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S.A.No.548 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2026

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

S.A.No.548 of 2015

and

M.P.No.1 of 2015

S. Ayyasamy

... Appellant / Respondent / Defendant

Vs.

V.P.Shanmugam

... Respondent / Appellant / Plaintiff

Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 30.01.2015 made in A.S.No.60 of 2014 on the file of the learned First Additional Sub Court, Erode, reversal of the judgment and decree dated 28.11.2013 made in O.S.No.279 of 2011 on the file of the learned Principal District Munsif Court, Erode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.A.Sundaravadhanan



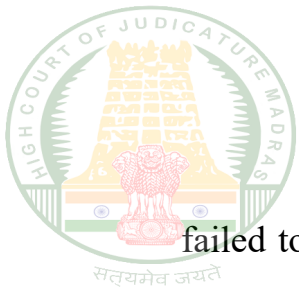
S.A.No.548 of 2015

JUDGMENT

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2. The appellant herein is the defendant in O.S.No.279 of 2011. The suit was filed by the respondent for recovery of money as against the appellant. The suit was dismissed on 28.11.2013. Aggrieved by the same, the respondent preferred an appeal before the I Additional Sub Court, Erode. The 1st Appellate Court, by its judgment dated 30.01.2015, reversed the judgment and decree passed by the Trial Court and decreed the suit in favour of the respondent.

3. The case of the respondent / plaintiff before the Trial Court was that the defendant borrowed a sum of Rs.40,000/- from the plaintiff for his urgent family expenses, for which, he executed a promissory note agreeing to repay the said amount with interest at the rate of 18% per annum on demand. In spite of repeated requests and demands made by the plaintiff, the defendant

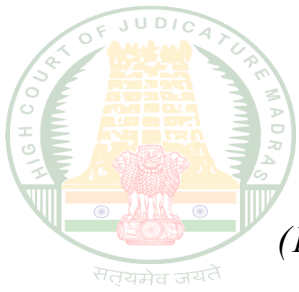


S.A.No.548 of 2015

failed to repay the said amount. Hence, the plaintiff issued a legal notice on 18.04.2011 calling upon the defendant to pay the principal amount with interest, and the same was replied on 25.04.2011 with false allegations. Therefore, the plaintiff filed a suit for recovery of money against the defendant.

4. The case of the appellant / defendant before the Trial Court was that the suit was false and not maintainable either in law or on facts. The allegations that the defendant borrowed money from the plaintiff to the tune of Rs.40,000/- and executed a promissory note dated 16.05.2008, agreeing to repay the said amount with interest at the rate of 18% per annum, were all denied. The alleged demands were also denied. In fact, the defendant had no knowledge about the plaintiff. The signature found on the promissory note did not belong to him, and the promissory note was a forged one. Furthermore, the defendant claimed that he did not know the witness or the scribe, and had never borrowed money from the plaintiff as alleged in the promissory note. Therefore, he prayed for the dismissal of the suit.

5. The Trial Court, based on the above said pleadings, framed the following issues after hearing the counsel on both sides:-



S.A.No.548 of 2015

WEB COPY

(1) Whether the alleged cause of action is correct?

(2) Whether the suit promissory note is true and made for proper consideration?

(3) Whether the plaintiff is entitled for the relief as prayed for?

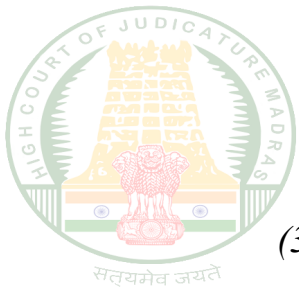
(4) Other relief if any?

6. In order to prove the case before the Trial Court, the respondent / plaintiff examined himself as P.W.1 and examined one of the attesting witnesses and scribe as P.W.2 and P.W.3, respectively. Exs. A1 to A5 were marked on the side of the plaintiff. On the side on the appellant / defendant, the defendant examined himself as D.W.1 and marked Exs.B1 to B4.

