



S.A.No.93 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Second Appeal No.93 of 2016

Karunya Finance
22-C, Co-operative Colony
Namakkal Town and Taluk
Represented by its Managing Partner
V.Vijayakumar, S/o Vasudevan
Cooperative Colony, Gandhi Nagar
Namakkal.

... Appellant

-Vs-

1.Arumugam
2.Dr.R.Rajendran

... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated dated 27.02.2015 made in A.S.No.120 of 2011 on the file of Principal District Judge, Namakkal confirming the judgment and decree dated 30.08.2011 made in O.S.No.311 of 2001 on the file of Sub Court, Namakkal.

For Appellant : Mr.T.Dhanya Kumar

For Respondent : Mr.A.Meenakshi Sundaram – for R1
R2 – Refused – No appearance



S.A.No.93 of 2016

J U D G M E N T

WEB COPY

The plaintiff is the appellant in this Second Appeal.

2. The plaintiff is a registered partnership firm, which filed the suit for recovery of money against the defendants. The case of the plaintiff is that the first defendant borrowed a sum of Rs.1,20,000/- from the firm and executed a registered promissory note on 25.06.1998. The further case of the plaintiff is that the defendants paid only a sum of Rs.36,000/- towards the principal amount with interest till 21.11.1999 and thereafter failed to repay back the principal amount as well as the interest. Hence the suit came to be filed seeking for the relief of recovery of money together with interest.

3. The first defendant filed a written statement and took a stand that he has already cleared the entire loan and the plaintiff is misusing the promissory note that was not handed over in spite of the loan amount being settled. The first defendant virtually denied the entire liability and sought for the dismissal of the suit.

4. Both the Courts below concurrently found that the plaintiff has made out a case by virtue of proving the promissory note. However, the relief was not granted in favour of the plaintiff since the plaintiff is a partnership firm and the person who represented the firm did not prove that he was a partner in that firm. Hence both the Courts relied upon Section 69(2) of the Indian Partnership Act, 1932 and dismissed the suit. Aggrieved by the same, this second appeal has been filed by the plaintiff.



S.A.No.93 of 2016

WEB COPY

5. This Court, while admitting the second appeal, framed the following substantial question of law.

“ Whether the Courts below were right in concluding that the suit is hit by Section 69(2) of the Indian Partnership Act, 1932, more so when the said plea was not even raised in the written statement and the attempt by the defendant raise the said plea in the additional written statement was rejected by the trial Court?”

6. Heard Mr.T.Dhanya Kumar, learned counsel for the appellant and Mr.A.Meenakshi Sundaram, learned counsel for the first respondent.

7. This Court has carefully perused the findings of both the Courts below. It is clear from the findings of both the Courts below that the plaintiff firm is a registered firm and as per the particulars available with the Registrar of Firms, which was marked as Ex.B3, it was found that Vijayakumar was not even a partner in this firm. In view of the same, both the Courts below relied upon Section 69(2) of the Indian Partnership Act, and held that the suit can be maintained only by those persons whose names have been shown in the Register of Firms as partners in the firm. This Court does not find any illegality or infirmity in the findings of both the Courts below. It is quite unfortunate that the plaintiff firm has failed in the suit because of the fundamental mistake that had taken



S.A.No.93 of 2016

place even at the time of filing the suit and obviously, the counsel who had represented the plaintiff should have at least advised and got the infirmity rectified. Now it is too late in the day to rectify this fundamental mistake, which goes to the root of the matter. The substantial question of law is accordingly answered against the appellant.

8. In the result, the second appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

11.03.2022

Index : Yes/No
Internet : Yes/No
KST

To

1. The Principal District Judge, Namakkal.
2. The Subordinate Judge (Senior Division), Namakkal.



WEB COPY



S.A.No.93 of 2016

N.ANAND VENKATESH, J.

kst

S.A.No.93 of 2016

11.03.2022