



S.A. No. 342 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.01.2026
PRONOUNCED ON : 07.07.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 342 of 2013

P.K. Masthan
No. 80, A, 4th Cross St, Devi
Karumariamman Nagar, Thiruverkadu, Ch

..Appellant(s)

Vs.

1. Dr. A. Kabilan
No 11b, Kelleys Rd, Ranipet, 632 401
2. G. Jayakumar
No. 266-b, Royapettah High Rd,
Ch-14

..Respondents

PRAYER IN S.A.:Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 11.08.2009 in O.S.No.946 of 2008 on the file of 1st Assistant City Civil Court Chennai as confirmed in decree and judgment dated 2.11.2011 in A.S.No.81 of 2010 on the file of VI Additional City Civil Court, Chennai.

For appellant : Mr.R.Subramanian for
M/s.B.Ravi.

For respondent: Mr.K.Govi Ganesan for R1.
Mr.R.N.Amarnath for R2.



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J U D G M E N T

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This Second Appeal has been filed by the plaintiff in O.S.No.946 of 2008, challenging the judgment and decree dated 02.11.2011, passed in A.S.No.81 of 2010 on the file of the VI Additional City Civil Court, Chennai, which confirmed the judgment and decree dated 11.08.2009, passed in O.S.No.946 of 2008 on the file of the I Assistant City Civil Court, Chennai.

2. The appellant herein is the plaintiff, and the respondents herein are the defendants before the Trial Court. For convenience, the parties are referred to as they were arrayed before the Trial Court.

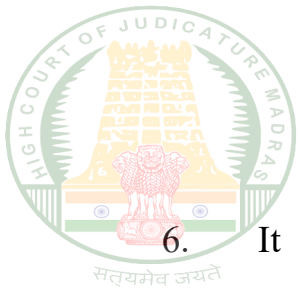
3. The suit was filed for the recovery of Rs. 90,000/- with interest at 12% per annum from the date of the plaint till realisation, and for a consequential charge under Section 100 of the Transfer of Property Act over the property described in the plaint schedule, which is stated to have belonged to the late T. Venugopal.



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4. The plaintiff's case was that he was employed by one T. Venugopal, a retired Engineer residing at Srinivasaperumal Sannathi 1st Street, Royapettah, Chennai, in connection with court, office, and personal matters for a long period. According to the plaintiff, because Venugopal was unwell, the plaintiff's assistance was required, and Venugopal engaged him. It was further pleaded that Venugopal agreed to pay a lump-sum remuneration of Rs. 1,00,000/- and executed a letter dated 03.07.2003 to that effect, which was marked as Ex.A1.

5. The plaintiff further pleaded that Venugopal used to lend him money for his necessities, and that such borrowings had already been repaid and discharged before Ex.A1. According to the plaintiff, when Venugopal fell ill, he attempted to settle his outstanding liabilities, paid Rs.10,000/- to the plaintiff on 19.02.2005, acknowledged the same under Ex.A2, and agreed to pay the balance of Rs.90,000/- by selling the suit schedule property. Venugopal died on 03.04.2005. The plaintiff therefore claimed that the balance amount of Rs.90,000/- became due from the estate of Venugopal.



6. It was further pleaded that Venugopal had executed a Will dated

03.11.1997, which was registered in the office of the Sub Registrar, Walaja, on 18.02.1998. Although there were other sharers/beneficiaries, the plaintiff asserted that the first defendant was administering the estate and had obtained permission from the Court to deal with it. On that basis, the plaintiff issued a legal notice dated 18.12.2006 to the first defendant, which was received on 28.12.2006. The first defendant replied on 03.01.2007, denying liability. The plaintiff also impleaded the second defendant on the ground that he had purchased the suit schedule property and sought the creation of a charge over the said property.

