

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 10.3.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

S.A.No.609 of 2013

Harikrishnan

...Appellant/Respondent/Plaintiff

vs.

Anbu

...Respondent/Appellant/Defendant

Second Appeal against the judgement and decree dated 7.12.2010 passed by the Principal District Judge, Villupuram, in A.S.No.95 of 2010, reversing the judgement and decree dated 6.1.2010 passed by the Principal District Munsif, Ulundurpet, in O.S.No.147 of 2008.

For appellant

:

Mr.R.Rajarajan

JUDGEMENT

The plaintiff in O.S.No.147 of 2008, on the file of the learned Principal District Munsif, Ulundurpet, is the appellant herein. This is a suit on promissory note. The defendant disputed the execution of the promissory note and the borrowal of money. The trial Court, by judgement and decree dated 6.1.2010 decreed the suit as prayed for. As against the same, the respondent/defendant filed an appeal, in A.S.No.95 of 2010, before the Principal District Judge, Villupuram. By judgement and decree dated 7.12.2010, the lower appellate Court allowed the appeal, set aside the judgement and decree of the trial Court and dismissed the suit. As against the same, the appellant/plaintiff is before this Court with this second appeal.

2. This second appeal has come up today for admission.

3. I have heard the learned counsel for the appellant and I have also perused the records carefully.

4. The case of the plaintiff in brief is that the defendant borrowed a sum of Rs.30,000/- on 12.09.2005 and duly executed a promissory note in his favour on the same day, thereby promising to repay the said amount on demand, with interest at the rate of 12% per annum. According to the plaintiff, he issued a legal notice demanding the repayment of money as promised. But the defendant did not comply with the said notice. Therefore, according to the plaintiff, he is entitled for a decree as prayed for.

5. The defendant in his written statement disputed the above promissory note. According to him, the suit promissory note was not at all executed by him and the signature found thereon was also not made by him. It was also contended that he did not borrow Rs.30,000/- from the plaintiff, as alleged in the plaint. Thus, according to the defendant, the suit is liable to be dismissed.

6. Based on the above pleadings, the trial Court framed appropriate issues.

7. On the side of the plaintiff, he was examined as P.W.1 and one Ravichandran, who claims to be a scribe of the suit promissory note, was examined as P.W.2. On the side of the defendant, he was examined as D.W.1.

8. Having considered the said evidences available, the trial Court decreed the suit, which was reversed by the lower appellate Court. That is why the appellant is before this Court with this second appeal.

9. In this second appeal it is contended by the learned counsel for the appellant that the lower appellate Court has failed to have regard to the legal presumption provided under Section 118 of the Negotiable Instruments Act. The learned counsel would further submit that non-examination of the attestors is of no consequence, because, the scribe has been examined as P.W.2. Thus, according to the learned counsel, the lower appellate Court was not right in reversing the well considered judgement and decree of the trial Court.

10. But, I find it very difficult to accept the said contentions of the learned counsel for the appellant. At the out set, I should say that there is no substantial question of law involved in this matter, warranting admission. For this conclusion,

there are many reasons. First of all, there is no explanation as to why one of the attestors has not been examined to prove the due execution of the promissory note, when the execution of the promissory note is disputed by the plaintiff. The plaintiff, who has been examined as P.W.1, has categorically stated, during the cross-examination, that he was not present when the suit promissory note was executed. Thus, he has got no knowledge of the due execution of the promissory note. P.W.2, the scribe has stated that when he was elsewhere, the defendant came to him and wanted him to draft a promissory note for a sum of Rs.10,000/-. But according to him, it was his practice to triple the amount in the promissory note. Accordingly he drafted the promissory note, mentioning as though a sum of Rs.30,000/- had been borrowed. He has also stated that he did not, however, witness the promissory note being signed by the defendant. Thus, he is also not a witness for the due execution of the promissory note. Thus, absolutely there is no evidence to show that the promissory note was duly executed by the defendant. The presumption under Section 118 of the Negotiable Instruments Act would be available if only the plaintiff is able to prove the due execution of the promissory note. Since in this case, the plaintiff has miserably failed to prove the due execution, by examining one of the attestors, I have to necessarily hold that the presumption under Section 118 is not available for the plaintiff.

