



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.418 of 2014

and

M.P.(MD)Nos. 1 & 2 of 2014

WEB COPY

Joseph

... Appellant/Respondent/Defendant

-Vs-

Veeraputhran

...Respondent/Appellant/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed by the learned First Additional Subordinate Court Nagercoil, Camp at Padmanabhapuram in A.S.No.85 of 2012, dated 26.11.2013 reversing the Judgment and Decree in O.S.No.186 of 2010, dated 03.08.2012 on the file of the Additional District Munsif, Padmanabhapuram.

For Appellant

: Mr.C.K.M.Appaji

For Respondent

: Mr.J.Lawrance

JUDGMENT

The defendant in O.S.No.186 of 2010 on the file of the Additional District Munsif Court, Padmanabhapuram is the appellant in this second appeal. The suit was laid on the basis of a cheque transaction. While the plaintiff would claim that the defendant approached him for loan and through the aforesaid cheque payment, the loan was disbursed, the defendant would state that it was repayment of the amount already given by the defendant. Since such a defence had been set up by the defendant, the plaintiff ought to have stepped into the witness box and cross examined the defendant.

2.In the case on hand, the plaintiff did not enter the witness box. The suit was filed by the power agent. It was the power agent who examined himself as P.W.1. In fact, the learned counsel appearing for the defendant would submit that the trial Court rightly dismissed the suit by relying on the decision of the Apex Court **2005 3 L.W. 403 (Janki Vashdee Bhojwani and another Vs. Indusind Bank Limited and others)**. It appears that during the relevant time, the plaintiff was abroad. I felt that in the interest of justice, the matter could be remanded, so that, the plaintiff would have an opportunity to get into the witness box. Though the respondent succeeded before the first Appellate Court, he is agreeable for the course of action suggested by me.

3.The learned counsel for the appellant, on instruction, states that he would be satisfied, if remand is made to the trial Court.



4.Recording the submission made on either side, the impugned Judgment and decree passed by the First Appellate Court is set aside and the matter is remanded to the file of the trial Court. The parties will appear before the trial Court on 30.06.2021. No fresh summons will be issued. The plaintiff Veeraputhran shall examine himself as P.W.2 on the date to be assigned by the trial Court. The question of filing any additional pleading will not arise. The remand is only made for the purpose of enabling Thiru.Veeraputhran to examine himself as witness. After cross examination is over, the parties can advance their arguments and based on the same the suit itself can be disposed of on merits and in accordance with law. Since the suit is of the year 2010, the learned trial Judge is requested to dispose of the matter within a period of six months. Since the order of remand has been made, Registry is directed to refund the Court fee to the appellant.

5.The second appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The First Additional Subordinate Judge, Nagercoil.

2.The Additional District Munsif, Padmanabhapuram.

3.The Section Officer-2 copies

Vernacular Records,

Madurai Bench of Madras High Court, Madurai.

Copy to:

The Registrar Judicial,

Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.J.LAWRANCE, Advocate (SR-18210[F] dated 30/04/2021)

Judgment made in
S.A.(MD)No.418 of 2014

and
M.P.(MD)Nos. 1 & 2 of 2014

30.04.2021