



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.23 of 2010

WEB COPY

Sri Koppammal Cotton Spinning Mills (P) Ltd.,
rep. by the Director T.R.S.Vijayram,
Having office at 311/2, Tiruchuli Road,
Aruppukottai Town,
Virudhunagar District.

... Appellant / 1st Respondent / Plaintiff

-Vs-

1.Athilakshmiammal ... Respondent / Appellant / 1st Defendant

2.Senthil Kumar ... Respondent / 2nd Respondent / 2nd Defendant
(R2 set Exparte in A.S)

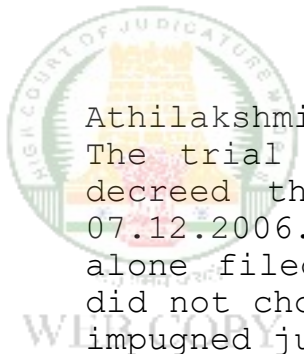
PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 14.09.2009 made in A.S.No.5 of 2007 on the file of the Principal District Court, Virudhunagar at Srivilliputhur by reversing the judgment and decree dated 07.12.2006 made in O.S.No.37 of 2005 on the file of the Sub Court, Aruppukottai.

For Appellant	: Mr.S.Kadarkarai
For R1	: Mr.V.Perumal
For R2	: No Residency

JUDGMENT

Heard the learned counsel on either side.

2. The plaintiff in O.S.No.37 of 2005 on the file of the Sub Court, Aruppukottai is the appellant in this second appeal. The appellant is an incorporated company. The second defendant in the suit namely Senthil Kumar was employed as the sales depot agent in the plaintiff company. It was discovered that he committed misappropriation to the tune of Rs.21,00,000/-. When confronted, the second defendant as well as his mother namely the first defendant agreed to clear the liability. In fact, a substantial portion of the liability was already recovered. To recover the balance amount of Rs.1,77,362/- with interest, the said suit came to be filed. The defendants filed written statement controverting the plaint averments. On the side of the plaintiff, two witnesses were examined. Ex.A1 to Ex.A4 were marked. The first defendant



Athilakshmi examined herself as D.W.1. Ex.B1 & Ex.B2 were marked. The trial court after a consideration of the evidence on record decreed the suit as prayed for vide judgment and decree dated 07.12.2006. Aggrieved by the same, the first defendant Athilakshmi alone filed A.S.No.5 of 2007. The second defendant Senthilkumar did not choose to file any appeal. The first appellate court by the impugned judgment and decree dated 14.09.2009 allowed the appeal and set aside the judgment and decree passed by the trial court insofar as the first defendant was concerned. Challenging the same, the second appeal came to be filed by the plaintiff.

3. Though the second appeal was filed way back in the year 2010, only notice was ordered and it was not admitted till date. A reading of the record indicates that it was only the second defendant who had committed the act of misappropriation. It was he who was liable. The first defendant had no liability whatsoever. Probably, because her son was involved, she also undertook to clear the liability. This undertaking by itself will not make her liable. That is why, the first appellate court rightly interfered with the decision of the trial court insofar as the first defendant was concerned. No substantial question arises for consideration. The second appeal is dismissed. No cost.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Principal District Judge, Virudhunagar @ Srivilliputhur.

2.The Subordinate Judge, Aruppukottai.

Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.KADARKARAI, Advocate (SR-5492[F] dated 11/02/2022)

+1 CC to M/s.V.PERUMAL, Advocate (SR-5496[F] dated 11/02/2022)

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