11. So far as the borrowal of the amount is concerned, though P.W.1 states that he had lent Rs.30,000/- under the suit promissory note, P.W.2 has stated that he was informed that the amount borrowed was only Rs.10,000/-, but as per usual practice, he tripled the amount and mentioned the same as Rs.30,000/- in the promissory note. This evidence of P.W.2 is quite contrary to the evidence of P.W.1. Yet another reason is that on facts, the lower appellate Court has held that there was no borrowal of Rs.30,000/- by the defendant. In these conclusions arrived at by the lower appellate Court, I do not find any infirmity or illegality, warranting interference at the hands of this Court.

12. As I already pointed out, absolutely there is no question of law much less substantial question of law, warranting admission of the second appeal.

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13. In view of the above, the second appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

msk

To

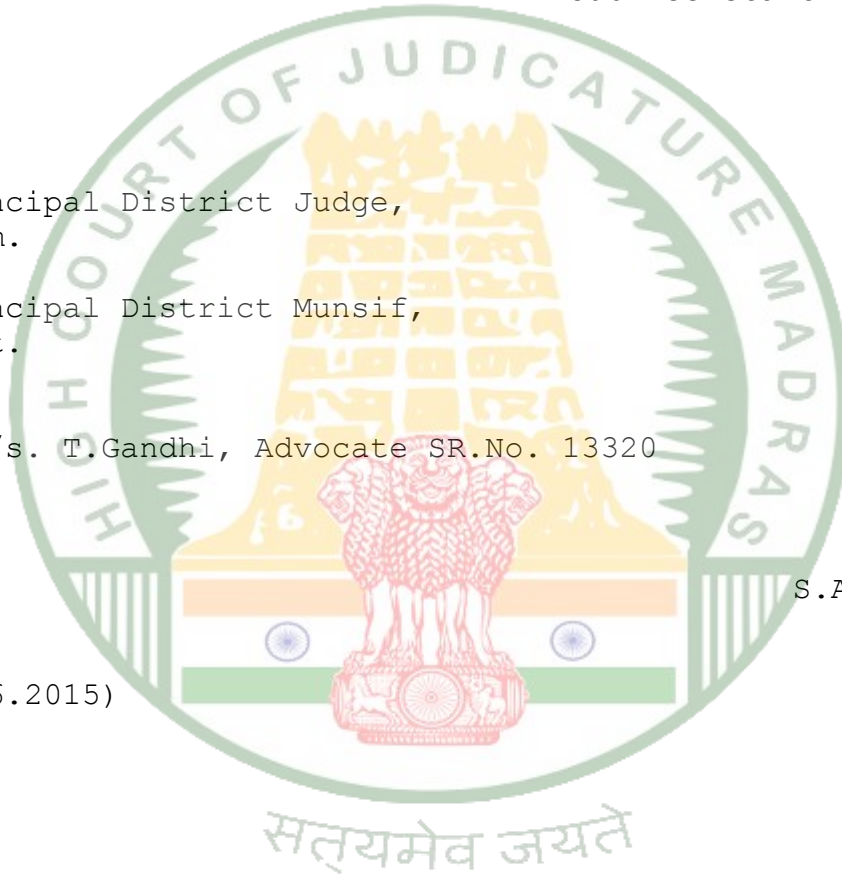
1.The Principal District Judge,
Villupuram.

2.The Principal District Munsif,
Ulundurpet.

1 CC to M/s. T.Gandhi, Advocate SR.No. 13320

S.A.No.609 of 2013

PPA (CO)
PSI (03.06.2015)



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