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S.A.(MD).No.360 of 2021

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.02.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.360 of 2021

and

C.M.P.(MD)No.4781 of 2021

V.Kala

... Appellant

/Vs./

1.K.Balasubramani

2.Jothi

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 08.08.2019 in A.S.No.144 of 2017 on the file of the Fast Track, Mahila Judge, Dindigul, reversing the judgment and decree dated 19.10.2016 in O.S.No.572 of 2002 on the file of the Learned Additional Subordinate Judge, Dindigul.

For Appellant : Mr.H.Lakshmi Shankar
For R1 : Mr.S.Loganathan
For R2 : Mr.P.T.Kannan

JUDGMENT

This Second Appeal is filed to set aside the Judgment and Decree, dated 08.08.2019 passed in A.S.No.114 of 2017 on the file of Fast Track Mahila Court, Dindigul reversing the Judgment and Decree, dated 19.10.2016 passed in O.S.No.



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572 of 2002 on the file of the Subordinate Court, Dindigul.

2. The first defendant is the Appellant herein and the plaintiff is the first respondent herein and the second defendant is the second respondent herein. For the sake of convenience, the contesting parties shall be referred to as plaintiff Balasubrmanian and 1st defendant V.Kala and the 2nd defendant Jothi as per the ranking in the suit.

3. The suit is filed by the plaintiff Balasubrmanian for recovery of money to the tune of Rs.1,71,600/- from the 1st defendant V.Kala. The contention of the plaintiff Balasubrmanian is that he had lend Rs.1,00,000/- as loan to the 1st defendant V.Kala with interest at the rate of 24% per annum. The 1st defendant V.Kala failed to repay the same within the stipulated time. Hence, the plaintiff Balasubrmanian had issued suit notice on 09.11.2002 to repay the amount, if not suitable legal action would be initiated. The 1st defendant V.Kala had replied to the said notice stating that she had already repaid the amount to the 2nd defendant Jothi who is the wife of the plaintiff Balasubrmanian. After receiving the reply notice, the plaintiff Balasubrmanian had preferred this suit. Initially, the suit was filed against the 1st defendant V.Kala alone, thereafter, the 1st defendant V.Kala



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had filed a petition under order 8A of CPC stating that the 2nd defendant Jothi ought to be impleaded to prove that she had received the amount. Moreover if the suit is allowed in favour of the plaintiff Balasubrmanian, then the 1st defendant V.Kala may be permitted to recover the said amount from the 2nd defendant Jothi. Since the 1st defendant V.Kala has already paid the entire amount for which there is an endorsement in the note, the suit was amended impleading the 2nd defendant Jothi as one of the parties in the suit before the Trial Court.

4. After analyzing the evidence especially Exhibit B1 and B2, the Trial Court has come to the conclusion that the 1st defendant V.Kala had paid the entire amount to the 2nd defendant Jothi and dismissed the suit. Aggrieved over the same, the plaintiff Balasubrmanian has preferred the first appeal and the Appellate Court has reversed the finding and allowed the appeal. The reasoning stated by the Appellate Court is that in Exhibit B2, there is no signature or stamp or date. Further, simply because the handwriting of the 2nd defendant Jothi is same, it cannot be a conclusive proof that the 1st defendant V.Kala had paid the entire amount to the 2nd defendant Jothi. The Appellate Court further held that Exhibit A1 is dated 27.11.1999 but the Exhibit B2 starts prior to the said date, i.e., 27.01.1999, which is ten months prior to the ExA.1 and the Appellate Court



disbelieved the Exhibit B2. Aggrieved over the same, the present second appeal is filed.

5. The second appeal was admitted on the following substantial questions of law:

- “i) Whether the first Appellate Court erred in holding that Ex.B1 has to be ignored for want of stamping, when such an objection was not raised either in pleadings or in evidence and no issue has been framed?*
- ii) Whether the judgment of the first Appellate Court is vitiated for having failed to note that the first defendant has invoked Order 8A of Civil Procedure Code?”*

6. It is an admitted fact that the plaintiff Balasubrmanian or the 2nd defendant Jothi has not raised objections or deny in their pleadings that the said Ex.B1 was not written by the 2nd defendant Jothi. Further the plaintiff Balasubrmanian and the 2nd defendant had not raised any objections stating that there is no stamp or signature or date in the Ex.B1 and infact, no issue was framed to this effect and there are no pleadings or evidence to this effect. This Court is of the considered opinion when the plaintiff Balasubrmanian and 2nd defendant had not objected to the contention of the 1st defendant V.Kala, when no issue was



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framed to this effect, when no evidence was available, then the finding of the Appellate Court in coming to the conclusion that Exhibit B1 ought to be ignored for the reason that there is no stamp or date or signature is erroneous. Therefore, the first substantial question of law is answered in favour of the first defendant V.Kala.

7. As far as the second substantial question of law is concerned, when separate petition was filed invoking order 8A of the CPC, the parties have contested the same and the petition was allowed. Against which neither the plaintiff Balasubrmanian nor the second defendant Jothi had preferred any appeal or revision against the said order, the said order has attained finality. In such circumstances, the Appellate Court ignoring the said fact that the order 8A application was allowed has travelled beyond the scope of the suit and has held that Exhibits B1 and B2 cannot be relied. Therefore, this Court is of the considered opinion that the Appellate Court has erred in coming to such a conclusion. Hence the second substantial question of law is held in favour of the 1st defendant V.Kala.



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8. Interestingly, the Appellate Court has stated that Exhibit A1 is dated 27.11.1998 but Exhibit B2 starts from 27.01.1999 which is 10 months prior to the suit. On perusal of Exhibit B2 it is seen that there are entries from 11.08.1988 onwards, especially on 11.08.1988, it is stated that Rs.5,000/- is paid by the first defendant to the second defendant for chit transaction and there are series of other entries for every month indicating instalments for chit transaction. Therefore, it is a conclusive proof that apart from the loan transaction there are several other transactions between the parties. The Appellate Court has erred in not taking all these factors into account. And the Appellate Court had erred in reversing the well-reasoned judgment of the Trial Court. Therefore, this Court is setting aside the judgment and decree of the First Appellate Court and confirming the judgment and decree of the Trial Court.

9. This Court had admitted the present second appeal with a condition that the 1st defendant / appellant herein should deposit 25% of the decretal amount. Since the second appeal is allowed, the 1st defendant / appellant is permitted to withdraw the amount already deposited by her.



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10. Hence, the second appeal is allowed on above terms. No costs.
Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
NCC : Yes / No

Tmg

TO:

1. The Fast Track, Mahila Judge,
Dindigul.
2. The Additional Subordinate Judge,
Dindigul.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.360 of 2021

Dated:
29.02.2024