

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.90 of 2006
& C.M.P.Nos.722 of 2006
& 15799 of 2017

K.Hamsavadhani

.. Petitioner

Vs.

T.V.Balaji

.. Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decretal order dated 08.03.2004 made in I.A.No.5441 of 2003 in O.S.No.3183 of 2002 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.A.Arumugam

For Respondent : Not ready in notice

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 08.03.2004 made in I.A.No.5441 of 2003 in O.S.No.3183 of 2002 on the file of the learned XVII Assistant Judge, City Civil Court, Chennai.

2. The petitioner is the defendant and respondent is the plaintiff in O.S.No.3183 of 2002 on the file of the XVII Assistant Judge, City Civil Court, Chennai. The respondent filed the said suit for recovery of money under order XXXVII Rule 1 C.P.C. The petitioner filed I.A.No.5441 of 2003 for grant of unconditional leave to the petitioner to defend the suit.

3. According to the petitioner, she was not aware of any borrowings by her husband. She has also contended that address of her husband is not mentioned in the promissory note and there is no witness to the said promissory note. The respondent did not demand any money from her and has not impleaded the legal heirs of the deceased K.Kalirajan.

4. The respondent filed counter affidavit and denied all the averments made in the affidavit filed in support of the said application. The respondent submitted that the petitioner has inherited estate of her husband/K.Kalirajan and after his death, she got transferred shop No.92-B, Periyar commercial complex at Koyambedu, owned by her husband, in her name and she is running the business. It is not necessary to implead all the legal

heirs of the deceased and suit is maintainable, if estate of the deceased is properly represented.

5. The petitioner filed reply affidavit and submitted that the signature and endorsement found on the backside of the promissory note are not that of her husband.

6. The learned Judge considering all the averments made in the affidavit, counter affidavit, reply affidavit and materials available on record dismissed the application holding that the petitioner did not dispute that her husband has executed the promissory note, but she has only stated that she does not know the said transaction.

7. Against the said order of dismissal dated 08.03.2004 made in I.A.No.5441 of 2003, the present Civil Revision Petition is filed by the petitioner/defendant.

8. Heard the learned counsel for the petitioner and perused the materials available on record.

9. The learned counsel appearing for the petitioner reiterated the averments made in the affidavit and reply affidavit filed in support of the present application for grant of unconditional leave to the petitioner to defend the suit. He further submitted that endorsement made on the backside of the promissory note is not the signature of her husband and therefore, the payment mentioned therein is in question and this gives rise to a triable issue.

10. The above said contention of the learned counsel for the petitioner is untenable. In the affidavit filed in support of the present application for grant of unconditional leave to the petitioner to defend the suit, the petitioner did not dispute the signature of her deceased husband in the promissory note. Only in the reply affidavit, she has disputed the payment of Rs.50,000/- and endorsement made on the backside of the promissory note and also disputed the signature of her husband. This stand is only an after thought. Further the petitioner has not disputed that she had inherited the shop owned by her husband. She got the same transferred in her name and she is running the business. Having inherited the estate of her husband, the deceased K.Kalirajan, it is

the duty of the petitioner to repay the amount borrowed by her husband to the extent of estate inherited by her. The averments made in the affidavit and reply affidavit do not disclose any triable issue.

11. In view of the above and that the learned Judge has considered all the aspects in proper perspective and dismissed the application by giving cogent and valid reason, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 08.03.2004 made in I.A.No.5441 of 2003 in O.S.No.3183 of 2002.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

