

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 904 of 2019
in
C.M.P.No. 19217 of 2019

Dhandapani ..Appellant/Appellant/Defendant

Vs.

Arukkani ..Respondent/Respondent/Plaintiff

Prayer: Memorandum of Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 08.01.2019 made in A.S.No. 4 of 2018 on the file of the Sub-Court, Udumalpet, confirming the judgment and decree dated 27.11.2017 made in O.S.No. 16 of 2009 on the file of the District Munsif Court, Udumalpet.

For Appellant : Mr. D.R.Arun Kumar

J U D G M E N T

The above appeal is filed by the defendant in O.S.No. 16 of 2009. The said suit was filed by the respondent seeking recovery of money based on a promissory note dated 17.11.2006. The plaintiff was forced to file the suit, since the defendant did not repay the money, despite having received the Lawyer's notice dated 22.12.2008. सत्यमेव जयते

2. In defence of the claim, the defendant pleaded that he had not borrowed any money from the plaintiff and had not executed any promissory note. It is also contended that the defendant had no occasion or there was no necessity to borrow a sum of Rs.75,000/- from the plaintiff. The document said to have been executed by the defendant was also disputed. However, in the evidence, the defendant sought to introduce a totally new case, therein, it was claimed that the defendant had borrowed a sum of Rs.1,00,000/- from the husband of the plaintiff and had executed two blank promissory notes for Rs.75,000/- each. One such promissory note has been filled in the name of the plaintiff and the suit has been filed. It was

also pleaded that the defendant had repaid the loan of Rs.1,00,000/- taken from the husband of the plaintiff on 30.09.2008 in the presence of certain Panchayathars and settled the entire loan. It was further contended that the husband of the plaintiff had returned only one promissory note and used the other promissory note to file the suit. Both the Courts below disbelieved the defence and concluded that the defendant is liable to pay a sum of Rs.75,000/- with interest. Aggrieved, the defendant is on appeal.

3. I have heard Mr.D.R.Arunkumar, learned counsel appearing for the appellant. Relying upon the inconsistencies in the evidence of P.W.2 with reference to the execution of the document, the learned counsel would submit that the execution of the promissory note itself has not been proved. It is also the contention of the learned counsel that the plaintiff had no wherewithal to advance a sum of Rs.1,00,000/-. He would draw my attention to the evidence of P.W.1, where P.W.1 had deposed that she is a salaried employee and getting a salary of Rs.4,000/- per month. I have considered, the submissions of the learned counsel. Of course, there are certain inconsistencies in the evidence of P.W.2. This is a suit on a promissory note. Once the execution of the document is admitted, the presumption under Section. 118 of the Negotiable Instruments Act would apply. The defendant has to let in evidence to discharge the presumption. The so called inconsistencies pointed out by the learned counsel in the evidence of P.W.2, I am of the considered opinion, aren't enough to rebut the presumption that will arise in view of Section 118 of the Negotiable Instruments Act.

4. As regards the contention relating to the financial ability of the plaintiff, the counsel for the defendant in cross-examination had suggested that the plaintiff had filed other suit for recovery of money. It is the admitted case of the defendant that the husband of the plaintiff had lent monies to the defendant earlier. Therefore, the claim of the defendant that the plaintiff had no wherewithal to advance a sum of Rs.75,000/- stands diluted by the cross-examination and the admissions made by the defendant himself. Hence, I do not find any question of law much less a substantial question of law in order to enable this Court to entertain this appeal, the appeal is therefore dismissed without being admitted. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar(CCC)

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Sub-Assistant Registrar

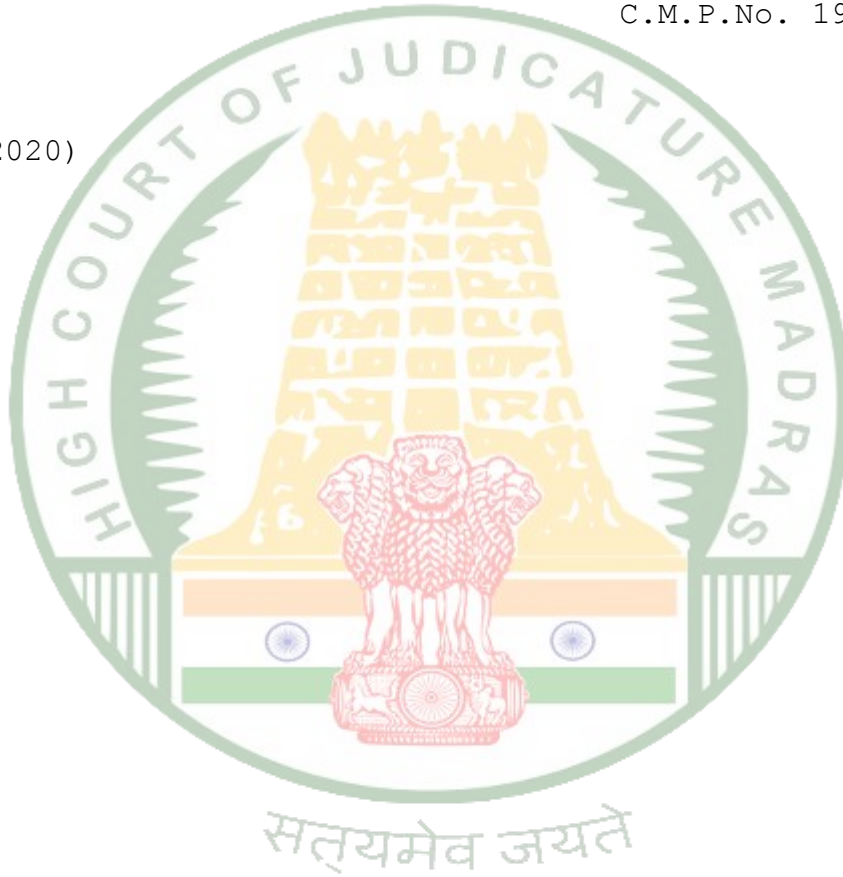
To

- 1.The Subordinate Court, Udumalpet
- 2.The District Munsif, Udumalpet

+1 CC to Mr.D.R.Arunkumar, Advocate sr 76940.

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and
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PA (CO)
SP(03/03/2020)



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