7. The Trial Court, after analysing the evidences adduced by both sides, dismissed the suit. Aggrieved by the same, the plaintiff preferred a first appeal before the I Additional Sub Court, Erode in A.S.No.60 of 2014 on various grounds. The 1st Appellate Court also framed the following points for determination:

(1) Whether the judgment and decree passed by the Trial Court are correct.

(2) Whether the appellant's contention that the Trial Court erroneously dismissed the suit is acceptable.



S.A.No.548 of 2015

(3) Whether the appeal should be allowed.

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8. During the pendency of the first appeal, the respondent / plaintiff also filed a petition under Order 41, Rules 27 and 151 of C.P.C., in I.A.No.105 of 2014, to receive additional documents, and thereby another point was also framed by the 1st Appellant Court as to whether the said I.A. is liable to be allowed or not.

9. The 1st Appellate Court, after hearing both sides, allowed I.A.No.105 of 2014, received the additional documents, and marked the said documents as Exs.A6 and A7. Subsequently, the 1st Appellate Court allowed the appeal by setting aside the judgment and decree passed by the Trial Court, and directed the defendant, the appellant herein, to pay the principal amount along with interest at the rate of 9% per annum from the date of filing of the suit till the date of judgment, and 6% per annum from the date of judgment till the date of payment of the entire amount. Aggrieved by the said judgment and decree, the present second appeal has been preferred by the defendant.

10. This Court, at the time of admitting this appeal, framed the following substantial questions of law:-



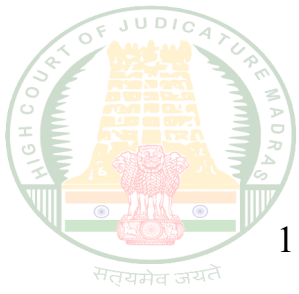
S.A.No.548 of 2015

WEB COPY

(1) Whether the 1st Appellate Court is correct in decreeing the suit when the defendant has denied the very execution of Ex.A1 whereupon the presumption of law covered by Section 118 of the Negotiable Instruments Act, 1881 will not apply until the due execution is proved.

(2) Whether the 1st Appellate Court is right in placing the burden of proof on the defendant when the very execution of Ex.A1 has been denied, then the burden is on the plaintiff to prove that the defendant had executed Ex.A1 and not on the defendant to prove the negative.

11. The learned counsel appearing for the appellant / defendant would submit that the plaintiff filed the suit for recovery of money based on the promissory note executed on 16.05.2008. The defendant totally denied the receipt of money and the execution of promissory note. Therefore, the plaintiff has to prove the execution and the passing of consideration. He would further submit that though the plaintiff examined P.W.1 to P.W.3 and marked Exs.A1 to A7, those documents are not sufficient to prove their case, and that the Trial Court, after analysing the evidences, fairly came to the conclusion that the plaintiff had not proved the execution of the promissory note and the passing of consideration.



S.A.No.548 of 2015

11.1 The learned counsel for the appellant would further submit that even as per the own statement of the plaintiff, the loan could have been given at least 7 years ago, and in that scenario, the loan would have become time-barred. Therefore, the Trial Court declined to grant a decree. However, the 1st Appellate Court, without considering the evidence adduced on the defendant's side and without proving the execution of Ex.A1 and the passing of consideration, decreed the suit by reversing the judgment and decree of the Trial Court.

11.2 The learned counsel for the appellant would further submit that the 1st Appellate Court failed to consider that the burden was shifted to the plaintiff and that the presumption of law under Section 118 of the Negotiable Instruments Act, 1881, would thereby disappear. He would further submit that the plaintiff approached this Court with unclean hands and the defendant proved that the promissory note was not supported by consideration, and the evidence of P.W.1 to P.W.3 is belied by the case of the plaintiff in view of the stand taken by P.W.1.

