



SA.No.853 of 2010

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.853 of 2010

and

M.P.No.1 of 2010

Y.Syamala Rao ... Appellant
- Vs -

Mangadevi ... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 19.09.2002 made in O.S.No.2399 of 1999 on the file of the II Assistant City Civil Court, Chennai as confirmed by the judgment and decree dated 29.06.2004 made in A.S.No.454 of 2003 before the Principal Judge, City Civil Court, Chennai.

For Appellant : Mr.Anton Dhanasekaran
for M/s.S.Mohanasundararajan

For Respondents : No Appearance



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JUDGMENT

The appellant herein is the defendant. The respondent herein is the plaintiff in the suit.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the trial Court.

3. The brief facts which gives rise to the instant second appeal is that:

According to the plaintiff, the defendant has borrowed a sum of Rs.25,000/- on 30.03.1996, and executed a promissory note agreeing to repay the said amount with interest at the rate of 24% p.a. Since the defendant failed to pay the borrowed amount, the plaintiff instituted the suit for recovery of the suit amount from the defendant.

4. The said suit was resisted by the defendant by contending that he never borrowed any amount from the plaintiff, and never executed any



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promissory note in evidencing the receipt of the borrowal. However, the defendant submitted that he had transaction only with the husband of the plaintiff and that he repaid the loan. Therefore, the defendant submitted that the suit is liable to be dismissed.

5. Evidence and documents:-

Before the Court below, the plaintiff has marked the promissory note as Ex.A1 and examined herself as PW1. On behalf of the defendant, he himself was examined as DW1 and marked two documents as Exs.B1 and B2.

6. Finding of the both the Court below:-

The Trial Court, after considering the evidence and documents and after hearing both sides submissions decreed the suit. Aggrieved by the same, the defendant has approached the First Appellate Court and filed an application to receive additional documents in C.M.P.No.2301 of 2003 and 160 of 2004. In the said applications, the First Appellate Court allowed the application and the additional documents namely depositions



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of criminal case was marked as Exs.B1 and B2. The First Appellate Court, after considering the submissions made by either side and upon considering the additional documents has come to the conclusion that the transaction between the plaintiff's husband and the plaintiff has no nexus, and the judgment of the Criminal Court has no relevance and ultimately confirmed the decree and judgment of the trial Court. Aggrieved with the said order, the defendant is before this Court by way of the Second Appeal.

7. Submissions of either side counsel:-

The learned counsel appearing for the appellant/defendant would vehemently contend that both the Courts below have failed to note that the appellant had not executed any promissory note in favour of the respondent/plaintiff. He would further submit that the judgment of the criminal proceedings would exemplify the case of the defendant. However, the First Appellate Court did not consider the same and has not permitted to mark the judgment. The learned counsel for the appellant would also invite the attention of this Court in respect of Exs.B1 and B2,



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wherein the respondent has categorically admitted that she had not lend any money prior to December 1998. It is the further submission of the learned counsel for the appellant that the both the Courts below have failed to take into consideration that the appellant/defendant executed the promissory note only in favour of the husband of the plaintiff. Thus, the learned counsel for the appellant would pray for allowing the second appeal and thereby prayed to dismiss the suit. Hence, prayed to allow this Second Appeal.

8. Despite the name printed in the cause list, no one is appeared on behalf of the respondent.

9. I have given my anxious consideration to either side submissions.

10. Analysis of the submissions:-

The sum and substance of the contention of the learned counsel for the appellant is that the defendant did not borrow any amount from the



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However, the First Appellate Court as well as the trial Court has disbelieved the same. While considering the submissions made by the defendant, the First Appellate Court held that the appellant had admitted his signature found in the promissory note. However, it was the contention of the defendant that the said promissory note was handed over to the plaintiff's husband.

11. However the First Appellate Court took cognizance of the death of the plaintiff's husband during 1998, and held that if at all had there been any settlement of amount with the plaintiff's husband, the defendant would have send notice to get back the promissory note as well as the cheque executed by him. Therefore, in view of no action taken by the defendant, the First Appellate Court had believed the case of the plaintiff and ultimately decreed the suit.

12. The First Appellate Court also perused Ex.A1 promissory note and found that the promissory note was duly executed. While considering



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the additional documents, Exs.B1 and B2, the First Appellate Court was of the view that the transaction between the plaintiff and her husband is two different transactions and has ultimately found that the defendant had executed the promissory note. Hence, confirmed the judgment of the trial Court.

13. This Court finds no materials to deviate from the findings recorded by both the Courts below and there are no substantial questions of law arising in this appeal.

14. In the result, this Second Appeal is dismissed and the judgment and decree dated 19.09.2002 made in O.S.No.2399 of 1999 on the file of the II Assistant City Civil Court, Chennai as confirmed by the judgment and decree dated 29.06.2004 made in A.S.No.454 of 2003 before the Principal Judge, City Civil Court, Chennai are hereby confirmed. There shall be no order as to costs. Consequently, connected M.P.No.1 of 2010 is also closed.



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Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No



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C.KUMARAPPAN, J.,

ssn

To

1. The Principal Judge,
City Civil Court,
Chennai.

2. The II Assistant Judge,
City Civil Court,
Chennai

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and
M.P.No.1 of 2010

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