7. The first defendant filed a written statement admitting that Venugopal was his maternal uncle and that Venugopal had executed a registered Will. It was also admitted that the plaintiff had assisted Venugopal. However, the first defendant denied that Venugopal regularly employed the plaintiff in connection with court or office matters. The first defendant specifically denied the alleged agreement to pay Rs. 1,00,000/- and contended that Ex. A1 was forged. He also denied the alleged payment of Rs. 10,000/- on 19.02.2005 and the alleged endorsement under Ex. A2. According to the first defendant, the plaintiff and his wife had, in fact, borrowed Rs. 1,04,500/- from Venugopal during his lifetime



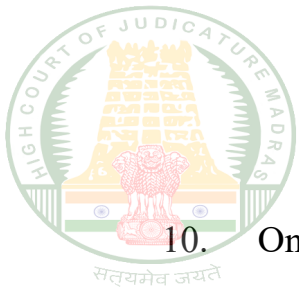
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by executing promissory notes. After Venugopal's death, when repayment was demanded, the plaintiff filed the present suit. The first defendant also pleaded limitation, absence of a contract to pay interest, non-joinder of necessary parties, mis-joinder of parties, and absence of a cause of action.

8. The second defendant filed a separate written statement denying the plaintiff's claim. He denied knowledge of any transaction between the plaintiff and Venugopal. He pleaded that there was no privity of contract between himself and the plaintiff, and that he was a bona fide purchaser of the property in the plaint schedule for value. He therefore contended that no liability could be fastened on him and that the suit was not maintainable against him.

9. On the above pleadings, the Trial Court framed the following issues:

1. Whether the plaintiff is entitled for the suit amount as claimed in the plaint?
2. To what other relief?



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10. On the side of the plaintiff, the plaintiff examined himself as P.W.1, and

one M. Jagadeesan, stated to be a friend of Venugopal, was examined as P.W.2.

Exs. A1 to A12 were marked. On the side of the defendants, the first defendant examined himself as D.W.1. No documents were marked.

11. Ex.A1 is the letter dated 03.07.2003, relied on by the plaintiff to show that Venugopal agreed to pay Rs.1,00,000/- to him. Ex.A2 is the alleged endorsement dated 19.02.2005, evidencing payment of Rs.10,000/- and acknowledgement of the balance. Ex.A3 is the death certificate of Venugopal. Ex.A4 is the legal notice issued by the plaintiff to the first defendant; Ex.A5 is the acknowledgement card; and Ex.A6 is the reply notice issued by the first defendant. Ex.A7 is the sale deed in favour of the second defendant. Ex.A8 is the legal notice issued to the second defendant, and Ex.A9 is the reply issued on behalf of the second defendant. Ex.A10 is the receipt relied on by the plaintiff in relation to the discharge of earlier borrowings. Exs.A11 and A12 are the signatures of M.Jagadeesan in Ex.A1 and Ex.A10, respectively.

12. The Trial Court, on appreciation of the evidence, held that the plaintiff failed to establish the basis for the alleged payment of Rs.90,000/-. It was noted



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that, according to P.W.1 himself, Venugopal used to pay him amounts such as

Rs.1,000/- or Rs.1,500/- at his own discretion, and that no independent evidence

was adduced to show that the plaintiff had worked under Venugopal as a clerk or employee for salary. The Trial Court further observed that, once the defendants alleged fabrication of Ex.A1 and Ex.A2, the burden was on the plaintiff to establish their genuineness. It found that, apart from Ex.A1 and Ex.A2, no satisfactory evidence was placed to prove the alleged liability.

13. The Trial Court also observed that there were corrections in Ex.A1, that no revenue stamp was affixed to Ex.A1 despite the amount mentioned being Rs.1,00,000/-, and that the plaintiff failed to satisfactorily establish the genuineness and enforceability of the documents relied upon. It further held that, apart from the first defendant, other persons claiming under the Will had not been impleaded, and therefore the suit was bad for non-joinder of necessary parties. It also held that the first defendant alone could not be made liable for the amount allegedly due under Ex.A1.

14. As regards the charge, the Trial Court held that the suit property was no longer in the first defendant's possession and that the second defendant had



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purchased it under Ex.A7. Since the property had changed hands before the suit was filed, the Trial Court held that no charge could be created over it under Section 100 of the Transfer of Property Act. Consequently, the suit was dismissed without costs.

