

HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.10.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.424 of 2017
and C.M.P.No.10421 of 2017

S.I.Rajkumar ... Appellant/Appellant/
Defendant

Vs.

R. Ramachandran ... respondent/respondent
Plaintiff

Prayer: The Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree of the learned Principal Subordinate Judge, Salem dated 18.07.2011 made in A.S.No.144 of 2010 confirming that of the learned II Additional District Munsif, Salem made in O.S.No.301 of 2004 dated 29.04.2010.

For Appellant : Mr.C.Rajasekaran

O R D E R

The appellant herein is the defendant in a suit, filed for recovery of money, based on a promissory note.

2. The case of the plaintiff is that the defendant had borrowed a sum of Rs.40,000/- (Rupees Forty Thousand) based on promissory note, marked as Ex.A1 dated 01.04.2001. Despite repeated demands, the money was not repaid. Hence, the suit has been filed.

3. The appellant/defendant had admitted the signature on the suit promissory note. However, it is contended that though signature has been admitted and the circumstances leading to signing of the promissory note has been explained, the same cannot be taken advantage of. The learned counsel also relied on the Judgment of the Hon'ble Supreme Court in TATIPAMULA NAGARAJU vs. PATTEM PADMAVATHI reported in (2011) 4 SCC 726. The relevant portion of the same is extracted hereunder:

"11. In our opinion, simply because the defendant had fairly admitted his signature, the Court should not have come to the conclusion that the amount was payable by the defendant especially when there was an expert's evidence that figure "1" was added so as to make the figure 1,25,000 from figure 25,000 and

when the mediators had deposed to the effect that there were transactions between the defendant and the son of the plaintiff and in pursuance of the said transaction, promissory notes were not returned to the defendant. The explanation given by the defendant, which was supported by ample evidence, ought to have been considered by the lower appellate Court and the lower appellate Court should not have been guided by a mere fact that the defendant had admitted execution of the promissory note. In our opinion, in such a set of circumstances, the defendant ought not have been saddled with a liability to pay the amount in pursuance of the tampered promissory note for which no consideration had ever passed from the plaintiff to the defendant."

4. In the above case there is a material alteration on the promissory note and Hon'ble Supreme Court has also held that explanation given by the defendant was supported by evidence. Whereas, in the case on hand, the defendant had categorically admitted his signature on Ex.A1. As per Section 20 of the Negotiable Instrument Act, where one person signs and delivers to another a paper stamped in accordance with law relating to Negotiable Instruments and either wholly blank or having written thereon and incomplete Negotiable Instrument, the person thereby given prima facie authority to the holder thereof to make or complete, as the case may be, for any amount specified therein.

5. In the present case also the appellant endeavored to state that it was not blank promissory note on which he signed but it was filled in promissory note. However, Section 20 of the Negotiable Instrument Act, gives prima facie authority to the holder, namely, the Plaintiff. The presumption is that the execution is admitted and the defendant is liable to pay the amount. Though, it is contended that Ex.A1 is not proved in accordance with law by examining the attesting witness, when the signature admitted, it would be an unnecessary exercise.

6. Once Section 20 of the negotiable instrument is proved, there is no passing of the consideration in this case. The defendant has not produced any convincing evidence to show that there is no passing of consideration, leading to presumption under Section 118-A of the Negotiable Instrument Act.

7. In the light of the above discussions, the Court below has concurrently held that plaintiff has proved his case and the defendant is liable to pay the amount and decreed the suit. There is no question of law arising for consideration in the second appeal.

8. In the result, the second appeal is dismissed, confirming the judgment and decree dated 18.07.2011 passed by the Lower Appellate Court in A.S.No.144 of 2010. No Costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

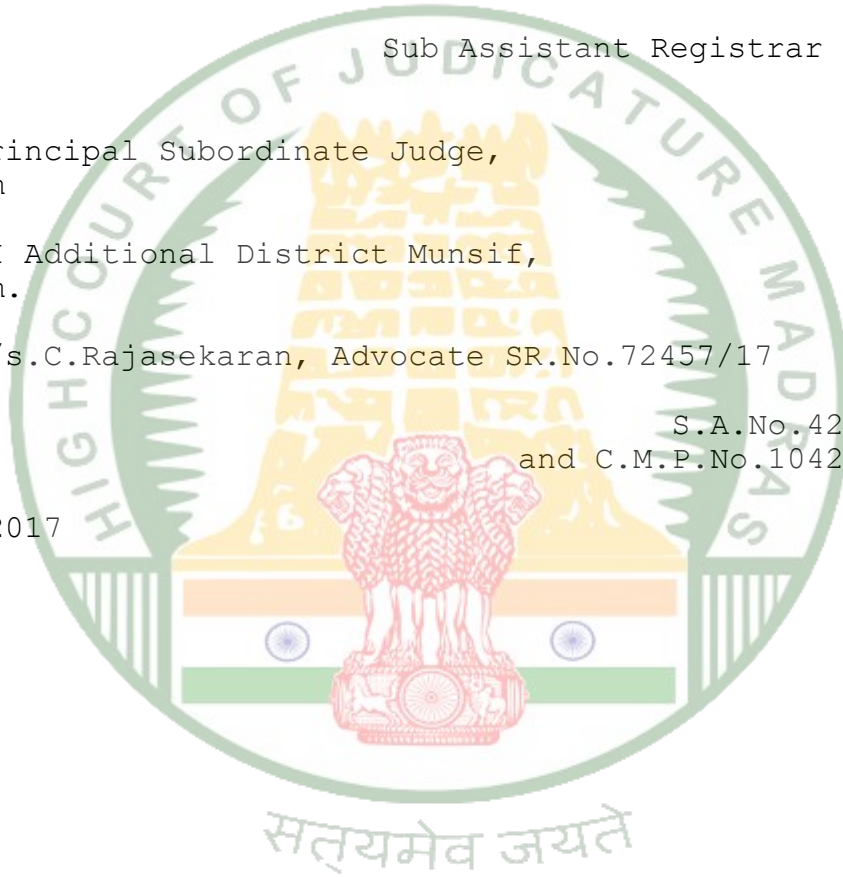
To

1. The Principal Subordinate Judge,
Salem
2. The II Additional District Munsif,
Salem.

+1cc to M/s.C.Rajasekaran, Advocate SR.No.72457/17

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