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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.No.21 of 2010
in M.P.No.1 of 2010

Rengaraj,
Village Administrative Officer of Othiyam Village,
Kunnam Taluk, now at Kotharai Village
Kunnam Taluk, Perambalur District.

... Appellant/Defendant

..Vs..

Govindasamy

... Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the learned Subordinate Judge, Perambalur, in A.S.No.37 of 2008 dated 03.04.2009 upholding the judgment and decree of the learned District Munsif, Perambalur, in O.S.No.23 of 2003 dated 22.12.2006.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.R.Balasubramanian

JUDGMENT

The present appeal is filed under Section 100 of C.P.C, against the decree and judgment dated 03.04.2009 passed by the learned Subordinate Judge, Perambalur in A.S.No.37 of 2008.

2. For the sake of convenience, the parties are called as per their ranking before the trial Court. The respondent/plaintiff filed a suit in O.S.No.23 of 2003 before the learned District Munsif, Perambalur for recovery of a sum of Rs.25,400/- together with interest at the rate of 12% per annum due on a promissory note executed by the appellant/defendant.

3. The brief case of the respondent/plaintiff is that the appellant/defendant borrowed a sum of Rs.20,000/- on 05.01.2000 promising to repay the principal together with interest at the rate of 12/- per annum on demand by the plaintiff or to his order. The further contention of the Plaintiff is that inspite of repeated demands made by him, the defendant did not repay



either the principal or the interest. Therefore, the plaintiff filed the suit for recovery of amount due under the promissory note.

4. The appellant/defendant filed a written statement contending that he received only a sum of Rs.10,000/- and not Rs.20,000/- as mentioned in the promissory note. It is further contended by him that the respondent/plaintiff failed to give him sufficient time to repay the amount due under the promissory note.

5. The trial Court framed necessary issues and after full contest, decreed the suit in favour of the plaintiff, directing the defendant to pay Rs.25,400/- together with interest at the rate of 9% per annum from the date of plaint till the date of decree and thereafter at 6% per annum till the date of realisation.

6. Aggrieved over the decree and judgment dated 22.12.2006 passed by the learned District Munsif, Perambalur, the present appellant/defendant filed A.S.No.37 of 2008 before the learned Subordinate Judge, Perambalur. The learned Subordinate Judge, Perambalur, after analysing the entire evidence on record, upheld the decree and judgment passed by the trial Court. Now the present second appeal is filed by the defendant on the following substantial questions of law:

" 1. Are the courts below justified in decreeing the suit when there was partial failure of consideration on the suit promissory note?;

2. Whether the courts below are correct in decreeing the suit by relying on the oral testimony of the plaintiff without support of necessary documentary evidence?;

3. Whether the Courts below are justified in decreeing the suit without even considering the fact that the plaintiff had not approached the Court with clean hands and pre-suit notice was also not issued to substantiate the case?.

7. At the outset, it may be observed that the appellant/defendant admitted his signature on the promissory note Ex.A1. He also deposed that the entire promissory note was written in his own hands. His contention is that he received only a sum of Rs.10,000/- instead of Rs.20,000/- mentioned in the promissory note. Both the Courts below had concurrently held that the defendant did not establish this contention by adducing acceptable evidence. Once the signature in the promissory note is admitted, there is a presumption under Section 118 of the Negotiable Instruments Act that the



promissory note is supported by consideration unless the contrary is proved. It is not the case of the defendant that he signed on an unfilled promissory note. On the contrary he has contended that the entire promissory note was written by him in his own hands. When it is so, he did not issue any notice to the plaintiff/respondent that he received only a sum of Rs.10,000/- from him and not Rs.20,000/- as mentioned in the promissory note. No legal action was initiated by him till date against the plaintiff. Moreover no acceptable evidence was adduced by him to show that there was passing of partial consideration towards the promissory note Ex.A1. Both the Courts below had analysed the entire evidence on record in the right perspective and in the facts and circumstances of the case, I do not see any reason to interfere with the findings recorded by the Courts below. Infact there is no substantial question of law involved in the present appeal.

8. In the result, the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge, Perambalur.
2. The District Munsif, Perambalur.

+1cc to Mr.R.Balasubramanian, Advocate, S.R.No.45226

S.A.No.21 of 2010

NRJK(CO)
CS/22/10/2019