11.3 The learned counsel for the appellant would further submit that the 1st Appellate Court was not justified in decreeing the suit, as the defendant



had denied the execution of Ex.A1. The burden of proof did not shift to the defendant to disprove the execution of Ex.A1. The 1st Appellate Court also erred in accepting the documents filed by the plaintiff. Therefore, he would submit that the judgment and decree of the 1st Appellate Court are liable to be set aside, and the judgment and decree passed by the Trial Court are to be restored.

11.4. In support of their case, the learned counsel for the appellant also relied upon the following decisions:-

(i) Dayamathi Bai (SMT) vs. K.M.Shaffi [(2004) 7 SCC 107]

(ii) R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple [(2003) 8 SCC 752]

(iii) Thiruvengadam Pillai vs. Navaneethammal [(2008) 4 SCC 530]

12. The learned counsel appearing for the respondent / plaintiff would submit that the defendant borrowed a sum of Rs.40,000/- from the plaintiff, agreeing to repay the said amount with interest at the rate of 18% per annum. After receiving the amount, the defendant executed a promissory note (marked as Ex.A1) in the presence of witnesses. To prove the debt, the plaintiff produced the promissory note and examined the attesting witnesses.



S.A.No.548 of 2015

WEB COPY

P.W.1 to P.W.3 categorically deposed to the borrowing of money by the defendant and the execution of the promissory note. Therefore, the plaintiff proved the execution and the passing of consideration, thereby discharging his burden of proof. Further, as per Section 118 of the Negotiable Instruments Act, 1881, the statutory presumption is available to the plaintiff.

12.1 The learned counsel for the respondent would further submit that since the execution and passing of consideration have been proved through the witnesses, the burden lies on the defendant to prove his case that he did not execute the promissory note and that it is a forged one. In order to rebut the presumption under Section 118 of the Negotiable Instruments Act, 1881, and to rebut the plaintiff's evidence, no contra evidence was adduced by the defendant. The defendant only examined himself as D.W.1 and produced no further witnesses.

12.2 The learned counsel for the respondent would further submit that the Trial Court, based on presumptions and assumptions, disbelieved the case of the plaintiff and dismissed the suit erroneously. Thereafter, the plaintiff preferred an appeal before the 1st Appellate Court. The 1st Appellate Court, after thoroughly considering the evidences of both sides, correctly



S.A.No.548 of 2015

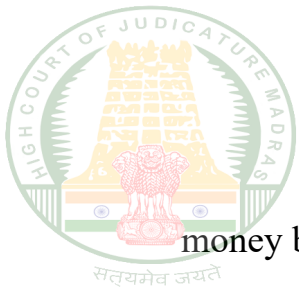
appreciated the facts and allowed the appeal by setting aside the judgment and decree passed by the Trial Court. Therefore, the 1st Appellate Court passed a reasoned judgment, and there is no illegality or perversity in the judgment and decree of the 1st Appellate Court.

12.3 The learned counsel for the respondent would further submit that the appellant / defendant had not taken any steps to produce other admitted signatures to compare with the disputed signatures, thereby failing to prove his contention. Therefore, the 1st Appellate Court correctly allowed the appeal. Since no substantial question of law is involved in this case, the second appeal is liable to be dismissed.

12.4 The learned counsel for the respondent also relied upon a decision of this Court in ***J.Lakshmanan vs. S.Jawahar [S.A.No.287 of 2017, dated 21.01.2022]***.

13. Heard the learned counsel for the appellant and the learned counsel for the respondent.

14. In this case, the respondent / plaintiff filed a suit for recovery of

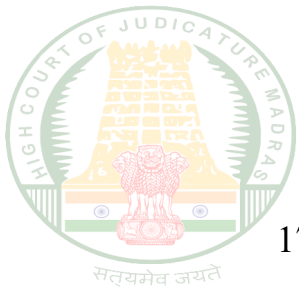


S.A.No.548 of 2015

money based on the promissory note executed by the appellant / defendant on 16.05.2008. The defendant denied the execution of promissory note and the passing of consideration.

