



SA No. 1070 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-07-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 1070 of 2014 &
M.P.No.1 of 2014**

Pazhani@Pazhaniappan
S/o Chinna Ramayya Gounder,
Vadakkumedu Kattu Kottagai,
Subramaniapuram, Ogaiyur Village,
Kallakurichi Taluk

..Appellant(s)

Vs

Subramanian
S/o Rangayya Gounder
D.No. 2/A1, Kottaikulam Street,
Thiyagadurugam,
Kallakurichi Taluk

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree made in A.S.No.160 of 2005 dated 20.02.2014 on the file of learned Subordinate Judge, Kallakurichi and reversing the Judgment and Decree dated 12.07.2005 in O.S.No.568 of 2004 on the file of the learned Principal District Munsif at Kallakurichi.



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For Appellant(s): Mr.P.Athisivan for
Mr.T.Sai Krishnan

For Respondent(s): Mr.R.Nalliyappan

J U D G M E N T

This Second Appeal has been preferred as against the Decree and Judgment passed by the learned Subordinate Judge, Kallakurichi in A.S.No.160 of 2005 dated 20.02.2014, wherein the respondent herein has preferred the appeal as against the Decree and Judgment passed by the learned Principal District Munsif, Kallakurichi in O.S.No.568 of 2004 dated 12.07.2005. In fact, the plaintiff, who is the respondent herein has filed the suit for recovery of money and the same was dismissed by the trial court. Aggrieved by the same, the plaintiff has preferred the Appeal Suit. The First Appellate Court reversed the Judgment of the trial court, thereby the present Second Appeal has been filed by the appellant/defendant.

2. For the sake of convenience and brevity, the parties herein are referred to as plaintiff and defendant, as referred before the trial court.



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3. The case of the plaintiff before the trial Court is that the defendant borrowed a sum of Rs.43,000/- from the plaintiff agreeing to repay the same amount with interest at the rate of Rs.1/- per month to Rs.100/- and executed promissory note dated 30.07.1998. Thereafter, the defendant neither paid the interest nor paid the principal amount, thereby the plaintiff sent a notice dated 05.03.2002, inspite of that, the defendant failed to repay the money, thereby filed the suit.

4. The defendant filed the written statement denying the execution of promissory note and passing of consideration and according to the defendant, the promissory note has been created. The defendant also denied the alleged endorsement dated 27.6.2000 and he denied the signature and the thumb impression found in the promissory note. The plaintiff in the notice mentioned about the date of the promissory note as 27.06.2000, whereas filed the suit for the promissory note dated 30.07.1998. Further, the date of endorsement 27.6.2002 has been altered as 27.06.2000 and that is a material alteration and the suit is barred by limitation, therefore, the suit is liable to be dismissed.



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5. Based on the above said pleadings and after hearing both sides, the trial court framed the following issues for trial:-

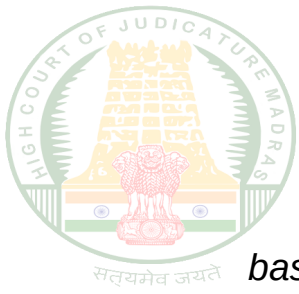
“1. Whether the suit promissory note is true, valid and supported by consideration?

2. To what other reliefs, the plaintiff is entitled to?”

Before the trial court, on the side of the plaintiff, witnesses P.W.1 to P.W.3 were examined and marked Exhibits A1 to A4 and on the side of the defendant, witnesses D.W.1 and D.W.2 were examined and no documents have been marked. The trial court after considering the evidences adduced on both sides, dismissed the suit holding that there was material alteration and the plaintiff failed to prove the case.

6. Aggrieved by the said Decree and Judgment passed by the trial court, the plaintiff has preferred the Appeal Suit before the Subordinate Judge, Kallakurichi in A.S.No.160 of 2005 on various grounds. The First Appellate Court framed the following points for determination:-

“1. Whether the decree and Judgment of the trial court are



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2. Whether the decree and Judgment of the trial court warrants any interference in the appeal?.

