

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.02.2017**

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

O.S.A.No.**36** of **2014** and M.P.No.**1** of **2014**

Mrs.Ramadevi

.. Appellant

- Vs -

1. Sajjan Raj Mehta
2. Abdul Razak Arif

.. Respondents

Prayer:- Appeal filed under Clause 15 of the Letters Patent read with Order XXXVII Rule 9 of the Original Side Rules against a portion of common order dated 29.11.2013 passed in Application No.619 of 2013 in C.S.No.245 of 2006 by a learned Single Judge of this Court.

For Appellant : Ms.G.Devi

For Respondent 1 : Mr.Om Sairam

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J U D G M E N T**(Judgment of the Court was delivered by S.Nagamuthu,J.)**

The second defendant in C.S.No.245 of 2006 before the learned Single Judge of this Court has come up with this appeal challenging the order made in Application No.619 of 2013.

2. C.S.No.245 of 2006 has been filed by the first respondent herein for recovery of a sum of Rs.7,00,000/- executed under a promissory note. It is the case of the plaintiff that the appellant herein/second defendant as a power agent of the first defendant borrowed money and executed a promissory note. When the suit was pending, the appellant/second defendant filed Application No.619 of 2013 seeking to dismiss the suit as against him because he did not borrowed money under the suit promissory note in his independent capacity but only as a power agent of the first defendant. That application has been dismissed by the learned Single Judge by an order dated 29.11.2013. It is the said order which is under challenge in this appeal.

3. We have heard the learned counsel appearing for the appellant and the learned counsel for the first respondent / plaintiff. There is no representation for the second respondent / second defendant. We have also perused the records carefully.

4. A perusal of the order of the learned Single Judge would go to show that the learned Single Judge has taken the view that it is too early to decide as to whether the money borrowed under the suit promissory note was enjoyed by the first defendant or enjoyed by the second defendant. Therefore, according to the learned Single Judge, the matter needs to be proceeded with further to its logical end.

5. In our considered view too, it is too early to decide whether the second defendant borrowed money in his independent capacity or as power agent of the first defendant. The first defendant has remained ex parte and therefore the stand of the first defendant is not known. When that be so, in our considered view, the second defendant cannot be deleted from the proceedings by dismissing the suit against the second defendant because it is yet to be seen as to whether the second defendant borrowed money as the agent of the first defendant executing the promissory note as though it was executed by him in his capacity as power agent. It needs to be examined whether the money due under the promissory note was enjoyed by the second defendant or not. Therefore, in our considered view, the decision of the learned Single Judge deserves only to be confirmed.

6. Thus, we do not find any merit at all in this appeal, the appeal fails and the same is accordingly dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

(S.N.J.) (N.A.N.J.)
03.02.2017

Index : Yes / No
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S.NAGAMUTHU,J.
&
N.AUTHINATHAN,J.

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