

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.134 of 1997

N.Padmanabhan

..Appellant/ Appellant/2nd Defendant

Versus

1.Visalakshi Chit Funds by
its Proprietor
K.K.Vellaichamy
No.69-A, Mecrickar Road,
R.S.Puram, Coimbatore

...1st Respondent/1stRespondent/Plaintiff

2.N.Swaminathan
S/o.Nagappa Chettiar
(Proprietor of Meenakshi Essence)
101, 102 Oppanakara Veedhi,
Coimbatore-1

..2nd Respondents/2nd Respondents/1st Defendant

PRAYER:This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 11.07.1996 and made in A.S.No.5 of 1995 on the file of the II Additional District Judge, Coimbatore, confirming the judgment and decree dated 13.09.1994 made in O.S.No.34 of 1986 on the file of the District Munsif Court, Coimbatore.

For Appellant :: Mr.R.Siddharth
for T.R.Rajaraman
For R1 :: Mr.B.Gnnavinothan
for V.Nicholas
For R2 : Exparte before Lower Court.

ORDER

The second defendant in O.S.No.34 of 1986 on the file of the First Additional District Munsif Court, Coimbatore is the appellant herein. The first respondent-Visalakshi Chit Funds was

the plaintiff in the said suit. The said suit has been filed for recovery of a sum of Rs.12,305/- together with interest and costs. The said suit was filed against two defendants Swaminathan and Padmanaban.

2. During trial, the first defendant-Swaminathan did not participate in the proceedings and consequently he was set *exparte*. By judgment dated 13.09.1994, the learned District Munsif, Coimbatore decreed the suits as against both the defendants. Challenging that judgment and decree, the second defendant-Padmanaban filed A.S.No.5 of 1995. This appeal came up for consideration before the Second Additional District Court, Coimbatore.

By judgment dated 11.07.1996, the appeal was dismissed and the judgment and decree of the trial Court was confirmed. In the appeal, the first defendant-Swaminathan was shown as the second respondent. He did not choose to participate in the appeal proceedings.

3. Aggrieved by the judgment of the First Appellate Court, the second defendant had filed the present Second Appeal. The first defendant was shown as the second respondent. Notice could not be served on him for the reasons that registered posts sent to him were returned as 'not known' and 'no such person'. The second appeal has not yet been admitted, even though it had been filed in the year 1997.

4. The learned counsel for the appellant raised one issue namely that the appellant herein was only a Guarantor and not a co-borrower along with the second respondent. That is an issue of fact and if the appellant is able to establish that, he would have cause to proceed against the second respondent. It is also stated that subsequent to the decree by the first appellate Court, an Execution Petition had been filed and the present appellant had paid the entire amount due to the first respondent. The learned counsel for the appellant reiterated that the appellant is only a Guarantor and consequently, he stated that it should have been observed by both the Courts below that he can subsequently initiate proceedings against the second respondent.

5. I have carefully considered that argument. If the appellant herein, who was the second defendant to the suit is able to establish vis-a-vis the second respondent/first defendant that their relationship was that of a Guarantor and borrower, then he can proceed against the second respondent. At any rate that can be done only by a separate proceedings. Consequently, if the appellant feels that he has cause to proceed against the second respondent and if that cause is permissible within the scope of law, he is at liberty to institute necessary proceedings against the second respondent.

The dismissal of this appeal will not stand against the appellant proceedings against the second respondent, if he deems necessary.

6. With such observations, this appeal is dismissed. No costs. The judgment and decree of the first appellate Court and the trial Court are confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District Judge,
Coimbatore

2. The District Munsif Court,
Coimbatore.

Copy to
The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.V.Nicholas, Advocate, S.R.No.84079

+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No.83794

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AD(CO)
GSP(14/02/2019)

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