The First Appellate Court after hearing both sides and analysing the evidences adduced on both sides, reversed the findings of the trial court and allowed the appeal and decreed the suit in favour of the plaintiff by holding that the plaintiff has proved the execution of promissory note and passing of consideration and the material alteration has been properly explained by the scribe of the document, therefore, decreed the suit by allowing the Appeal Suit.

7. As against the Decree and Judgment passed by the First Appellate Court in A.S.No.160 of 2005 dated 20.02.2014, the defendant, has preferred the present Second Appeal. This Court, at the time of admitting the appeal, on 13.11.2014, formulated the following Substantial Questions of Law:-

“ 1. Whether the Lower Appellate Court's Judgment is contrary to law as it has proceeded to dispose the case without considering the evidence of P.W.3 and D.W.2 wherein



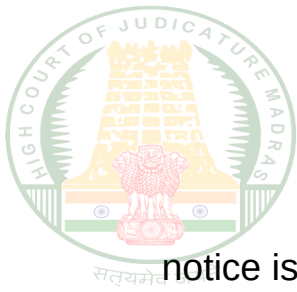
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they gave evidence with full contradiction to the case of the plaintiff?

2. Whether the Lower Appellate Court can allow the suit for recovery of money when the suit itself is clearly barred by limitation as per the suit pronote i.e., Ex/A.1, when there is a clear material alteration in Ex.A.2?"

8. The learned counsel appearing for the appellant would submit that the plaintiff, who is the respondent herein has filed the suit for recovery of money based on the promissory note dated 30.07.1998 alleging that the defendant borrowed money for a sum of Rs.43,000/- agreeing to repay the said amount with interest at the rate of Rs.1/- per month to Rs.100/- and executed the promissory note dated 30.07.1998. Thereafter, the defendant repaid the money of Rs.250/- and made an endorsement dated 27.06.2000. Thereafter, the plaintiff also issued notice dated 05.03.2002, wherein he has mentioned about the date of Promissory Note as 27.06.2000. There is no any mention about alleged endorsement, thereby the defendant also issued reply notice admitting the execution of promissory note dated 30.07.1998, however, the said money borrowed by the defendant was repaid to the plaintiff. When the defendant asked to return the promissory note, the plaintiff refused to return the promissory note and thereby issued suitable reply to the



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notice issued to the plaintiff.

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8.1. The present suit has been filed alleging that the suit promissory note executed on 30.07.1998 and thereafter, the defendant made endorsement dated 27.06.2000 after payment of Rs.250/-.The trial court after considering the evidences adduced on both sides correctly came to a conclusion that there is material alteration in the year mentioned in the alleged endorsement. Originally, the date has been mentioned as 27.06.2002, the year 2002 has been materially altered as 2000 and thereby the suit is barred by limitation. Since the promissory note has been materially altered, the plaintiff is not entitled to any relief. However, the First Appellate Court without considering the above said material alteration, erroneously held that the plaintiff has proved the execution of the promissory note and passing of consideration, therefore, the Judgment and Decree passed by the First Appellate Court are liable to be set aside and the judgment and decree passed by the trial court are liable to be restored.

9. The learned counsel appearing for the respondent would submit that the plaintiff, who is the respondent herein has filed the suit for



recovery of money based on the promissory note. The defendant in the reply notice admitted the execution of promissory note, but in the written statement, he totally denied the receipt of amount, execution of promissory note and passing of consideration. On the side of the plaintiff, witnesses P.W.1 to P.W.3 were examined and marked Exhibits A1 to A4 and on the side of the defendant, witnesses D.W.1 and D.W.2 were examined and no documents have been marked. After analysing evidences adduced on both sides, the trial court erroneously dismissed the suit on the ground that there is a material alteration and the suit is also barred by limitation. In fact, there is a correction in the year 2000, the last letter zero '0' has been written as small letter, therefore, that letter has been corrected. The above said explanation has not been accepted by the trial court. However, the First Appellate Court after analysing the evidence adduced on both sides and after accepting explanation offered by P.W.3, who is the scribe of the promissory note, correctly decreed the suit by setting aside the decree and Judgment passed by the trial court.