15. Aggrieved by the dismissal of the suit, the plaintiff filed A.S.No.81 of 2010 before the VI Additional City Civil Court, Chennai. Before the First Appellate Court, the plaintiff contended that the Trial Court erred in dismissing the suit on the ground of non-joinder without framing an issue to that effect; that the first defendant alone administered the estate of Venugopal; that the administrator was bound to discharge the deceased's liability; and that the suit ought to have been decided on the strength of Ex.A1 and Ex.A2. It was also contended that the second defendant, having purchased the property, could not avoid liability.

16. The first respondent/first defendant, on the other hand, contended before the First Appellate Court that Ex.A1 was not an enforceable debt instrument but, at best, a letter of gratitude or an offer; that Ex.A2 did not independently establish any enforceable liability; that the execution of Exs.A1 and A2 was



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seriously disputed; and that the plaintiff had not taken steps to establish the genuineness of those documents. The second respondent/second defendant contended that he was a bona fide purchaser under a registered sale deed dated 16.03.2007 and that the suit was filed only on 11.02.2008, after about a year.

17. The First Appellate Court held that the plaintiff had rendered some services to Venugopal and that Venugopal had paid him amounts from time to time. However, it found that the plaintiff had not explained why Venugopal, who was alive for nearly two years after Ex.A1, did not pay the alleged amount if he had really undertaken to pay Rs.1,00,000/-. The Appellate Court also noted the correction in Ex.A1, the absence of a revenue stamp in Ex.A1, the manner in which the endorsement under Ex.A2 was made, and the plaintiff's failure to send the disputed signatures for expert opinion despite serious denial of execution.

18. On the question of non-joinder, the First Appellate Court held that Venugopal died issueless, his wife having predeceased him, and that he had executed a Will in favour of several beneficiaries; according to the First Appellate Court, there were nine beneficiaries, including the first defendant. It



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held that, although the first defendant was named as administrator in the Will,

the properties devolved upon all the beneficiaries. Therefore, all beneficiaries were proper parties to a proceeding seeking to fasten liability upon the estate and to create a charge over the estate property. It further held that the non-framing of a separate issue on non-joinder did not vitiate the judgment, since the matter was pleaded, evidence was led, and the parties addressed the issue.

19. Regarding the second defendant, the First Appellate Court held that the suit property had originally belonged to Venugopal, that it was bequeathed along with other properties to nine beneficiaries, including the first defendant, under the Will dated 03.11.1997, and that all nine beneficiaries, including the first defendant, sold the suit property to the second defendant under the sale deed dated 16.03.2007. The Appellate Court further found that the second defendant had purchased the property free from encumbrance, that he had been in possession from the date of sale, and that the suit was filed only on 11.02.2008, nearly nine months after the sale. On that basis, it held that the creation of a charge over the property against the second defendant was not sustainable.



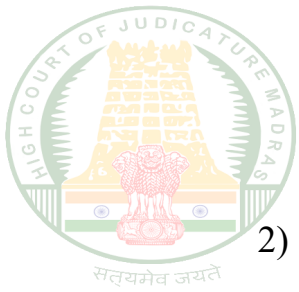
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20. The First Appellate Court therefore dismissed A.S.No.81 of 2010 and confirmed the Trial Court's judgment and decree dated 11.08.2009 in O.S.No.946 of 2008.

21. Challenging the concurrent judgments, the plaintiff has filed the present Second Appeal. In the memorandum of grounds, the appellant contends that the Courts below erred in dismissing the suit on the ground of non-joinder of necessary parties; that no issue on non-joinder was framed; that the first defendant was the administrator of the estate of Venugopal under the Will dated 03.11.1997; that the deceased Venugopal's personal liability had to be discharged from his estate; and that Section 306 of the Indian Succession Act preserves the cause of action against the administrator. The appellant also contends that Exs. A1 and A2 were proved through P.W.2 and that the Courts below erred in rejecting them.

22. This Second Appeal was admitted on 13.03.2025 on the following substantial questions of law:

1) Whether in law is not the finding of the Courts below that the suit is hit by the non-joinder of necessary parties, vitiated?



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2) Have not the Courts below over looked that personal liability of the deceased has to be discharged from his estate and under section 306 of Indian Succession Act, the administrator is liable to discharge the debt?

