decreeing the suit despite the fact that when the course of the business is usually followed is proved, the probability is that there was no departure from the common course of business in the particular transaction?

(3) Whether the courts below did not err in failing to note that the evidence is offered of facts having direct connection with the facts in question, which lays the foundation to believe that the appellant was not in the village and actually on duty?

(4) Whether the courts below did not err in failing to note that evidence of D.W.2 and 3 had made the fact of the presence of the Appellant highly impossible and highly improbable?

(extracted as such)

5. Both sides have argued the matter relating to the fact as to whether any substantial question of law is involved in this matter. After hearing both sides extensively, I am of the view that there is no substantial question of law is involved in this matter for the reasons set out infra. However, one substantial question of law could be framed as under:

"Whether both the Courts below properly exercised their discretion in awarding pendente lite interest at the rate of 12% per annum, when the borrowal of money by the defendant, ever as per the plaintiff was only for non commercial one and that too for the defendant's daughter's marriage expenses?"

6. The sum and substance of the argument of the learned counsel for the appellant/defendant would run thus:

(a) D.W.3, the staff of Chemfab Alkalies Limited from where the defendant got loaded the lorry for transport, detailed and delineated the relevant facts that on 15th January 2005 at about 9 o'clock the defendant took the tanker lorry with load in it out of Chemfab Alkalies Limited situated at Kalapet, Pondicherry, so as to take it to Karnataka. D.W.2, the staff of the Lorry Company in which the driver was working also would corroborate the testimony of D.W.3 to the effect that the defendant was actually driving the said loaded lorry from Chemfab Alkalies Limited to Karnataka and the oral testimony of both the witnesses was buttressed and fortified by documentary evidence also. However, both the Courts below did not take into account such oral and documentary evidence.

(b) The trial Court also was very much carried away by the inability on the part of the defendant in identifying his own signature in the Vakalat and the written statement before the Court and in fact the Court should not have placed reliance on that piece of evidence for the reason that the defendant being a lorry driver might not have been in a position to identify his signature in the Vakalat and the written statement in isolation and that too when he was prevented from seeing the whole documents concerned.

(c) Both the Courts below fell into error in not taking into account the fact that the plaintiff had not taken any steps to get the impugned signatures in the document examined by an expert.

Accordingly, the learned counsel for the appellant/defendant prays for setting aside the judgments and decrees of both the Courts below and for dismissing the original suit.

7. By way of torpedoing and pulverising the arguments as put forth and set forth on the side of the appellant/defendant, the learned counsel for the respondent/plaintiff would advance her arguments, the gist and kernel of them would run thus:

(a) P.W.2 and P.W.3 the attester of the said promissory note Ex.A1 and the scribe of it respectively would buttress and fortify the case of the plaintiff in the plaint. The plaintiff would depose that the defendant borrowed a sum of Rs.50,000/- on 15.01.2005 in connection with the defendant's daughter's marriage and the plea of alibi as put forth on the side of the defendant is totally unbelievable.

(b) The distance between Kalapet in Pondichery and Panapakkam Village in Panruti Taluk is short only and in such a case, the question of alibi has been rightly rejected by both the Courts below. The trial Court threadbare discussed the evidence and arrived at the conclusion that the plea of alibi was incorrect. However, the plaintiff proved the case convincingly. As against the finding of facts by the Courts below, this Court while exercising jurisdiction under Section 100 of CPC might not be justified in interfering with such findings.

(c) She would also submit that pendente lite interest at the rate of 12% per annum in the present day context, is quite reasonable warranting no interference in the Second Appeal.

Accordingly, the learned counsel for the respondent/plaintiff prays for dismissing the Second Appeal.