9.1. Further, the trial court itself recorded that the defendant



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admitted the execution of promissory note, this admission completely demolishes the defence raised by the defendant, during the cross examination, the defendant denied the promissory note, endorsement, signatures, thumb impression and the signatures in the summons and the vakalat, therefore, the said conduct of the defendant shows that he has completely denied the signatures even on the summons and vakalat. Once the defendant admitted the execution of promissory note in the reply notice, he cannot turn around and deny the execution of promissory note and passing of consideration in the written statement. Therefore, the plaintiff has amply proved the execution and passing of consideration, thereby the First Appellate Court has correctly decreed the suit, therefore, the present Second Appeal has no merits and deserves to be dismissed.

10. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused entire documents placed on record.

11. In this case, the plaintiff has filed the suit for recovery of money based on the promissory note. According to the plaintiff, the defendant borrowed a sum of Rs.43,000/- from the plaintiff on 30.07.1998 agreeing



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to repay the same with interest at the rate of Rs.1/- per Rs.100/- per month. On the same date, the defendant executed a promissory note and thereafter, on 27.06.2000, the defendant paid a sum of Rs.250/- and made endorsement in the back side of the promissory note, thereafter, the defendant has not repaid the money, thereby the plaintiff filed the suit.

12. The defendant totally denied the execution of promissory note, receipt of money and the rate of interest. The plaintiff has issued notice prior to the suit on 05.03.2002. The defendant has issued a reply by admitting the execution of promissory note, but according to the defendant, he settled the entire money and when he asked to return the original document, the plaintiff refused to return the document. On the side of the plaintiff, witnesses P.W.1 to P.W.3 were examined and marked Exhibits A1 to A4 and on the side of the defendant, witnesses D.W.1 and D.W.2 were examined and no documents have been marked.

13. The main contention raised by the plaintiff is that the defendant himself admitted the execution of promissory note through reply notice and in the written statement, he denied the entire execution of document



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and passing of consideration.

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14. On perusal of the records it is seen that the Promissory Note has been marked as Ex.A.1, endorsement in the Promissory Note has been marked as Ex.A.2. Notice issued by the plaintiff's counsel to the defendant has been marked as Ex.A.3, Reply notice by the counsel for the defendant to the plaintiff has been marked as Ex.A.4. In the Ex.A.3, notice, the plaintiff has stated the date of execution of the promissory note as 27.06.2000, there is no mention about the endorsement in the promissory note, therefore, the admission made by the defendant through Ex.A.4, reply notice cannot be taken as admission for the execution of document, as the date of execution of document differs. Once the defendant deny the execution of document and passing of consideration, it is the duty of the plaintiff to prove the same through sufficient evidence. Though the plaintiff examined witnesses, P.Ws.1 to 3 to prove the execution and passing of consideration, there is a material alteration in the alleged endorsement dated 27.06.2000. Though the promissory note has been executed on 30.07.1998 till the alleged endorsement Ex.A.2 dated 27.06.2000, no single pie has been



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paid by the defendant and after two years, how the plaintiff accepted a mere sum of Rs.250/- has to be explained by the plaintiff. Once the defendant denied the execution of promissory note and endorsement made by him, it is the duty of the plaintiff to prove the same in accordance with law, but at the time of execution of promissory note, P.W.2 was present and according to him, the plaintiff borrowed money.