23. Learned counsel for the appellant/plaintiff submitted that the Courts below erred in dismissing the suit on the ground of non-joinder of necessary parties, since the first defendant, as administrator/representative of the estate of the late T. Venugopal, sufficiently represented the estate. It was contended that Section 2(11) of the CPC and Sections 211, 306, 307 and 322 of the Indian Succession Act make it clear that an executor or administrator represents the estate and is bound to discharge the debts and wages/remuneration payable by the deceased before distribution or alienation of the estate. According to the appellant, the other beneficiaries under the Will were not necessary parties, as the plaintiff did not claim any share in the property but only sought recovery of a debt due from the estate. It was further submitted that Ex.A1 and Ex.A2 proved the liability; P.W.2 Jagadeesan had spoken to Ex.A1; the first defendant admitted that the plaintiff was assisting Venugopal in legal and personal matters; and, therefore, the Courts below ought to have decreed the suit for Rs.90,000/- with interest and created a charge over the property purchased by the second defendant.



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24. Per contra, learned counsel for the first respondent/first defendant

submitted that the plaintiff was never regularly employed by Venugopal and that there was no agreement to pay Rs.1,00,000/- as remuneration. It was contended that Ex.A1 and Ex.A2 were forged and fabricated; that Ex.A1 contained corrections without Venugopal's signature near the corrected portion; that no revenue stamp was affixed; that Ex.A2 was suspicious; and that the plaintiff did not send the disputed signatures for expert opinion. It was further submitted that Venugopal lived for nearly two years after the alleged Ex.A1, and no demand was made during his lifetime. The first respondent also contended that the plaintiff and his wife had in fact borrowed money from Venugopal and filed the suit only after repayment was demanded. On non-joinder, it was submitted that there were other beneficiaries under the Will, that they had sold the property to the second defendant, and that they were necessary parties when the plaintiff sought to create a charge over that property. The second defendant's stand was that he was a bona fide purchaser for value, that there was no privity of contract between him and the plaintiff, and that no charge could be created over the property after sale.

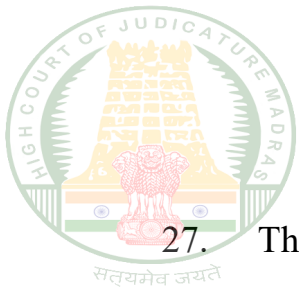


Substantial Questions of Law:

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25. The two substantial questions of law are closely interconnected and are therefore considered together. The first substantial question, though couched in the negative, essentially raises the issue of whether the Courts below were justified in holding that the suit is bad for non-joinder of necessary parties. The second substantial question proceeds on the premise that the administrator's presence alone is sufficient to maintain a suit for recovery of the debt due from the deceased. Since the determination of one necessarily depends on the answer to the other, both questions are answered together.

26. There can be no dispute about the settled legal principle that an executor or an administrator appointed under the Indian Succession Act, 1925 represents the estate of the deceased. During the subsistence of the administration, the estate vests in the executor or administrator, who is competent to sue and be sued in his representative capacity in respect of the deceased's estate. Equally well settled is the principle that the deceased's liability is not personal to the executor or administrator but is enforceable only against the estate inherited from the deceased.



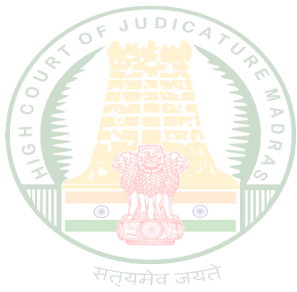
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27. The more important question, however, is whether such representative

character continues indefinitely, irrespective of the completion of administration. The answer must be negative.

28. The primary duties of an executor or administrator are to collect and preserve the deceased's estate, ascertain the assets and liabilities, discharge funeral and testamentary expenses, satisfy lawful debts, including Government dues, and thereafter distribute the residue of the estate among the beneficiaries in accordance with the testamentary disposition. Where the liquid assets are insufficient to pay the debts, the administrator may, with the permission of the competent Court under Section 307(2) of the Indian Succession Act, sell the deceased's immovable properties to satisfy such liabilities.

29. Thus, so long as the estate remains under the administration of the executor or administrator, a creditor of the deceased can effectively maintain a suit against the executor or administrator alone, as he represents the estate for all legal purposes.



