

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

S.A. 537 of 2019
and
C.M.P. 8941 of 2019

T.R.Thangavel ... Appellant/Defendant

Vs.

T.C.Madhavaraya Gounder ... Respondent/Plaintiff

Prayer :- This Second Appeal has been filed under Section 100 of C.P.C. against the Judgment and decree dated 26.09.1995 made in A.S.No.44 of 1993 on the file of the Sub-Court, Gobichettipalayam confirming the judgment and decree dated 20.07.1993 made in O.S.No.28 of 1991 on the file of District Munsif Court, Gobichettipalayam.

For Appellant : Ms.P.V.Rajeswari

JUDGMENT

The defendant, who has suffered the judgment and decree passed by both the courts below has filed the present Second Appeal.

2. The respondent/plaintiff has filed a suit for recovery of money based on a promissory note. Both the Courts below have concurrently held against the Appellant/defendant and decreed the suit. Aggrieved over the same, the present Second Appeal has been filed.

3. The case of the plaintiff is that the defendant has borrowed a sum of Rs.6000/- on 29.12.1987 for family expenses and executed Ex.A1, promissory note. The plaintiff made a demand to repay the amount, but the defendant failed to repay the amount. After issuing a statutory notice, the plaintiff has filed the present suit.

4. The defendant has contested the Suit that, the suit is barred by limitation, the plaintiff is a money lender and also running a chit. The defendant was one of the subscriber of the chit and for security purpose, he has executed a promissory note in favour of plaintiff. After paying the entire chit amount, the defendant requested the plaintiff to return the promissory note, but he did not return it. By using the promissory note, which was executed for security, the present Suit has been filed.

5. The Trial Court after considering the entire pleadings and evidence both oral and documentary held that the defendant has admitted the execution of the promissory note, and the initial burden cast on the defendant, but, the defendant has failed to discharge the initial burden, and thereby decreed the suit. Challenging the same, the plaintiff has filed an appeal. The Lower Appellate Court also concurred with the findings of the Trial Court, and dismissed the Appeal. Now, challenging judgment and decree passed by both the court below, the present Second Appeal has been filed.

6. In the grounds of appeal, the following substantial question of law was framed by the appellant :-

(a) Have not the courts below committed an error of law in not framing an issue on the question of limitation as provided for under Order 14 Rule 1 of C.P.C., which is an essential requirement of law?

(b) Is the judgment of the Courts below holding that the defendant had borrowed money under Ex.A1 is supported by legally acceptable evidence?

7. I have considered submissions made by the learned counsel appearing for the appellant, and perused the materials available on record carefully.

8. The Suit is for the recovery of money. The defendant has admitted the execution of the promissory note. Hence, there is a presumption under Sec.119 of the Negotiable Instruments Act that the promissory note has been executed for consideration. The case of the defendant is that the promissory note has been executed as a security for a chit run by the plaintiff. But, he has failed to prove the same by an acceptable evidence, and failed to raise the initial presumption cast on him. Both the courts below after considering the pleadings and evidence extensively, on fact, came to a conclusion, that the defendant has failed to prove the same and decreed the Suit.

9. I have gone through entire materials available on record, I do not find any any illegality or infirmity in the judgment and decree passed by both the courts below and no substantial question of law arises for consideration in the present Second Appeal. In the result, the Second Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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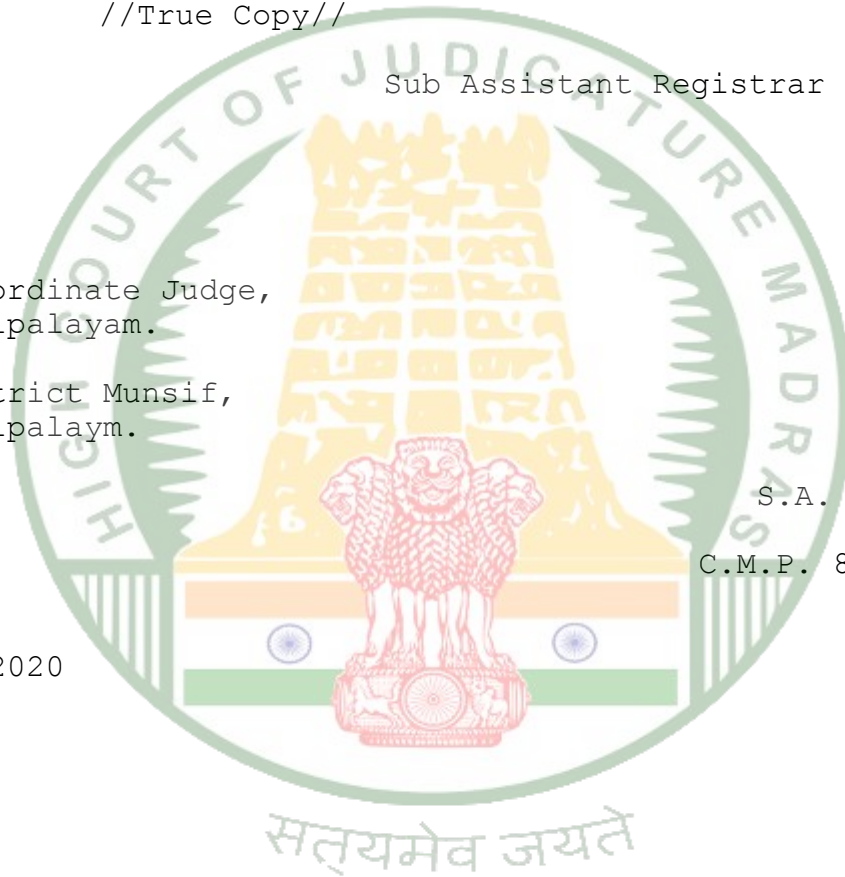
To

1.The Subordinate Judge,
Gobichettipalayam.

2.The District Munsif,
Gobichettipalayam.

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