

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.104 of 2017
and
C.M.P.No.2064 of 2017

P.S.K.Subramaniam .. Appellant/Appellant/
Plaintiff

Vs

P.Sivakumar .. Respondent/Respondent/
Defendant

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 27.04.2016 passed in A.S.No.12 of 2015 on the file of the I Additional Sub Court, Erode, confirming the judgment and decree dated 21.11.2009 passed in O.S.No.676 of 2004 on the file of the Principal District Munsif, Erode.

For Appellant .. Mr.M.V.Venkateshan
For Respondent .. Mr.S.S.Swaminathan

JUDGMENT

The appellant is the plaintiff in the suit filed for recovery of money based upon a cheque said to have been issued by the defendant under Ex.A1. The Courts below dismissed the suit on the premise that there is a material alteration found in Ex.A1. It is the case of the plaintiff as the appellant that such an alteration has been done by the defendant himself. Having found that there is no material to substantiate the said statement, the suit has been decreed. Challenging the same, the present appeal has been filed by formulating the following substantial questions of law:

(1)Whether the Courts below are right in rejecting the case of the plaintiff on the ground of material alteration of Ex.A1 when factually it is a perverse finding?

(2)Whether the Courts below are right in relying upon the evidence of D.W.2 whose report and evidence are contrary to the proven facts of Ex.A1?

2.Learned counsel appearing for the appellant submits that in fact there is no material alteration. Even otherwise, it has been done by the defendant. This Court is not inclined to accept the said submission. The appellant himself has stated before the trial Court that the alteration has been done by the defendant. If that is the case, it is for him to establish the aforesaid assertion made.

3.The Courts below have concurrently held that there exists a material alteration and the appellant has failed to prove that a sum of Rs.60,000/- has been received by the defendant. The said finding has been given based upon the premise that it is the case of the appellant/plaintiff that only a sum of Rs.6,000/- has been received.

4.The Courts below have taken into consideration the evidence available on record. The handwriting expert, who has been examined as D.W.2 has also found that there is material alteration. Therefore, the very basis of the claim made by the appellant/plaintiff was rightly found to be not sustainable by the Courts below as it was not his case in the plaint that such an insertion has been made by the defendant voluntarily on his own.

5.In such view of the matter, this Court does not find any substantial question of law involved in the appeal, warranting interference. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mmi

To

1.The I Additional Subordinate Judge,
Erode.

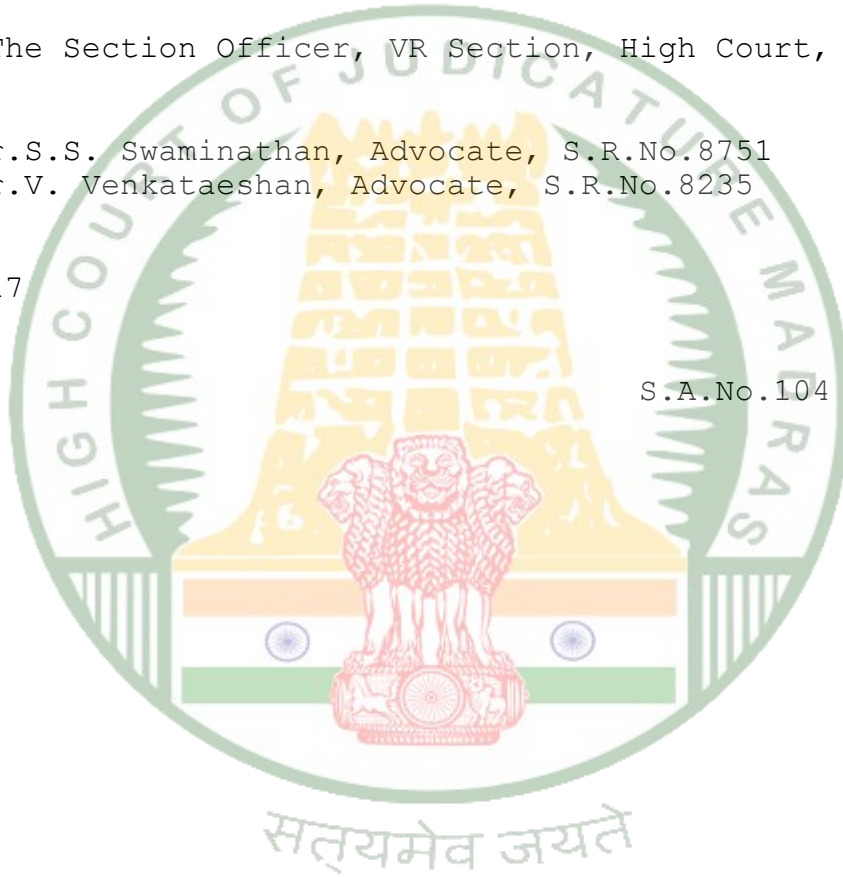
2.The Principal District Munsif,
Erode.

Copy to: The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.S.S. Swaminathan, Advocate, S.R.No.8751
+1cc to Mr.V. Venkataeshan, Advocate, S.R.No.8235

SSI(CO)
Eu 07.03.17

S.A.No.104 of 2017



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