



S.A.No.1081 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

S.A.No.1081 of 2013

and

M.P.No.1 of 2013

C.Paramasivam .. Appellant/Appellant/Defendant

Vs.

V.R.Meenakshi Sundaram ..Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure to set aside the decree and judgment dated 06.10.2012 rendered in A.S.No.91 of 2012 on the file of the Principal Subordinate Judge, Coimbatore confirming the decree and the Judgment dated 30.11.2007 rendered in O.S.No.1989 of 2004 on the file of the learned Principal District Munsif, Coimbatore.

For Appellant : Ms.M.H.Anisha
for Mr.S.Subbiah

For Respondent : Mr.D.Mahesh for
Mr.S.Manickam



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JUDGMENT

The Second Appeal has been filed to set aside the Judgment and decree passed by the learned Principal Subordinate Judge, Coimbatore in A.S.No.91 of 2012 dated 06.10.2012 confirming the Judgment and decree passed by the learned Principal District Munsif, Coimbatore in O.S.No. 1989 of 2004 dated 30.11.2007.

2. The learned Counsel for the Appellant submitted that the Second Appeal filed by the Defendant in O.S.No. 1989 of 2004 on the file of the learned Principal District Munsif, Coimbatore. The Suit was filed by the Plaintiff seeking recovery of money. The Defence of the Defendants in the written statement was that he had borrowed money on a promissory note and he had repaid the same. At the time of repayment of amount, the Plaintiff had not handed over the promissory note claiming it as missing. The Plaintiff undertook to hand over the promissory note once it is traced. Instead of handing over the promissory note, he had misused the promissory note and had laid the Suit before the learned Principal District Munsif. On receipt of summons, the Defendants engaged a Counsel and filed written statement disputing the claim, claiming that he had repaid the entire amount. The



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learned Principal District Munsif, Coimbatore had framed the issues and posted the case for trial. During trial, the Plaintiff had examined himself as P.W-1 and marked the pronote as Ex.A-1 and the lawyer's notice seeking recovery of money as Ex.A-2 and the reply notice given by the Defendants as Ex.A-3. The Plaintiff had also examined another witness by the name Chandra Mohan who is an interested witness. The Defendants had cross-examined the Plaintiff. The Defendants had not let in evidence, the Defendant was not afforded an opportunity to let in evidence. When she sought an adjournment, the Court closed the evidence suo-moto and pronounced the Judgment granting the decree as prayed for.

3. Aggrieved by the Judgment of the learned Principal District Munsif, Coimbatore, the Defendants had preferred the Appeal in A.S.No.91 of 2012 before the learned Principal Sub Judge, Coimbatore. The learned Principal Sub Judge, Coimbatore had dismissed the Appeal by Judgment dated 06.10.2012.

4. Aggrieved by the same, the Defendant before the trial Court had



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preferred this Second Appeal raising the following substantial questions of

law:

“(i) When the presumption under Section 118 of the Negotiable Instruments Act is a rebuttable one, and when, the parties have adduced evidence, is it not the duty of the Court to specify where exactly, the burden had shifted.

(ii) When the Appellate Court is under the bounden duty to discuss the entire evidence adduced by both the parties, but a mere finding without any evidence placed on record, is not the Judgment of the lower Appellate Court is vitiated.

(iii) When the Defendant did not lead evidence in the trial Court, and when a request was made in the Appellate Court for permission to lead evidence, is it not the refusal on the part of the Appellate Court to give an opportunity to the Defendant to lead his evidence is proper, and against the right of the Defendant, to lead his evidence, though at a later stage, in the Appeal, which is to be treated as one continuation of the Suit.”

5. The learned Counsel for the Appellant seeks to remand this case to the first Appellate Court to consider afresh the Appeal.

6. The learned Counsel for the Respondent submitted that there is concurrent finding before the trial Court as well as the First Appellate Court. There is no ground to raise substantial questions of law in this Appeal. The Second Appeal lacks merits and is to be dismissed.



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7. The prayer of the learned Counsel for the Appellant seeking remand this case after 11 years cannot at all be accepted. From the submission made by the learned Counsel for the Appellant, it is found that with an ulterior motive to prevent the decree-holder from executing the decree. Therefore, after 11 years, this Court as Second Appellate Court cannot remand the case afresh for consideration of the learned Sub Judge, Coimbatore. If the claim of the Appellant is *bonafide*, he ought to have sought to remand the case at the earliest point of time, without waiting for 11 years. Therefore, as rightly claimed by the learned Counsel for the Respondent, the substantial questions of law in this case do not arise.

In the admission stage itself, this Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No
Internet: Yes/No
Speaking order/Non-speaking order
dh

SATHI KUMAR SUKUMARA KURUP, J.



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dh

To

1. The Principal Subordinate Judge,
Coimbatore.
2. The Principal District Munsif,
Coimbatore.

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