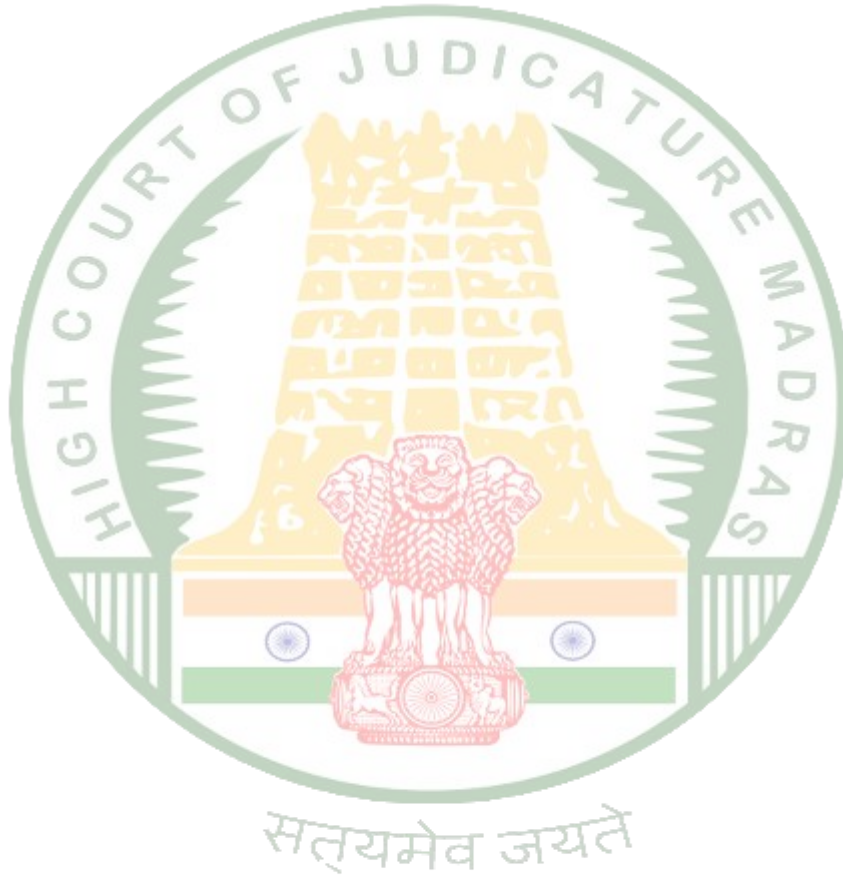
13.09.2017

Index : Yes/No
dm/kj

To

The XVII Assistant Judge,
City Civil Court, Chennai.

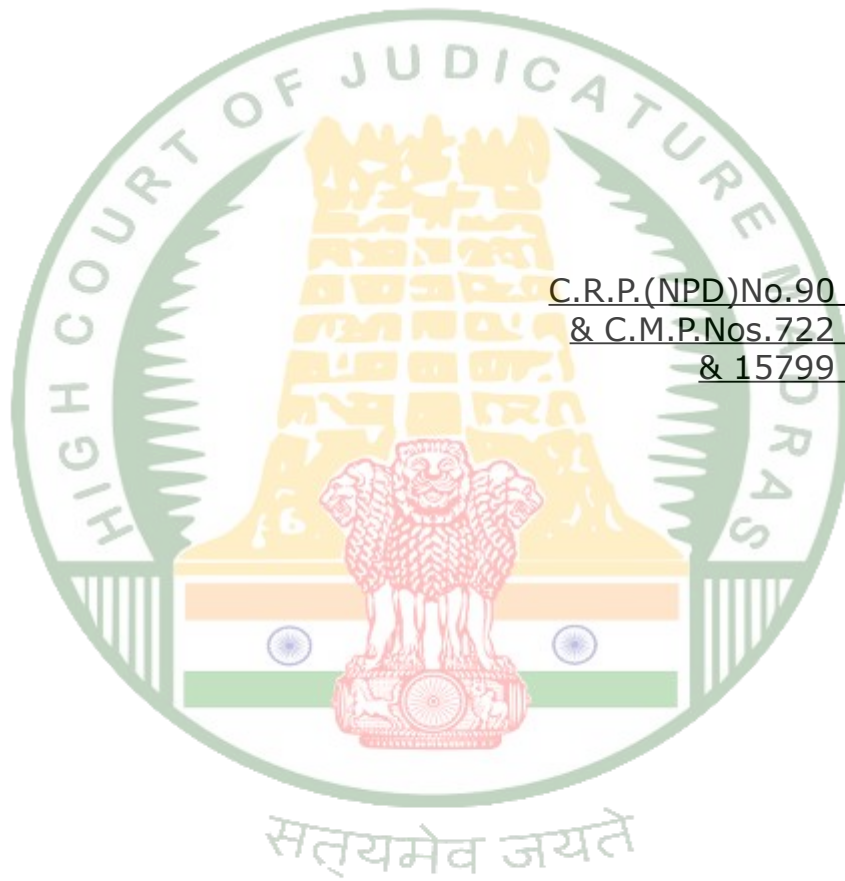
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V.M.VELUMANI, J.

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