15. Before the Trial Court, on the side of the plaintiff, P.W.1 to P.W.3 were examined and Exs.A1 to A5 were marked. On the side of the defendant, D.W.1 was examined and Exs.B1 to B4 were marked. Exs.A6 and A7 were also marked on the side of the plaintiff before the 1st Appellate Court.

16. The Trial Court dismissed the suit after framing and answering the issues by holding that the plaintiff admitted the fact that the defendant had borrowed the loan 7 years ago, and therefore, there was no possibility that the promissory note (Ex.A1) was executed on 16.05.2008. The Trial Court also held that the attesting witness (P.W.2) and the scribe (P.W.3), examined on the side of the plaintiff, had deposed that they did not know the defendant and where he belonged to, and that both of them resided near the plaintiff's house. Consequently, the execution of Ex.A1 was not proved, and the plaintiff was not entitled to the benefit of Section 118 of the Negotiable Instruments Act, 1881.

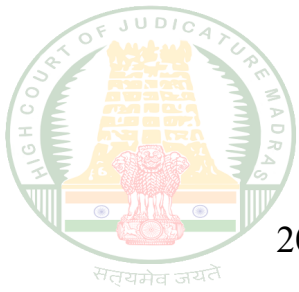


S.A.No.548 of 2015

17. The judgment and decree passed by the Trial Court was challenged before the 1st Appellate Court. The 1st Appellate Court, after considering the evidences of P.W.1 and D.W.1, allowed the appeal and decreed the suit by holding that the defendant took a plea that he did not know the plaintiff, whereas both the plaintiff and the defendant worked in a same company. Additionally, the defendant had filed a petition for comparison of the signatures, but once the signatures could not be compared, no further steps were taken by the defendant to prove his contention.

18. The 1st Appellate Court also held that the plaintiff had proved the execution of the promissory note and the passing of consideration, however, the Trial Court, based on presumptions and assumptions, rendered a finding that no promissory note was executed and no consideration was passed, and that the plaintiff failed to prove the execution of Ex.A1. Thereby, the 1st Appellate Court set aside the judgment and decree passed by the Trial Court.

19. The above said findings of the 1st Appellate Court were based on the evidence. Therefore, there is no illegality or perversity in the findings of the 1st Appellate Court, and its judgment and decree warrants no interference by this Court.



S.A.No.548 of 2015

20. The learned counsel for the appellant has produced the following

judgments:

(i) Dayamathi Bai (SMT) vs. K.M.Shaffi [(2004) 7 SCC 107]

(ii) R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple [(2003) 8 SCC 752]

(iii) Thiruvengadam Pillai vs. Navaneethammal [(2008) 4 SCC 530]

21. On a careful perusal of the above said judgments, it is clear that objections in respect of documents can be classified into two categories. The first is an objection that the document sought to be proved is itself inadmissible. The second is an objection directed not against the admissibility of document itself, but against the mode of proof thereof on the ground of irregularity or insufficiency. The first category of objection can be raised even after the document has been marked as an Exhibit or even in an appeal or revision, but the objection under the second category can be raised when the evidence is tendered, but not after the document has been admitted in evidence and marked as an Exhibit.

22. In the case on hand, there is no any dispute in respect of documents admitted as evidence, and mere marking of a document itself will not amount



S.A.No.548 of 2015

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to proof of the execution of the document, and there is a difference between the marking and proving. In order to prove the execution of the document, the same have to be proved in accordance with law. However, in the case on hand, though the defendant claimed that Exs.B2 and B3 were admitted signatures, through those documents, the expert was unable to compare the signatures, and the Appellate Court has compared the signatures under Section 73 of the Evidence Act and not reversed the Trial Court's judgment only on the ground, but on evidence came to conclusion that Ex.A1 has been proved, thereby those judgments are of no way help to decide the case in favour of the appellant.

