



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.10.2020

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.1349 of 2010

&

M.P.No.1 of 2010

Rajendran ... Appellant/Defendant

/versus/

Selvi ... Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 06.04.2009 in A.S.No.11/2006 on the file of Subordinate Court, Ariyalur confirming the decree and judgment dated 17.11.2005 passed in O.S.No.282 of 2004 by the Additional Munsif Court, Ariyalur.

For Appellant :Mrs.V.Revathy for
Mr.R.Nalliyappan

For Respondent :No appearance

JUDGMENT

(The case has been heard through video conference)

Heard the learned counsel appearing for the appellant.

2.The defendant in the pro-note suit is the appellant before this Court. According to the plaintiff, the defendant borrowed a sum of Rs.25,000/- and executed a pro-note dated 05.08.2000. Hence, notice was issued through counsel for repayment. The defendant gave reply notice with false averments. Hence, suit for recovery of money based on pro-note.

3.In the written statement, the defendant has contended that he only borrowed Rs.10,000/- from the plaintiff for which he has already paid Rs.3,500/- in three installments. At the time of borrowing, the plaintiff obtained signature in a blank pro-note and making use of the blank pro-note, she has

filed the suit filling it up with false particulars. Further, the defendant has contended that he has given Rs.17,500/- to the plaintiff when her father was admitted in the hospital for injury sustained in the road accident.

4.The plaintiff to prove her case, examined 2 witnesses and marked four exhibits. On behalf of the defendant, examined two witnesses and one exhibit was marked besides the hand writing of the defendant in the presence of the Court was obtained for comparison and the same was marked as Ex.C1.

5.The Trial Court, on appreciating the evidence has held that the defendant admits execution of pro-note passing of consideration. Though denied he has not produced sufficient evidence to rebut the presumption against the defendant. Hence, allowed the suit and decreed as prayed. The lower appellate Court has confirmed the judgment of the trial Court and decreed the appeal.

6.Aggrieved by the concurrent finding, the Second Appeal is filed on the ground that the Courts below have failed to properly appreciate the evidence placed before it and inspite of rebutting the presumption regarding consideration, the Courts below erred in rejecting the rebuttal placed by the defendant.

7.The perusal of the records reveals that the defendant/appellant while rebutting the presumption under Section 118 of Negotiable Instrument Act regarding passing of consideration has specifically pleaded that he borrowed only Rs.10,000/- for which he executed a blank pro-note. He has paid Rs.3,600/- in three installments. Further, he paid a sum of Rs.17,500/- to the plaintiff, when the plaintiff father met with an accident and has specifically stated that Pichaipillai, Govindan, Mohan, Murugesan are the close friends and relatives of the plaintiff are examined, the truth of the fact will come out.

8.Having pleaded so, the defendant has not marshalled those evidence alleged to be in his favour. He has marked only one exhibit, which happens to be an accounts statement maintained by the defendant itself. Mere self-serving document, the Courts below have rightly declined to accept it. Out of the names mentioned in his written statement, the defendant has not chosen any other to examine except one Mohan who was examined as DW2. However, the testimony of DW2 is not adequate to rebut the presumption, since the burden of proof to rebut the presumption under Section 118 of the Negotiable Instruments Act regarding consideration falls on the defendant and the defendant having failed to discharge the same, this Court finds no error in the findings of the Courts below. Hence, this Second Appeal is

dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

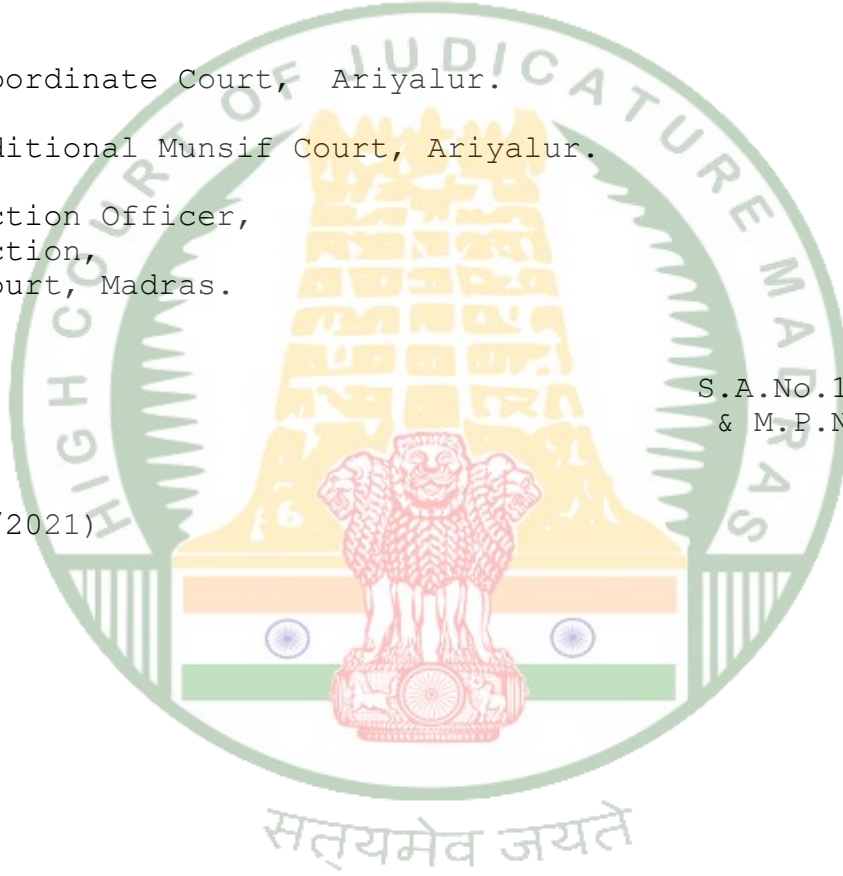
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To:

1. The Subordinate Court, Ariyalur.
2. The Additional Munsif Court, Ariyalur.
3. The Section Officer,
V.R.Section,
High Court, Madras.

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CNR (CO)
GMY (27/04/2021)



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