

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.01.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

C.M.A.No.1540 of 2016

M.Pushparaj ... Appellant/Defendant

Vs.

K.Kanthiah ... Respondent /Plaintiff

Civil Miscellaneous Appeal filed under Order 43 Rule 1 (U) of the Code of Civil Procedure against the judgment and decree dated 05.01.2016 made in A.S.No.535 of 2010 on the file of the I Additional City Civil Court, Chennai remanding the suit in O.S.No.1924 of 2004 on the file of the XIII Assistant City Civil Court, Chennai.

For Appellant : Mr.V.V.Sathya

For Respondent : Mr.S.Balaji

J U D G M E N T

Challenging the judgment and decree passed in A.S.No.535 of 2010 on the file of the I Additional Judge, City Civil Court, Chennai, setting aside the judgment and decree passed in O.S.No.1924 of 2004 on the file of the 13th Assistant Judge, City Civil Court, Chennai and remanding the matter to the trial Court for fresh consideration, the defendant has filed the above appeal.

2.The plaintiff has filed the suit in O.S.No.1924 of 2004 for recovery of money. The defendant has filed his written statement and was contesting the suit.

3.After trial, the trial Court found that the suit pro-note is not genuine and that the signature found in the suit pro-note is not that of the defendant and dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal in A.S.No.535 of 2010.

4.It is pertinent to note that before the trial Court, the defendant took out an application in I.A.No.8174 of 2008

under Section 45 of the Evidence Act read with Order 26 Rule 10 - A of the Code of Civil Procedure to appoint an Advocate Commissioner to file a report from the Handwriting Expert with regard to the signature found in the suit pro-note. After contest, the trial Court dismissed the application finding that the defendant has not produced any document of contemporaneous period.

5.In the First Appeal filed by the plaintiff, he took out an application in C.M.P.No.1495 of 2013 for the very same relief sought for in I.A.No.8174 of 2008.

6.In the affidavit filed in support of the said application, the plaintiff has stated that the signature found in the suit promissory note should be compared by an Expert with the signature found in Exs.A2, B1 and B2 and a report should be obtained from the Handwriting Expert.

7.After contest, the Lower Appellate Court took up the petition in C.M.P.No.1495 of 2013 along with the appeal in A.S.No.535 of 2010 and allowed the application and also set aside the judgment and decree of the trial Court and remanded the matter back to the trial Court with a direction to the trial Court to send the suit promissory note with the admitted signature found in Exs.A2, B1 and B2 to the Handwriting Expert, Forensic Science Department, Government of Tamil Nadu, Chennai by keeping certified copies of the aforesaid documents.

8.The Lower Appellate Court should not have disposed of the petition in C.M.P.No.1495 of 2013 along with the appeal. The Lower Appellate Court should have taken up the said petition separately and disposed of on merits and in accordance with law. That apart, merely because the petition in C.M.P.No.1495 of 2013 has been allowed, that is not a ground for setting aside the judgment and decree of the trial Court. The Lower Appellate Court itself could have obtained the report from the Handwriting Expert and disposed of the appeal on merits and in accordance with law. I do not find any ground for remanding the matter to the trial Court.

9.It is brought to the notice of this Court that the appellant/ defendant has also filed a Civil Revision Petition in C.R.P.(NPD).No.3412 of 2016 as against the order passed in C.M.P.No.1495 of 2013 and the same is pending.

10.In these circumstances, the judgment and decree passed in A.S.No.535 of 2010 are set aside. The matter is remanded to the I Additional Judge, City Civil Court, Chennai for fresh consideration. The Civil Miscellaneous Appeal is allowed.

11.It is open to the parties to contest the correctness of the order passed in C.M.P.No.1495 of 2013 in C.R.P.(NPD). No.3412 of 2016. No costs.

Sd/-

ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1.The I Additional City Civil Court,
Chennai.

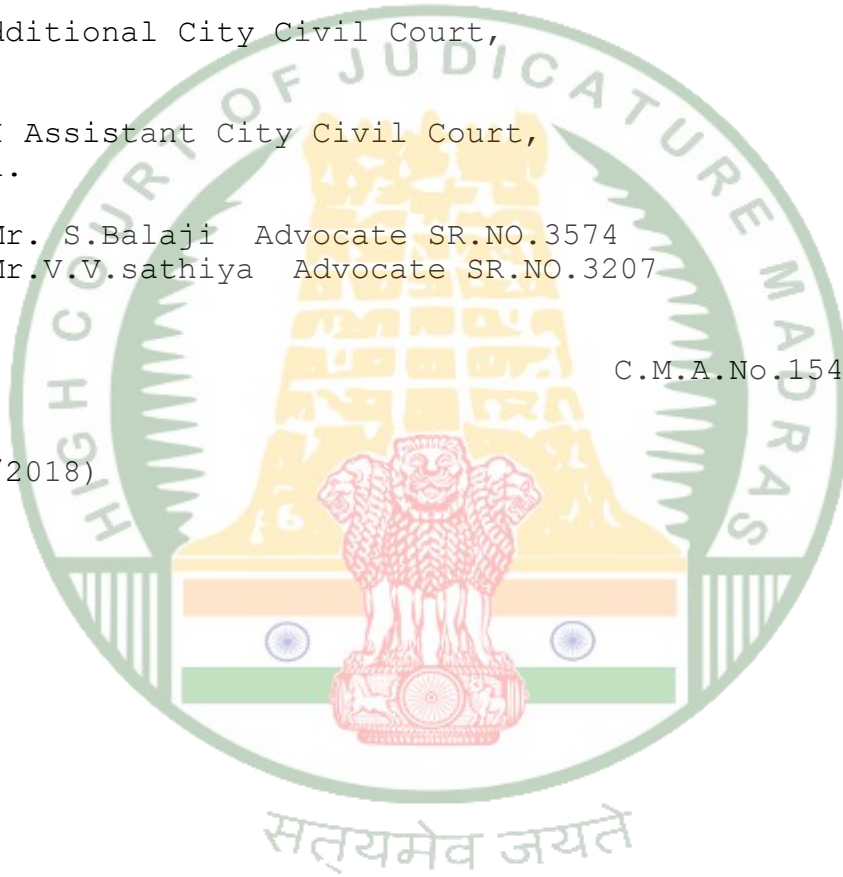
2.The XIII Assistant City Civil Court,
Chennai.

+1 CC to Mr. S.Balaji Advocate SR.NO.3574

+1 CC to Mr.V.V.sathiya Advocate SR.NO.3207

C.M.A.No.1540 of 2016

SJ(CO)
VC (05/02/2018)



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