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30. However, the position changes once the administration of the estate is completed. After the assets are collected, the known liabilities are discharged, and the estate is distributed in accordance with the Will, the administrator ceases, in substance, to represent the estate. Though the Indian Succession Act does not contemplate a formal order of discharge, the representative character of the administrator comes to an end once there remains nothing further to administer. Thereafter, the estate stands vested in the beneficiaries who have inherited it under the Will.

31. Consequently, where the administration has come to an end, a creditor seeking to enforce a liability of the deceased must proceed against those in whom the estate has vested. A decree passed against a person who no longer has control over or possession of the estate would be ineffective and incapable of execution against properties already vested in the beneficiaries.

32. In the present case, it is not in dispute that late T. Venugopal executed a Will bequeathing his properties in favour of nine beneficiaries, and that the first



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defendant obtained Letters of Administration with the consent of the others. The

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materials on record further disclose that the beneficiaries had taken separate possession and enjoyment of their respective properties, that the administration had substantially come to an end, and that the suit-mentioned property had already been sold in favour of the second defendant. Thus, when the suit was instituted, the estate was no longer under the effective control or administration of the first defendant.

33. In those circumstances, the deceased's liability, if otherwise established, could be enforced only against the estate in the hands of the beneficiaries who had inherited it. The plaintiff, however, chose to implead only the first defendant and failed to implead the remaining beneficiaries, in whom the estate had already vested and whose rights would be directly affected by the outcome of the suit. In their absence, no effective or executable decree could be passed. The Courts below were, therefore, justified in holding that the suit was bad for non-joinder of necessary parties.

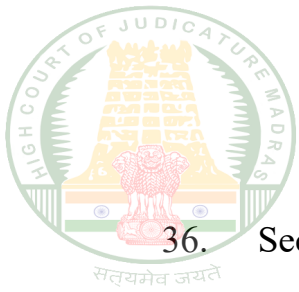


34. The contention of the learned counsel for the appellant that, by virtue of

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Section 306 of the Indian Succession Act, the administrator alone is liable to answer the creditor's claim cannot be accepted in the facts of the present case. Section 306 merely preserves the right to enforce against the estate those causes of action which survive the death of a person. It does not create any personal liability on the part of the executor or administrator, nor does it authorise a creditor to proceed exclusively against the administrator even after the estate has ceased to remain under his administration. The liability continues to be that of the deceased's estate; and once the estate has been distributed, any proceeding to enforce that liability must be directed against those in whom the estate has vested, to the extent of the assets inherited by them.

35. It is also significant that the Act does not contemplate that an executor or administrator should represent the estate in perpetuity. Upon completion of the administration, including the collection of assets, discharge of known liabilities, filing of inventory and accounts as required under Sections 317 and 318, and distribution of the residue to the beneficiaries, there remains no estate under his control for further administration. At that stage, his representative capacity ends by necessary implication.



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36. Section 306, therefore, cannot be construed as dispensing with the

necessity of impleading the beneficiaries after completion of the administration, nor can it sustain a suit against the administrator alone where the estate has already vested in the beneficiaries.

37. Accordingly, the first substantial question of law is answered against the appellant by holding that the finding of the Courts below that the suit is bad for non-joinder of necessary parties is not legally infirm. Consequently, the second substantial question is also answered against the appellant by holding that, on the facts of the present case, the mere impleadment of the administrator was insufficient to maintain the suit after the administration had come to an end and the estate had vested in the beneficiaries.

38. Accordingly, the substantial questions of law are answered against the appellant/plaintiff. In the result, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions if any stand closed.

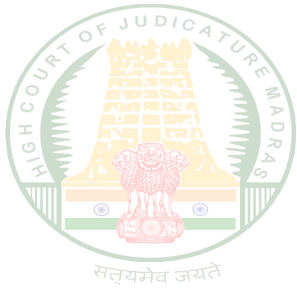
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Index: Yes/No

Speaking Order /Non-speaking order

Neutral citation: Yes/No



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DR. A.D. MARIA CLETE, J

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To

1. The 1st Assistant City Civil Court Chennai
2. The VI Additional City Civil Court, Chennai.
3. The Section Officer,
V.R.Records,
Madras High Court.

PRE DELIVERY JUDGMENT
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