

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2018

PRONOUNCED ON:14.06.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1708 of 2004

Munusamy ... Appellant/Defendant

Vs.

Rajendran ... Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree in A.S.No.63 of 2003 on the file of the Subordinate Judge, Dharmapuri and dated 26.02.2004 in confirming the judgment and decree in O.S.No.60 of 1999 on the file of the District Munsif, Pennagaram and dated 23.01.2003.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.S.Saravana Kumar

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J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 26.02.2004 passed in A.S.No.63 of 2003 on the file of the Subordinate Court, Dharamapuri, confirming the judgment and decree dated 23.01.2003 passed in O.S.No.160 of 1999 on the file of the District Munsif Court, Pennagaram

2.The Second Appeal has been preferred challenging the judgments and decrees of the Courts below with reference to a suit for recovery of money based on a promissory note. The appellant is the defendant in the Trial Court. It is found that the value of the subject matter of the original suit for recovery of money laid in O.S.No.160 of 1999 on the file of the District Munsif Court, Pennagaram is only Rs.17,373.75/-. The Second Appeal has been preferred on 26.07.2004, impugning the judgment and decree of the First Appellate Court dated 26.02.2004.

3. In the light of the above said factual position, inasmuch as the original suit had been laid only for recovery of money and the subject matter of the original suit not exceeding Rs.25,000/-, a preliminary objection has been taken by the counsel appearing for the respondent/plaintiff that the Second Appeal would not lie in view of the bar provided u/s.102 of the Code of Civil Procedure.

Section 102 of the Code of Civil Procedure reads as follows:

102. No second appeal in certain cases: No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.

4. Section 11 of the Code of Civil Procedure [Amendment] Act, 1999 has abolished the Second Appeal in all the cases where the value of the subject matter in the suit for recovery of money did not exceed Rs.25,000/-. Further, as per the statutory changes effected by the Code of Civil Procedure [Amendment] Act 22 of 2002 with effect from 01.07.2002, it is found that the position has been reiterated that no Second Appeal shall lie from any decree, where the subject matter of the suit for recovery of money does not exceed Rs.25,000/-.

5. In the light of the above position, in my considered opinion, it is unnecessary to deal with the merits of the Second Appeal. Inasmuch as the Second Appeal is found to be barred as abovestated, accordingly the Second Appeal is liable to be dismissed as not maintainable in the light of Section 102 of the Code of Civil Procedure.

6. In this connection, the counsel for the appellant in support of his contentions placed reliance upon the decisions reported in 1957 SCR 488 [Garikapati Veeraya Vs. N.Subbiah Choudhry & Others] and 1976 (2) SCC 917 [Jose DA Costa and Another Vs. Bascora Sadasiva Sinai Naracornim and others]. The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case. However, considering the bar as provided u/s.102 of the Code of Civil Procedure, it is found that the abovesaid decisions would not in any manner advance the case of the appellant to hold that the Second Appeal would still lie as per law.

7. The counsel for the appellant made a plea that this Court should direct the Registry to register the Second Appeal as the Civil Revision Petition so as to enable the appellant to pursue his remedies for the challenge made by him to the

judgments and decrees of the Courts below as per law. However, I am not inclined to accede to the abovesaid request of the appellant's counsel. If at all the appellant has a legal remedy to pursue the matter to challenge the judgments and decrees of the Courts below, it is always open to the appellant to take recourse to the same as provided under law.

8. In view of the abovesaid reasonings, the Second Appeal is dismissed as not maintainable. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS-vi)

//True Copy//

Sub Assistant Registrar

mfa

To

1.The Subordinate Judge,  
Dharmapuri.

2.The District Munsif,  
Pennagaram.

3. The Section Officer,  
V.R. Section, High Court, Madras.(2 copies)

+1cc to Mr.V.RAGHAVACHARI, Advocate, S.R.No. 37178

Pre-delivery judgment made in  
S.A.No.1708 of 2004

KGK(CO)  
TR(06/07/2018)

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