

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal No.274 of 2016
and
CMP No.5270 of 2016

Sadhasivam ... Appellant/Defendant

Vs.

Subramaniyan ... Respondent/Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Principal District and Sessions Judge, Cuddalore dated 20.06.2014 made in A.S.No.50 of 2013 thereby confirming the judgment and decree of the learned Subordinate Judge, Neyveli dated 28.09.2012 made in O.S.No.112 of 2010.

For Appellant : Mr.P.Mani

For Respondent : Mr.S.Sithirai Anandan

J U D G M E N T

The defendant who lost before both the courts below in a suit for recovery of money is the appellant. This appeal is listed before this court after issuing notice to the other side before admission. Hence, this court has to see as to whether any substantial question of law arises for consideration to entertain this appeal for further hearing on such question of law.

2.The case of the respondent/plaintiff is that the appellant/defendant borrowed a sum of Rs.3,25,000/- from the plaintiff on 13.11.2007 as a loan and issued a cheque for the said amount; that when the said cheque was presented for encashment, the same was dishonoured. Therefore, for recovery of the sum of Rs.3,64,000/-, the suit is filed.

3.The case of the defendant is that he did not borrow any amount from the plaintiff and has not issued any cheque. It is

his further case that he borrowed only a sum of Rs.25,000/- from one Chakrapani and also discharged the debt. The said Chakrapani obtained the signatures of the defendant for security purpose in blank promissory note and also in two blank cheques and one of such cheque was utilised by the plaintiff to seek the claim, when the defendant did not know the plaintiff at all.

4.The plaintiff examined himself as PW1 and the bank officials as PW2 and PW3. He also marked Exs.A1 to A3 in support of his claim. The defendant examined himself as DW1 and did not mark any exhibit. The trial court after considering the respective plea of the parties and also the evidence let in by them decreed the suit. The challenge made by the defendant before the First Appellate Court, as against the judgment and decree of the trial court, met with the same fate of dismissal of the first appeal.

6.Heard Mr.P.Mani, learned counsel appearing for the appellant and Mr.S.Sithirai Anandan, learned counsel appearing for the respondent and perused the materials placed before this court.

7.It is seen that the present suit was filed by the plaintiff for recovery of the money in pursuant to a loan transaction between the parties. The plaintiff in support of his claim marked the dishonoured cheque as Ex.A1 and other connected documents as Exs.A2 to A10. Apart from marking those documents, the plaintiff examined himself as PW1 and examined the bank officials as PW2 and PW3. When the defendant has chosen to deny the execution of the cheque in favour of the plaintiff, his signature found in the cheque was proved by the plaintiff by examining the bank officials. Apart from the above said fact, it is also seen that the defendant himself in his cross-examination has admitted his signature in the dishonoured cheque under Ex.A1. Therefore, once the execution of the cheque is proved, the burden lies on the defendant to disprove the contention of the plaintiff by letting in evidence. In this case, except his interested testimony as DW1, the defendant has not examined any third party witness and not marked any documents in support of his contention. Therefore, both the courts below have gone into the factual aspects of the matter in detail on appreciation of the evidence let in by the parties and came to the conclusion that the defendant has borrowed the said sum of Rs.3,25,000/- and failed to repay the same and that the cheque issued by him for such sum has also been dishonoured as is evident by marking other exhibits issued by the bank. When such liability is fixed on the defendant based on material evidence, in the absence of any rebuttable evidence to disprove the contention of the plaintiff, both the courts have rightly

decreed the suit. I do not find any ground to interfere with the concurrent findings rendered by the courts below moreso, when no such substantial question of law arises for consideration in this case. Accordingly, the second appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vri

To

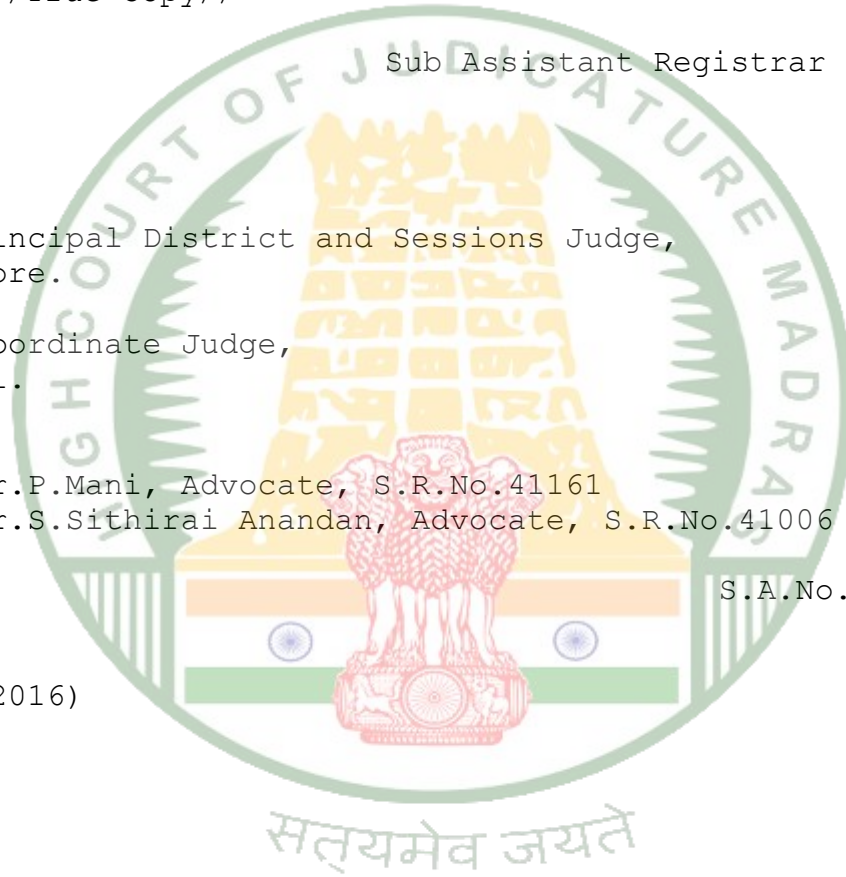
1. The Principal District and Sessions Judge,
Cuddalore.
2. The Subordinate Judge,
Neyveli.

+1cc to Mr.P.Mani, Advocate, S.R.No.41161

+1cc to Mr.S.Sithirai Anandan, Advocate, S.R.No.41006

S.A.No.274 of 2016

EV(CO)
CA(09/08/2016)



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