

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2017

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

A.S.No.872 of 2010

L.Chellammal

... Appellant

Vs.

K.Kolandaisamy

... Respondent

Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 29.03.2010 made in O.S.No.56 of 2007 on the file of the Additional District Court, Fast Track Court No.1, Erode.

For Appellant : Ms.T.R.Gayathri
for M/s.Sarvabhauman Associates

For Respondent : Mr.Kaithamalai Kumaran

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J U D G M E N T

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Challenging the judgment and decree passed in O.S.No.56 of 2007 on the file of the Additional District Court, Fast Track Court-I, Erode, the defendant has filed the above appeal.

2.The plaintiff filed the suit in O.S.No.56 of 2007 for recovery of a sum of Rs.6,07,400/- together with interest.

3.It is the case of the plaintiff that the defendant borrowed a sum of Rs.6,00,000/- and executed two pro-notes on 06.03.2005, each for a sum of Rs.3,00,000/- in favour of the plaintiff and agreed to pay the loan amount together with interest at the rate of 12% per annum. The said pro-notes were attested by the defendant's husband Lakshmanan and one Shanmugam, who is also the scribe of the promissory notes. Since the defendant failed to repay the loan amount, the plaintiff sent a Lawyer's notice on 05.01.2006. However, the defendant did not repay the loan amount. The defendant sent a reply dated 18.01.2006 denying the execution of the suit pro-notes. However, the defendant wanted the copies of the suit promissory notes from the plaintiff. The plaintiff also sent rejoinder to the defendant. Since the defendant failed and neglected to repay the loan amount, the plaintiff has filed the suit.

4.In the written statement, the defendant has stated that the suit pro-notes were given to the plaintiff's co-brother Shanmugam for getting a loan of Rs.6,00,000/-. Further, the defendant contended that her husband had repaid a sum of Rs.3,00,000/- on 05.09.2004 to Shanmugam. However,

the said Shanmugam had not returned the promissory notes to the defendant's husband. Further, the defendant contended that the pro-notes, which were given to Shanmugam, were handed over to the plaintiff, who in turn has filed the fictitious suit against the defendant. The defendant also contended that she has no money dealings with the plaintiff. She had money dealings only with the plaintiff's co-brother Shanmugam. In these circumstances, the defendant prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, 2 witnesses were examined and 9 documents, Exs.A1 to A9 were marked. On the side of the defendant, 2 witnesses were examined and 5 documents, Exs.B1 to B5 were marked. The trial Court, after taking into consideration the oral and documentary evidences let in by both the parties, decreed the suit as prayed for. Aggrieved over the same, the defendant has filed the above appeal.

6. Heard Ms.T.R.Gayathri, learned counsel appearing for the appellant and Mr.Kaithamalai Kumaran, learned counsel appearing for the respondent.

7. On a perusal of the written statement filed by the defendant, it could be seen that in paragraph - 7 of the written statement, the defendant had stated that she gave two pro-notes, each for a sum of Rs.3,00,000/- to the plaintiff's co-brother, who was examined as P.W.2, for availing a loan of Rs.6,00,000/- and that she repaid a sum of Rs.3,00,000/- to P.W.2. However, P.W.2 did not return the pro-notes to her, instead, he had handed over the same to the plaintiff, who in turn had filed the fictitious suit. From the averments stated in the written statement, it is clear that the defendant had admitted the execution of the pro-notes. However, the pro-notes were not given to the plaintiff and they were given only to the plaintiff's co-brother (P.W.2). Further, the defendant contended that there was no money dealings with the plaintiff and dealings were only with P.W.2. Since the defendant had admitted the execution of the pro-notes and the signature found in Exs.A1 and A2 pro-notes dated 06.03.2005, there shall be presumption in favour of the plaintiff under Section 118 of the Negotiable Instruments Act, 1881. In such circumstances, the defendant has to prove that the pro-notes were given to the plaintiff for some other purpose and not for availing the loan from him.

8. On a perusal of the available evidences of the parties, it is clear

<http://www.judis.nic.in> that the defendant had not discharged the burden of proof. The defendant failed to establish that the pro-notes were given to P.W.2 and not to the

plaintiff. P.W.2 also categorically stated that the pro-notes were given only to the plaintiff and not to him. The defendant was examined as D.W.1 and her husband was examined as D.W.2. Even the evidences of D.W.1 and D.W.2 also failed to prove the case of the defendant. In the absence of any supportive evidence, the trial Court had rightly decreed the suit. The plaintiff, by examining himself as P.W.1 and his co-brother as P.W.2, proved that the defendant had borrowed a sum of Rs.6,00,000/- from the plaintiff and executed Exs.A1 & A2 pro-notes on 06.03.2005. Since the plaintiff had proved his case by adducing oral and documentary evidence, the trial court had rightly decreed the suit.

9. In these circumstances, I do not find any ground to interfere with the judgment and decree of the trial Court. The appeal is liable to be dismissed. Accordingly, the First Appeal is dismissed. No costs.

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Index : No

Internet : Yes

Speaking order

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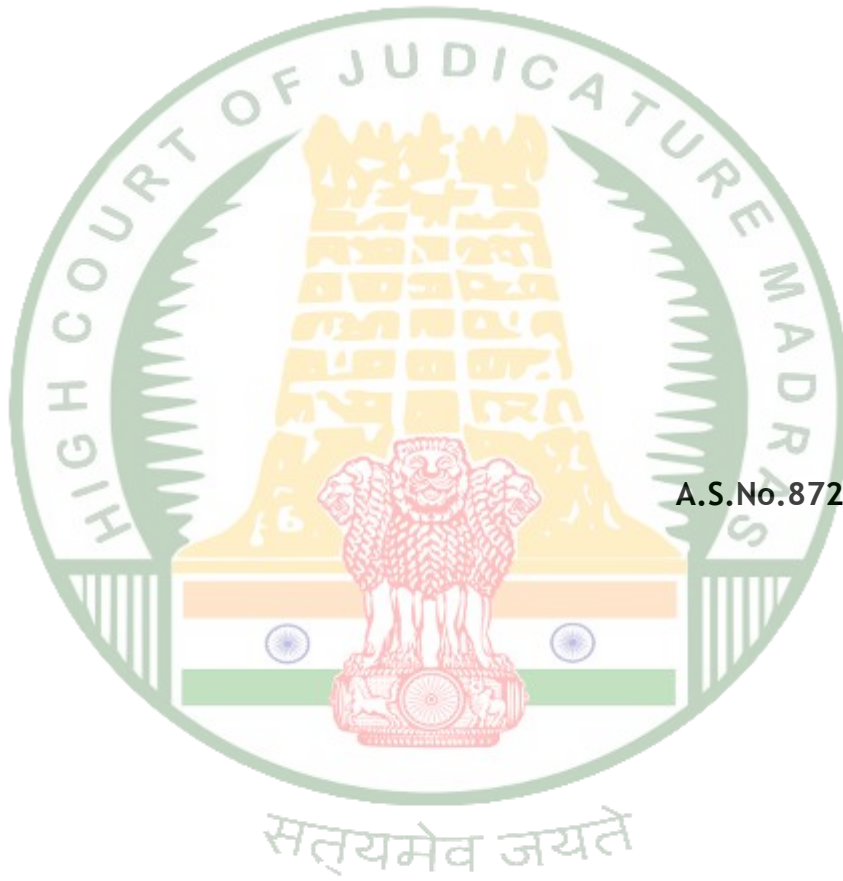
To

<http://www.judis.nic.in>

The Additional District Judge,
Fast Track Court-I,
Erode.

M.DURAI SWAMY, J.

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