

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

S.A.No.160 of 2018
and C.M.P.No.4221 of 2018

Duraipandi ..Appellant/Appellant/Defendant

Vs.

Motchiah ..Respondent/Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree on the file of the Subordinate Judge, Tambaram in A.S.No.154 of 2009 dated 26.11.2010, confirming the judgment and decree dated 02.09.2008 in O.S.258 of 2006 on the file of the District Munsif Court, Tambaram.

For Appellant : Mr.H.Adaikala Arockiaraj

For Respondent : Mr.K.Harikrishna

JUDGMENT

Aggrieved by the unanimous decisions of the Courts below, the defendant has preferred the above Second Appeal in a suit for promissory note.

2. The case of the plaintiff is that the defendant had borrowed a sum of Rs.50,000/- on 10.05.2002 and executed a promissory note agreeing to re-pay the same with interest at the rate of 12% p.a.. Despite repeated requests and issuing legal notice dated 13.04.2005, no amount had been re-paid by the defendant. Hence, the suit was filed.

3. It is the case of the defendant that he had borrowed a sum of Rs.50,000/- from one Paramasivam and repaid the same with interest without any default. As directed by the said Paramasivam, the defendant had transferred a sum of Rs.10,700/- to the plaintiff through Chit fund. Hence, there is no transaction between the plaintiff and the defendant and it is claimed that the said promissory note is a fabricated one. Hence, he prayed for dismissal of the suit.

4. Before the trial Court, the plaintiff himself examined as P.W.1 and marked Exs.A1 to A4 and the defendant had been examined as DW.1, apart from D.Ws.2 to D.W.4 and marked Exs.B1 and B2.

5. After considering the oral and documentary evidence, the Courts below had concurrently found that the plaintiff was entitled to the decree and accordingly, decreed the suit. Being aggrieved against the same, the defendant has filed the above Second Appeal.

6. The execution of the promissory note is admitted. D.W.1 had specifically admitted the signature found on Ex.A-1- Pronote and also the signature found on Ex.A-3, which is an acknowledgment card. Once the execution of the promissory note is admitted, the burden shifts on the defendant to prove that there is no consideration passed under the Negotiable Instrument. The defendant also could not substantiate his claim that he had paid to the plaintiff through Chit Fund as per the instructions of the said Paramasivam. It is settled principle that once the execution of the promissory note is admitted, the presumption is that the valid consideration is passed, unless it is rebutted by substantial evidence. The contention of the appellant / defendant that borrowal from D.W-4, has not been substantiated by evidence. The further contention that as per the instruction of D.W-4, he made payments to the plaintiff and had transferred to certain amount, which has not established by acceptable evidence. As stated earlier, having admitted the signature found on Ex.A-1, it is the burden on the defendant to prove that he had not received any amount and that he had miserably failed to adduce any rebuttal evidence to substantiate his claim and prove that Ex.A-1 is a fabricated document.

7. In the absence of any proof that the defendant had repaid the suit amount, the plaintiff is entitled to the decree as granted by the Courts below. This Court sees no infirmity in the findings of the Courts below and no interference is warranted in the absence of any question of law, much less substantial question of law arising out of the said facts. Accordingly, the Second Appeal is dismissed confirming the judgment and decree of the Courts below. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Subordinate Judge, Tambaram

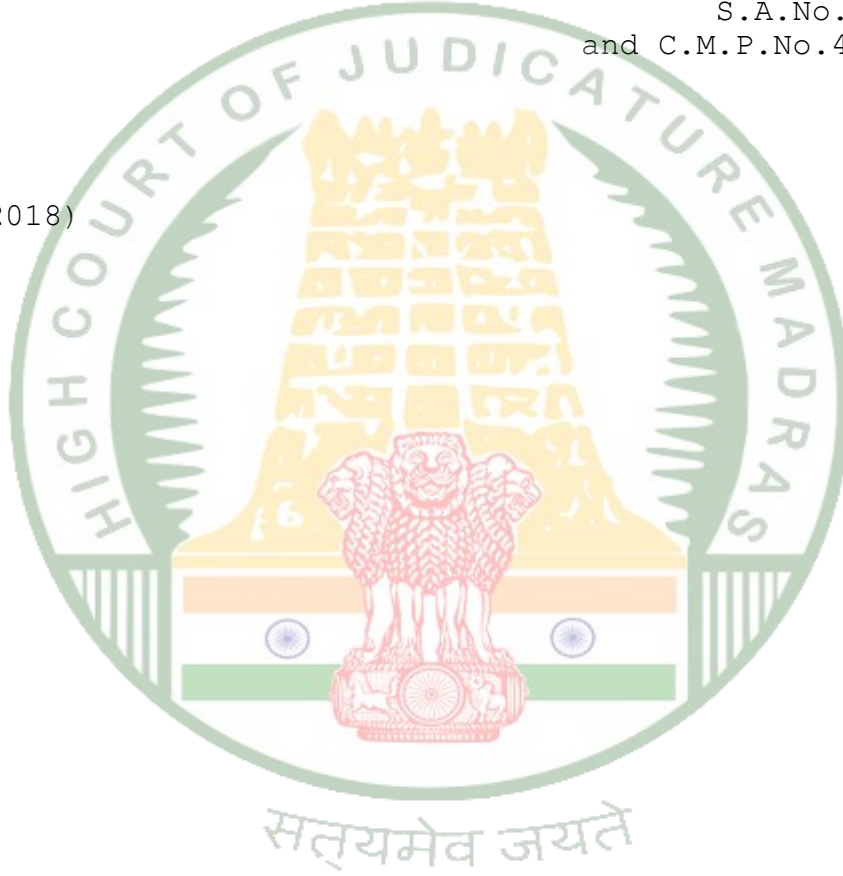
2. The District Munsif Court, Tambaram

+ 1 cc to Mr.H. Adaikala Arockiaraj, Advocate Sr.17299

+ 1 cc to Mr. K. Harikrishnan, Advocate Sr.17696

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GJ(CO)
EU(17/04/2018)



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