

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:27.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.199 of 2020 &
C.M.P.No.4081 of 2020

S.R.George .. Appellant/Defendant

Versus

P.Thangavelu .. Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 17.08.2019 rendered in A.S.No.10 of 2019, on the file of II Additional Subordinate Judge, Salem, confirming the Judgment and Decree dated 18.06.2018, rendered in O.S.No.450 of 2015, on the file of I Additional District Munsif Judge, Salem.

For Appellant : Mr.A.Kalaivanan

JUDGMENT

This Second Appeal arises out of the Judgment and Decree of II Additional Subordinate Judge, Salem, passed in A.S.No.10 of 2019, confirming the Judgment and Decree of I Additional District Munsif Judge, Salem, made in O.S.No.450 of 2015.

2. It is the case of the plaintiff that on 12.08.2012, the defendant borrowed a sum of Rs.75,000/- from him for his urgent family expenses and promised to repay the said amount along with interest at Rs.1% per month. It is alleged that despite repeated demands made by him in person and the legal notice, dated 17.04.2015, the defendant failed to repay the principal as well as interest, a reply notice, dated 30.04.2015, was sent with false allegations and hence, the suit.

3. The suit was resisted by the defendant contending that the plaintiff has fascinated the defendant that he could avail loan from third parties at lower interest and believing his words, the defendant handed over signed promissory note in December 2014. But, in spite of several demands, the plaintiff postponed the matter

saying that he would get the loan very shortly and by manipulating the unfilled signed promissory note of the defendant, filed the above suit. According to the defendant, no consideration was passed and prayed to dismiss the suit.

4. On the basis of the above pleadings, the trial Court framed necessary issues. On behalf of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A4 were marked. On the side of the defendant, D.W.1 was examined and Ex.B1 was produced.

5. The trial Court, after considering the oral and documentary evidence adduced by the parties, decreed the suit. The appellate Court, confirmed the finding of the trial Court. Aggrieved over the same, the present appeal has been filed.

6. Mr.A.Kalaivanan, learned counsel for the appellant submitted that the Courts below have completely overlooked the defense as well as the deposition of the appellant as he was promised by the plaintiff that he would arrange to get a loan at the lower rate of interest and for which, he handed over the blank promissory note. It is the submission of the learned counsel that the Courts below have erred in relying upon Section 20 of the Negotiable Instrument Act, which authorizes holder of instruments to fill up blanks. The Courts below ought to have testified the veracity of P.W.1 and P.W.2, who had deposed that the plaintiff availed a loan of such huge amount of Rs.75,000/- by cash without there being any corroborative materials to support the same.

7. In the matter on hand, the suit was instituted for recovery of a sum of Rs.75,000/- on the basis of Ex.A1-promissory note, dated 12.08.2012 and to fortify his case, the plaintiff examined himself as P.W.1 and also examined the scribe of Ex.A1 promissory note, as P.W.2. Both consistently deposed with regard to execution of promissory note and passing of consideration. Perusal of evidence would reveal nothing could be elicited during cross examination to discredit the witnesses. It is to be noted that to establish the case of the defendant, except Ex.B1-notice issued by the plaintiff and the oral evidence of D.W.1, no other materials were brought on record. It is also found that in view of Section 20 of Negotiable Instruments Act, the plaintiff is entitled to fill the blanks in Ex.A1.

8. Both the Courts below in my view rightly have arrived at finding that the plaintiff is entitled to succeed in the suit. I find no ground to interfere with the concurrent finding of the Courts below and also no

substantial question of law arises for consideration in the appeal.

9. In fine, the Second Appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1. The II Additional Subordinate Judge,
Salem.

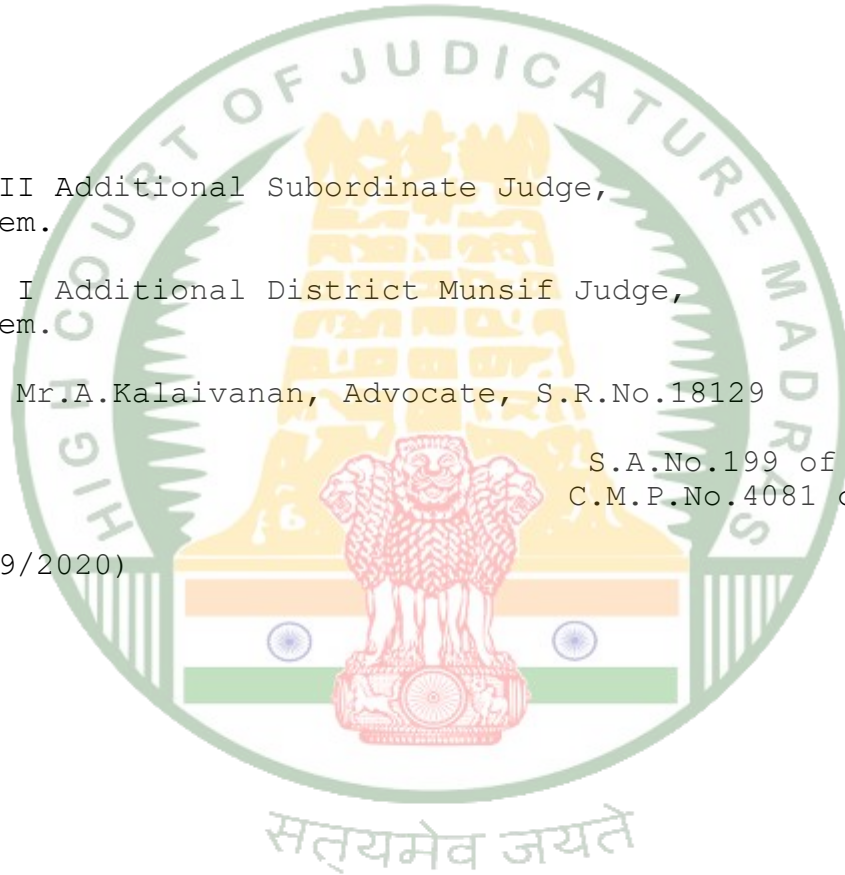
2. The I Additional District Munsif Judge,
Salem.

+1cc to Mr.A.Kalaivanan, Advocate, S.R.No.18129

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MG(CO)

CB(01/09/2020)



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