



THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD)No.521 of 2014

and

M.P. (MD)No.1 of 2014

S.Rajkumar

... Appellant/Appellant/Defendant

-Vs-

Saroja

...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and decree passed by the learned Subordinate Judge, Periyakulam in A.S.No.3 of 2010, dated 17.06.2013 confirming the Judgment and decree of the learned District Munsif Court, Periyakulam in O.S.No.23 of 2008, dated 17.08.2009.

For Appellant : Mr.S.Vijayashanthi

For Respondent : no appearance

JUDGMENT

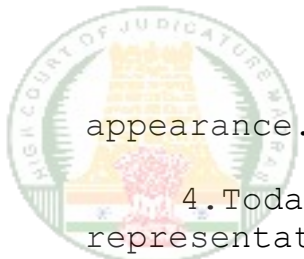
The defendant in O.S.No.23 of 2008 on the file of the District Munsif Court, Periyakulam is the appellant in this second appeal. The said suit was filed by the respondent Saroja for recovering a sum of Rs.92,190/- with interest.

2.The case of the plaintiff was that the appellant herein had borrowed a sum of Rs.70,000/- on the strength of Ex.A1-promissory note dated 19.05.2005. The suit was decreed vide Judgment and decree dated 17.08.2009. Questioning the same, the appellant filed A.S.No.3 of 2010 before the Sub Court, Periyakulam. By Judgment and Decree dated 17.06.2013, the appeal was dismissed. Challenging the same, this second appeal came to be filed. The second appeal was admitted by framing the following substantial questions of law:-

"1.Whether the Courts below is right in decreeing the suit seeking the relief of money on suit promissory note, when the plaintiff failed to prove the signature of the defendant in the suit promissory note in case of denial of signature in the suit promissory note?

2.Whether the Courts below is right in decreeing the suit where the burden of prove lies on the part of the plaintiff in the case where the signature in the suit promissory note is disputed?

3.The appellant was granted interim stay on condition to deposit a sum of Rs.25,000/-. The appellant is said to have complied with the stay condition. Notice was issued to the respondent. In fact, Mr.R.Shankar Ganesh had filed caveat on behalf of the respondent and notice was served on the caveator. Later, there was a change of counsel and one Mr.A.Gandiappan entered



appearance.

4.Today, when the case was taken up for hearing, there was no representation on the side of the respondent. Though the court officer attempted to contact Gandiappan on his mobile number, Thiru.Gandiappan did not attend the said call. It is stated by the appellant's counsel that Saroja has passed away. It is also stated that Saroja's husband had pre-deceased her. Saroja is not having any class I legal heir. The appellant is desirous of taking steps to bring the legal heirs on record. But for want of details, the appellant is unable to do anything. The appellant has suffered a decree at the hands of the Courts below. The decree cannot be set aside because the decree holder is no more and details regarding the legal heirs are also not available. Technically this second appeal will have to be dismissed as having abated against the respondent. It is accordingly dismissed as abated against the respondent. In future, if someone claims to be a legal heir of Saroja and seeks to enforce the impugned decree, it would be open to the appellant to move this Court by filing CMP for setting aside this order of abatement and for reopening the entire appeal proceedings..

5.With this liberty to the appellant, this second appeal is dismissed as abated against the respondent. Since a sum of Rs.25,000/- had already been deposited by the appellant, the same can be withdrawn by the appellant after a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

- 1.The District Munsif Court, Periyakulam.
- 2.The Subordinate Judge, Periyakulam.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2C)

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