8. The onus of proof is on the plaintiff to prove the case because the defendant in the pre litigation notice as well as in the written statement denied his signatures in Ex.A1. The core question arises as to whether in all such cases of denial of the signature in the suit pro note, the plaintiff is duty bound to get such purported signature examined by an handwriting expert. The answer is at once clear that invariably in all cases, the Court cannot expect the plaintiff to get the assistance of an handwriting expert to verify the genuineness of the signature, simply because the defendant denied it. Here P.W.2 the attesor of Ex.A.1-the pro note and P.W.3-the scribe of Ex.A1 would cogently and convincingly in unison would depose that they had witnessed the defendant borrowing a sum of Rs.50,000/- from the plaintiff and executing the pro note in the printed format.

9. Indubitably and indisputably two signatures were found in the promissory note as correctly observed by the Courts below. One signature is found on the revenue stamp and another signature is found below it. Normally a forger might be satisfied by forging the signature on the stamp affixed and leave it, but this is a case where over the stamp as well as below it one could find the signatures of the executant.

10. I am not in agreement with the practice of the Advocates, during trial showing to the witness, only the signature portion by blocking the rest of the document and I would like to lay down as law hereby that the Advocates shall do well to see that such practice is dropped. Even a well educated person might not be in a position to identify his own signature if it is shown to him in isolation as it has been shown in this case. Here the defendant happened to be a driver and perhaps while he was in the witness box he might have got perplexed and in that context, he might have stated as though those signatures were not that of his ownand from that the Court should not jump to the conclusion that the defendant was a man who was having the attitude to deny his signatures.

11. However, I would like to highlight that the other discussions in the judgments of the trial Court are convincing. The trial Court threadbare discussed all the relevant facts and arrived at a comprehensive acceptable conclusion. The distance between Kalapet where Chemfab Alkalies Limited is situated and Panapakam Village, Panruti where the pro note emerged is short. Even assuming that at 9.00 a.m. the lorry left Chemfab Alkalies Limited premises at Kalapet, Pondicherry it cannot be stated that the driver of the vehicle might not have had any opportunity to go to Panruti which was nearby only. Hence, I could see no perversity or illegality in the ratiocination adhered to by the trial Court in arriving at its conclusion.

12. The trial Court also considered the depositions of P.Ws.1 to 3 and nothing abnormal could be noticed in those depositions. Even though the defendant contended that earlier the defendant borrowed a sum of Rs.5,000/- from the plaintiff's father and that he discharged it, yet there is no proof to that effect. The Courts below also considered that the plea of alibi is not found set out in the pre suit reply notice or in the written statement; only during trial the defendant ventured to put forth before the Court such plea of alibi.

13. At this juncture, my mind is redolent and reminiscent of the following decisions of the Hon'ble Apex Court;

(i) (2006) 5 Supreme Court Cases 545 HERO VINOTH (MINOR) VS. SESHAMMAL,

(ii) 2008(4) SCALE 300 KASHMIR SINGH VS. HARNAM SINGH AND ANOTHER.

A mere perusal of those decisions would clearly exemplify and demonstrate that in the Second Appeal this Court while exercising its power under Section 100 of CPC might not be justified in interfering with the concurrent finding of facts by the Courts below, unless there is any perversity or illegality in such appreciation of evidence. Wherefore, I am of the view, that as against the concurrent finding of facts, no interference of this Court is warranted.

14. Section 34 of CPC is clear that awarding of pendente lite interest is purely within the discretion of this Court in non commercial matters and it has to be exercised judiciously. It is clear and quite obvious that the defendant is a poor driver and he borrowed money for the purpose of his daughter's marriage and in such a case awarding of pendente lite interest at the rate of 12% per annum in my opinion is exorbitant and it should be slashed down to 6% per annum. With this slight modification no further interference with the judgments and decrees of both the Courts below is required. Accordingly, this Second Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Gms

31.01.2011

Index : Yes/No

Internet: Yes/No

G.RAJASURIA, J.

gms

To

1. The Subordinate Judge, Panruti.

2. The District Munsif, Panruti.

S.A.No.1421 of 2010

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