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S.A.No.118 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.118 of 2024
and
C.M.P.No.3735 of 2024

G.Thiruvengadam

... Appellant

Vs.

M/s.Gayathri Finance,
a Registered Partnership Firm,
by its Managing Partner,
Having Office at
No.44-A 1,
Annapoorna Street, Main Road,
Namakkal Town,
Namakkal Taluk and District

... Respondent

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 16.12.2022 made in A.S.No.35 of 2021 on the file of the Additional District Court, Namakkal reversing the Judgement and Decree dated 03.01.2020 made in O.S.No.148 of 2010 on the file of the Additional Subordinate Court, Namakkal.

For Appellant : M/s.K.S.Karthik Raja



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JUDGEMENT

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The defendant is the appellant before this Court. This Second Appeal has been filed challenging the judgment and decree in A.S.No.35 of 2011 on the file of the Additional District Court, Namakkal in and by which the learned Judge has reversed the judgment and decree in O.S.No.148 of 2010 on the file of the Additional Sub Judge, Namakkal.

2. The facts are briefly set out herein below with the parties being referred to in the same array as before the Trial Court.

3. The plaintiff had filed the suit for recovering a sum of Rs.4,96,125/- with future interest on the principal amount of Rs.2,22,000/- from the date of the suit till the date of decree against the defendant. It is their contention that the defendant had borrowed a sum of Rs.2,22,000/- from the plaintiff's concern on 16.09.2004 promising to repay the same with interest and a promissory note has been executed acknowledging the borrowal.



4. The plaintiff would submit that the defendant had repaid the money till 15.10.2004 and on 13.09.2007 had made an endorsement on the promissory note and thereafter there has been no payments till the date of the filing of the suit. Therefore, the plaintiff had come forward with the suit in question.

5. The defendant had filed a written statement inter alia denying all the contentions of the plaintiff. It is the contention of the defendant that he was a partner in the plaintiff's concern and the sum of Rs.2,22,000/- paid to him was his share of the profit and was not a borrowal. He would deny the execution of the promissory note. He would contend that he had stood as a guarantor to one Marappan and during this time the defendant had signed on loan applications and guarantee forms which have been misused.

6. The defendant would submit that he was the managing partner in the plaintiff's concern. Thereafter, on account of certain differences of opinion between himself and the other partner, namely,



Chandrasekaran, the said Chandrasekaran had made use of the blank promissory note signed by the defendant and created the suit promissory note. The defendant would further submit that he had allowed the blank promissory note to remain in the plaintiff's firm as they had informed him that it would be safe with the plaintiff. Now the said blank promissory note has been utilized to create the suit promissory note. He therefore sought to have the suit dismissed.

7. An additional written statement also came to be filed in which the defendant had contended that the plaintiff's firm is not a registered Partnership Firm and to institute a suit on behalf of a Partnership Firm, the firm must not only registered but also all partners at the time of the institution of the suit must be or have been shown as such in the Register of Firms as partners. Non-production of the list of partners as in Register of Firms before filing the suit is fatal to the plaintiff's case.

8. He would further submit that though he had retired, the company had not complied with the mandatory provisions of the



Partnership Act to have the register updated. Therefore, the plaintiff's firm cannot sue the defendant. He would also contend that the consideration has not passed. He would also deny the endorsement made on the rear of the promissory note made just two days prior to its expiry.

9. The Trial Court had framed the following issues and Additional issues:-

- 1. Whether the suit pro-note is true and genuine?*
- 2. Whether the suit pro-note was executed by the defendants for consideration?*
- 3. Whether the plaintiff is entitled for the suit amount as prayed for?*

Additional Issues:-

- 1. Whether the plaintiff firm was a registered partnership firm?*
- 2. Whether the plaintiff has not duly complied the provisions of Indian Partnership Act?*



3. Whether the suit initiated by Partnership Firm

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4. Whether suit is barred by limitation?

10. The plaintiff had examined himself as P.W.1 and marked Ex.A.1 to A.23. The defendants had not entered the witness box nor filed documentary evidence.

11. The learned Trial Judge observed that the witness who has adduced evidence on behalf of the plaintiff's firm was not given an expressed authority to appear and depose on behalf of the plaintiff's firm and therefore, he had appeared before the Court without seeking permission. The learned Trial Judge had also observed that the onus is on the plaintiff firm to prove that they have given the share of profits arising from out of the firm to its partner, namely, the defendant herein.

12. The learned Judge had held that the suit is initiated by the partnership firm which has not complied with the provisions of the



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Indian Partnership Act and therefore, the suit has to necessarily fail.

Ultimately, the Trial Court had dismissed the suit. Challenging the said judgement and decree the plaintiff had filed A.S.No.35 of 2021 on the file of the Additional District Munsif, Namakkal.

13. The learned Appellate Judge on considering the evidence held that the person who has verified the pleadings and adduced evidence has been registered as a partner in the Register of Firms which is evident from Ex.A.16 and A.18 and therefore the institution of the suit was in order and held that the execution of the promissory note had been admitted by the defendant who has not proved the defense and that apart the suit is filed within the period of limitation as the endorsement made on the promissory note though denied has not been proved to be a fabricated one by the defendant. Ultimately, the lower Appellate Court had allowed the appeal and set aside the judgment and decree of the Trial Court.

14. Challenging the same, the defendant is before this Court.



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15. Heard the counsel for the appellant/defendant.

16. The defendant has admitted receipt of the sum of Rs.2,22,000/- even in his written statement. However, it is his contention that the amount constitutes his share of the profit. This fact has not been proved by the defendant. Further, the defendant would contend that he had executed the promissory note as a guarantor for one Marappan for whom he has signed several papers which has now been misused by the plaintiff. The defendant has not examined the said Marappan. The third plea that was taken by the defendant is that the plaintiff is not a registered Partnership Firm and the person who has verified the pleadings and adduced evidence is not a partner and not authorised to do so as per Section 69 of the Partnership Act. The plaintiff has filed Ex.A.16 and Ex.A.18 to prove that the firm is a Partnership Firm and the person who has verified the pleadings and adduced evidence is shown as a partner of the firm. Therefore, this defense of the defendant also does not hold water. Having admitted the



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signature, the onus shifts to the defendant to prove that he had not executed the promissory note as stated in the plaint and that he had not received consideration. The defendant however has admitted receipt of the sum of money as shown in the promissory note but would state that this is towards the share of the profit. There is no proof of the same.

17. The Lower Appellate Court has considered the evidence from its correct perspective and has rightly set aside the non-speaking judgment and decree of the Trial Court. I see no reason to interfere with the same and accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.02.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

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1. The Additional District, Court, Namakkal.
2. The Additional Subordinate Court, Namakkal.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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