



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.09.2020	Pronounced on: 04.09.2020
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Coram::

The Honourable Dr.Justice G.Jayachandran

S.A.No.76 of 2010
and
M.P.No.1 of 2010

A.Palanisamy ... Appellant/Defendants

/versus/

Ahamed Basha ... Respondent/Plaintiff

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree dated 09.07.2009 in A.S.No.10 of 2009 on the file of the Additional Sub Judge, Salem, confirming the judgment and decree dated in O.S.No.596 of 2007 on the file of the First Additional District Munsif, Salem, dated 24.11.2008.

For Appellant : Mr.Kalyanaraman
For Respondent : Mrs.R.Meenal

J U D G M E N T

(The case has been heard through video conference)

The defendant, in the suit for recovery of money based on a pro-note, is the appellant herein. The suit pro-note dated 23.01.2007 was for Rs.95,000/- executed by the defendant in favour of the plaintiff with promise to pay with interest at the rate of 18% p.a. Two witnesses seen the execution were examined by the plaintiff. The appellant contention was that he used to take job works of making silver anklets on contract basis. As a security for the silver bar supplied, the plaintiff obtained signature from him in the blank pro-note. No consideration was passed for the alleged pro-note.

2. To prove his case, the plaintiff apart from mounting the witness box had examined two others who are the witnesses for the pro-note Ex.A-1. To rebut the presumption under section 118 of the Evidence Act, the defendant had examined one Sathiyamoorthy as DW-2.

3. DW-2 is a common friend of the sparring parties. He had deposed that, the plaintiff gave him the blank pro-note carrying the signature of the defendant and instructed him to fill it up. He did so due to compulsion. At that time, neither the defendant nor the witnesses were present.

4. Both the Courts below disbelieved the evidence of DW-2 for different reasons. The Trial Court allowed the suit holding that the defendant in his deposition had denied his acquaintance with the scribe of the pro-note Mr. Sathiyamoorthy (DW-2), but subsequently he has called Sathyamoorthy as his witness. This witness cannot be the appropriate witness to speak about passing of consideration.

5. The Appellate Court confirming the Trial Court decision held that, though the scribe DW-2 examined by the defendant on his behalf, his evidence only strengthens the plaintiff case. According to him, he did not see the signatories of Ex.A-1. The scribe is not a competent witness to speak about passing of consideration.

6. The submission of the learned counsel for the appellant, that the probability of executing the pro-note as security is not supported by evidence. DW-2 who claims to be the scribe of the pro-note, had deposed that he wrote it when the defendant and the witnesses to the document were not present. In that case, passing of consideration earlier, when the defendant signed the pro-note cannot be overruled.

7. On analysing the evidence, this Court holds that the conclusion of the Courts below on fact needs no interference. This Court finds no error on law in the conclusion of the Courts below in dismissing the defendants/appellants claim.

8. In the result, the second appeal is dismissed. No order as to costs. Consequently, connected miscellaneous petition is also closed.

सत्यमेव जयते

Sd/-

Assistant Registrar (CO)

//True Copy//

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Sub Assistant Registrar

Rpl

To

1.The Additional Sub Judge,
Salem.

2.The First Additional District Munsif,
Salem.

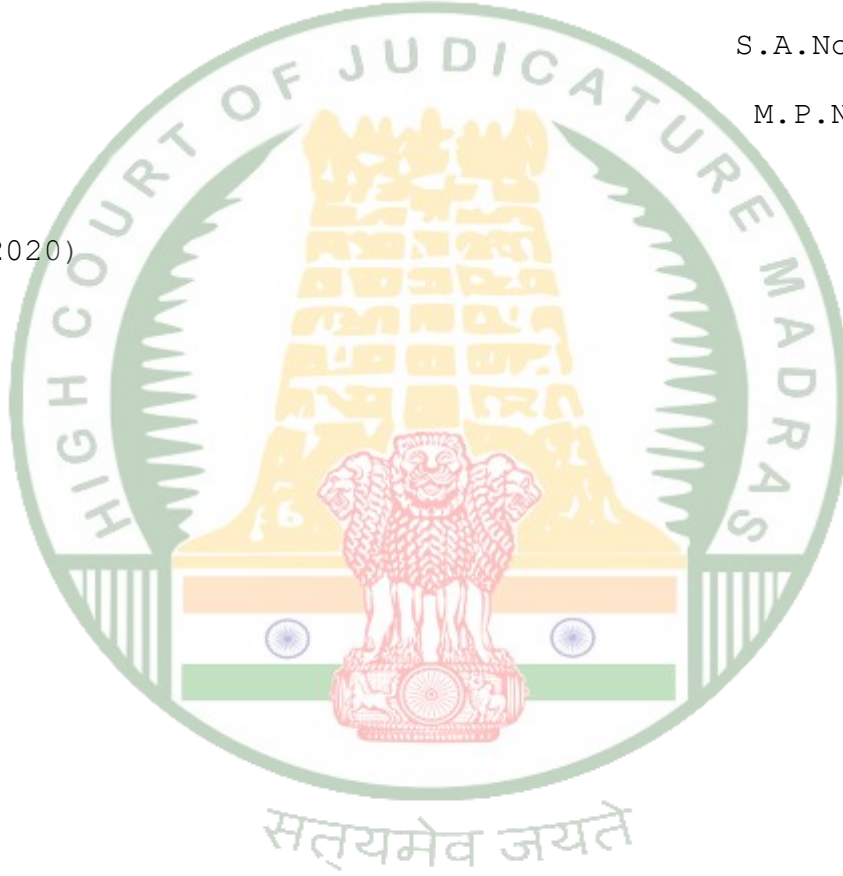
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The Section Officer,
V.R. Section, High Court,
Madras.

+lcc to Mr.S.Kalyanaraman, Advocate, S.R.No. 29016
+lcc to Mr.R.Meenal, Advocate, S.R.No. 29230

S.A.No.76 of 2010
and
M.P.No.1 of 2010

PA(CO)
GN(18/11/2020)



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