



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2017

CORAM

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

C.M.A(MD)No.1316 of 2015

and

M.P.(MD)No.1 of 2015

A.Mathi

... Appellant

**Vs.**

K.Palani Kumar

... Respondent

**PRAYER:-** Civil Miscellaneous Appeal filed Order 43 Rule 1(u) of Civil Procedure Code, against the judgment and decree dated 05.10.2015 made in A.S.No.7 of 2015 on the file of the Principal District Court, Karur, remanding the suit in O.S.No.184 of 2012 on the file of the Additional Sub Court, Karur.

|                |                 |
|----------------|-----------------|
| For Appellant  | :Mr.M.P.Senthil |
| For Respondent | :Mr.M.Bindran   |

### **J U D G M E N T**

Heard the learned counsel on either side.

2.The defendant in the suit in O.S.No.184 of 2012, on the file of the Additional Sub Court, Karur, has filed this Civil Miscellaneous Appeal. The suit was filed by the respondent for recovery of a certain sum of money. The suit was laid on the strength of the promissory note dated 28.02.2010, alleged to have been executed by the appellant herein. The appellant herein filed his written statement denying the said claim. The Trial Court, however, decreed the suit by judgment and decree dated 29.04.2014. The defendant filed A.S.No.7 of 2015, before the Principal District Court, Karur. The first appellate court noted that the plaintiff did not take any step for referring the disputed suit document for the opinion of the handwriting expert. It therefore took the view that the matter should be remitted to the file of the Trial Court and the plaintiff should be given an opportunity to file a petition for obtaining the said expert opinion. In that view of the matter, the judgment and decree of the Trial Court was set aside and the matter was remitted to the file of the Trial Court. Questioning the same, the defendant has filed this Civil Miscellaneous Appeal.

3.I am of the view that when the plaintiff has not chosen to file a petition for obtaining expert opinion, the first appellate court could have very well decided the matter on merits on the strength of the evidentiary material available on record. There



was no need to remand the matter for this purpose. Therefore, the order of remand dated 05.10.2015 is set aside. A.S.No.7 of 2015 shall be disposed of by the first appellate court on or before 28.02.2018.

4. This Civil Miscellaneous Appeal is allowed as indicated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To,

1. The Principal District Judge,  
Principal District Court, Karur.
2. The Additional Subordinate Court,  
Karur.
3. The Record Keeper (Two copies)  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1cc to Mr.M.P.Senthil, Advocate Sr.No.91064

+1cc to Mr.M.Bindran, Advocate Sr.No.91066

TSG

VB/MR/SAR3/01.02.2018/2P/7C

C.M.A (MD) No.1316 of 2015  
and

M.P. (MD) No.1 of 2015  
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