IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.09.2019
CORAM:
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
S.A.No. 795 of 2019
and
C.M.P.No. 15987 of 2019

Selvakumar ..Appellant/Defendant

Vs.

Radha ..Respondent/Plaintiff

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree passed in A.S.No. 5 of 2017 dated 27.02.2018 on the file of the Hon'ble Sub-Court, Gudalur confirming the judgment and decree of the lower Court in O.S.No. 121/ 2013 dated 06.02.2015 on the file of the Hon'ble Principal District Munsif Court at Gudalur.

For Appellant : Mrs. Girija Velmurugan

For Respondent : Mr. Anand Venkatesh for T.Ravi

J U D G M E N T

The defendant in O.S.No. 121 of 2013, who had suffered a decree for payment of money which was confirmed on appeal in A.S.No. 5 of 2017 has come forward with this second appeal.

2. The plaintiff's suit for recovery of money on the strength of the promisory note executed by the defendant on 25.11.2010 for a sum of Rs.25,000/-. The defendant, in the written statement would admit that he had borrowed monies from the plaintiff and would claim that he has been repaying the amount with 14% interest. It is also claimed that the plaintiff had taken signatures of the defendant in various bank promisory notes.

3. The Courts below, upon consideration of the evidence on record had concluded that the defendant who has admitted the borrowing has not proved the repayment claimed by him. The Courts below had also concluded that the plaintiff has established the borrowing and is entitled to decree for repayment of money. Aggrieved, the defendant is on appeal.

4. I have heard Mrs. Girija Velmurugan, learned counsel appearing for the appellant and Mr.Anand Venkatesh, learned counsel appearing for the sole respondent.

5. Mrs.Girija Velmurugan, learned counsel appearing for the appellant would invite my attention to the suit notices and the replies made and claim that there are discrepancies in the dates of the borrowing. But the evidence of P.W.1 shows that the P.W.1 had deposed regarding the various borrowings on various dates. He has also stated that a sum of Rs.25,000/- was borrowed on 25.11.2010 in cross examination. I therefore find that the discrepancies in the dates will not affect the case of the plaintiff more so, when several borrowings were made by the defendant on various dates. In fact, the defendant had admitted the borrowings and had claimed that he had repaid. Therefore, the onus is on him to prove repayment. I find that there is no evidence worth mentioning to prove the claim of the defendant that he has repaid the entire amount borrowed by him.

6. The suit is based on promisory note. The execution of the promisory note is admitted. The presumption under Section 118 of the Negotiable Instruments Act would stand automatically attracted. Therefore, the burden is on the defendant to prove such discharge or failure of consideration. I find absolutely no evidence much less evidence worth mentioning to prove the claim of the defendant that he has repaid the borrowings. The Courts below discussed the entire evidence and have come to factual conclusion. I find no question of law much less substantial question of law in order to enable this Court to entertain this appeal. Hence, this second appeal is dismissed without being admitted. Consequently, connected Civil Miscellaneous Petition is closed. However, no order as to costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

kkn
To
1.The Subordinate Judge
Gudalur

2.The Principal District Munsif
Gudalur

+1 cc to Mr.T.Ravi Advocate sr77224

aa24/02/2020