23. As far as the judgment relied on by the learned counsel for the respondent in ***J.Lakshmanan vs. S.Jawahar [S.A.No.287 of 2017, dated 21.01.2022]*** is concerned, on a careful perusal of the same, it is clear that in case, a party, whose signature is disputed, wants his own signature found in the documents that came into existence much later in point of time or after the dispute has arisen and the same is opposed by the party relying on the document containing the disputed signature, it shall be prudent for the court not to make such a comparison. On the other hand, if the person, who relies on the disputed signature, does have no objection for comparing it with, or



S.A.No.548 of 2015

WEB COPY

seeks comparison of the same with, the admitted signature contained in a document even though the same came into existence after the dispute has arisen as he believes that the signatures are not disguised and they are good for comparison, then, the person disputing his signature in the document in question cannot have any valid objection for making such comparison. Only when the party who relies on the disputed document expresses an apprehension that the document of recent origin or the farthest document shall not be suitable for making comparison, the admitted or proved contemporary signatures alone should be used for such comparison."

24. In the case on hand, although the defendant filed a petition for comparison of signatures found in the disputed documents along with the admitted documents, those documents are not sufficient to compare the signatures, as the defendant has not taken any steps to produce any other admitted signatures. Therefore, the aforesaid judgment relied upon by the respondent is not applicable to the facts of this case. However, the plaintiff examined P.W.2 and P.W.3 to prove the execution and the passing of consideration.

25. It is true that there are minor discrepancies in the plaintiff's side

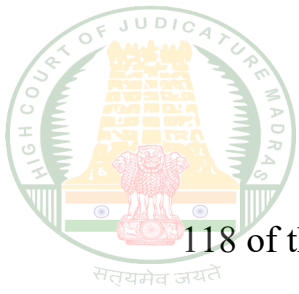


S.A.No.548 of 2015

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26. As far as the substantial question of law No.1 is concerned, the 1st Appellate Court recorded the finding that through P.W.1 to P.W.3 and Exs.A1 to A5, the execution of Ex.A1 and the passing of consideration have been proved. Therefore, the presumption under Section 118 of the Negotiable Instruments Act, 1881, is applicable. Although the defendant denied the execution of Ex.A1, it was duly proved by examining the witnesses P.W.2 and P.W.3, and thereby the 1st Appellate Court was correct in decreeing the suit, since the execution was sufficiently proved.

27. As far as the substantial questions of law Nos.2 and 3 are concerned, the 1st Appellate Court came to the conclusion that the execution of Ex.A1 and the passing of consideration were proved through evidence. Once the plaintiff proved these facts, there is a presumption under Section



S.A.No.548 of 2015

118 of the Negotiable Instruments Act, 1881.

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28. In order to rebut the above said presumption, the defendant failed to adduce any further evidence. Therefore, the finding of the 1st Appellate Court is correct. The 1st Appellate Court did not erroneously place the burden of proof on the defendant. Rather, since the execution of Ex.A1 has been proved, the burden to disprove it lies squarely on the defendant. Therefore, the findings of the 1st Appellate Court are based on the evidence on record. As a result, there are no grounds to interfere with the findings of the 1st Appellate Court, and this second appeal lacks merit and deserves to be dismissed.

29. Accordingly, this Second Appeal is dismissed. No costs. Connected miscellaneous petition is closed.

14.07.2026

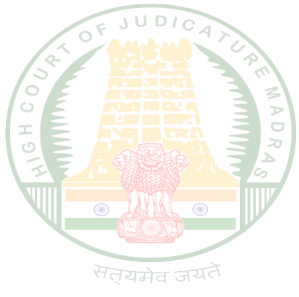
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Neutral Citation : Yes / No

To

1. The I Additional Sub Court, Erode
2. The Principal District Munsif Court, Erode

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S.A.No.548 of 2015

P.DHANABAL, J.

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S.A.No.548 of 2015

14.07.2026