

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

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THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Second Appeal No.41 of 2017 &
C.M.P.No.694 of 2017

J.Mariya Selvam @ Baskar Appellant/Defendant

v.

M.SugumarRespondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 08.09.2016 passed in A.S.No.48 of 2015 on the file of the Sub-Judge, Ranipet, Vellore District, confirming the decree and Judgment dated 11.02.2015 made in O.S.No.29 of 2008 on the file of the District Munsif Court, Renipet, Vellore District.

For Appellant : Mr.G.Jeremiah

J U D G M E N T

The appellant, who is the defendant in the suit, having suffered a decree for payment based upon a promissory note, seeks to set aside the same, based upon the following substantial questions of law:-

"a) Whether the Lower Appellate Court is correct in law in having arriving at a finding that on the basis of P.W.1's oral evidence in the absence of any pleading to that effect, contrary to the decision of the Hon'ble Supreme Court reported in 2000 SC 153 and 1995 SCC Supp(4) Page 422?

b) Whether the finding of the courts below in respect of Ex.B4 discharge letter is correct in law in the absence of any pleading or evidence to the contra?

c) Whether the courts below are correct in law in having eschewed the oral evidence of DW2 and DW3?

d) Whether the Lower Appellate Court is correct in law in not having reversed the judgment and decree of the trial court in view of the non application of mind evident on the face of the record inasmuch as the list of witnesses and documents indexed in the judgment did not pertain to the suit?

2. Mr.G.Jeremiah, learned counsel appearing for the appellant, submits that the documents relied upon by the trial court, as marked by the respondent-plaintiff, do not have correlation to the suit promissory note. The learned counsel, therefore, submitted that the judgment and decree by the courts below warrants interference.

3. This court is unable to accept the said submission. Neither in the written statement nor before the trial court, such a plea has been taken. The specific case of the appellant before the trial court is one of discharge. The appellant has not given any reply to the legal notice issued. In other words, the appellant has admitted the execution of the suit promissory note for a sum of Rs.20,000/- (Rupees twenty thousand only). It is coupled with the fact that the appellant has put up a plea of discharge. The courts below rightly fixed the onus on the appellant. The appellant has in fact set up a plea supported by the documents relied upon by him under Exs. B1 to B4. The courts below found that Exs.B1 to B4, on the face of it, are created by the appellant. Thus, the courts below found that there is material alteration under Ex.B3. There was no recital found therein for the alleged receipt. Ex.B3 is also found to be not signed in the stamp paper, which was usually being done. The appellant has also stated to be running a chit business and therefore, he is not an illiterate person. The recitals were found to be written in black ink whereas, the signature of the appellant is in the blue pen. Apart from that, several discrepancies have been found in the documents relied upon by the appellant, by the courts below.

4. In such view of the matter, this Court does not find any substantial question of law involved warranting interference to the Judgment and decree rendered by the Courts below in exercising power under Section 100 of the Code of Civil Procedure. Accordingly, the Second Appeal fails and the same is

dismissed. No costs. Consequently, connected miscellaneous petition is closed. .

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Sub-Judge,
Ranipet, Vellore District

2. The District Munsif,
Ranipet, Vellore

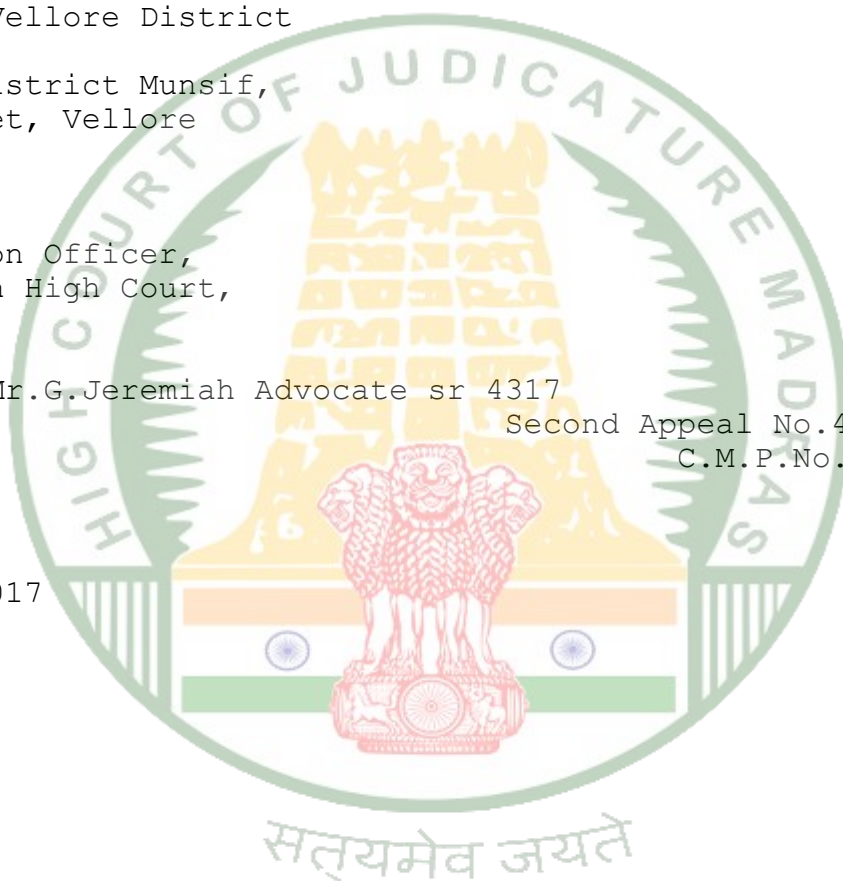
copy to

The Section Officer,
VR Section High Court,
Madras

+1 cc to Mr.G.Jeremiah Advocate sr 4317

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