15. Even assuming that the defendant borrowed money, the plaintiff ought to have filed the suit within the period of limitation, but the suit has been filed only on 11.04.2003. The plaintiff mainly relied upon the endorsement made in the Promissory Note Ex.A.2 and in order to prove the endorsement, he examined P.W.3, who is the said to be scribe of the said document. According to P.W.3, last letter in the year 2000, viz., '0' has been written as small letter, therefore, it was corrected, but on naked eye, an ordinary prudent man can see the alteration of the year '2002' as '2000'. The last letter, written as '2', has been altered as '0' and the same can be seen on the naked eye. Therefore, it is the duty of the plaintiff to explain as to why the said material alteration was taken place, however, there is no explanation and the explanation given by



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P.W.3 is not acceptable as the year was corrected. The evidences of P.Ws.2 and 3 are contrary to each other and the plaintiff has to prove his case, thereby the plaintiff's evidences are not sufficient to prove the case of the plaintiff. Though the plaintiff stated that the date of promissory note has been wrongly mentioned, in the notice, no rejoinder has been issued by the plaintiff. P.W.3 in his evidence stated that the defendant paid a sum of Rs.250/- and the same has been endorsed by him in the promissory note and he admitted that there is no endorsement as about the correction made by him.

16. The D.W.2, who is the attesting witness in the promissory note, Ex.A.1 has stated that at request of the plaintiff, he attested the promissory note, at the time of attesting, nobody were present and before his attestation, the contents of the document, Ex.A.1 were filled up, but P.W.2, who is said to be the scribe of Ex.A.1 stated that he only written the promissory note and in his presence, no money was paid to the defendant and D.W.2, also put his signature as a witness. Therefore, there are major contradictions between the evidence of P.W.2 and D.W.2 in respect of execution of promissory note and passing of



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consideration. Therefore, the plaintiff failed to prove his case through sufficient evidence. The trial court after careful consideration of the evidence adduced on both sides, fairly came to a conclusion that the date of endorsement has been altered from 2002 to 2000 and there is a material alteration and originally promissory note was executed on 30.07.1998, thereby the suit has been filed after the period of limitation and thereby dismissed the suit. Further, the above said findings of the trial court are based on evidences. However, the First Appellate Court in the Appeal Suit rendered findings that as per evidences of P.Ws.1 to 3, the plaintiff proved the execution of Exs.A.1 and A.2 and passing of consideration and the alteration made in the year is only to correct the small letter into the big letter, to that effect, P.W.3 also explained and thereby reversed the judgment of the trial court and decreed the suit.

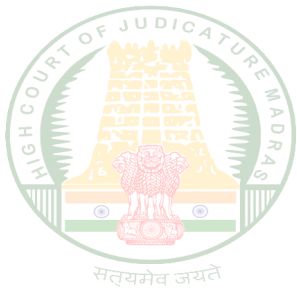
17. Further, the First Appellate Court failed to consider that on the naked eye, an ordinary prudent man can see that the year 2002 has been altered as 2000 and the same is material alteration, since there is material alteration, the plaintiff is not entitled to any relief and the suit relief is barred by limitation. The First Appellate Court failed to consider



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that for the past two years, the defendant has not paid any money, while so, how the plaintiff accepted the meagre amount of Rs.250/- towards interest, these are all created doubts over the plaintiff's case and the same has not been considered by the First Appellate Court, therefore, the Judgment and Decree passed by the First Appellate Court are liable to be set aside and the Decree and Judgment passed by the trial court has to be restored.

18. As far as the Substantial Questions of Law are concerned, there are major contradictions between the evidence of P.W.2, P.W.3 and D.W.2 in respect of execution of promissory note and passing of consideration. However, the First Appellate Court, failed to consider material alteration. The alleged date of promissory note is 30.07.1998 and the suit has been filed in the year 2002, thereby the suit is barred by limitation, as per Ex.A.1 promissory note. Since material alteration has been made in Ex.A.2, thereby that endorsement cannot be considered as a genuine one and thereby the Decree and Judgment passed by the First Appellate Court are not sustainable. Thus the Substantial Questions of Law are answered.



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19. In view of the above said discussions and the Substantial Questions of Law, this Court is of the opinion that the Judgment and Decree passed by the First Appellate Court are liable to be set aside and the judgment and decree passed by the trial court are liable to be restored.

20. In the result, the Second Appeal is allowed. The Judgment and Decree passed in A.S.No.160 of 2005 dated 20.02.2014 on the file of learned Subordinate Judge, Kallakurichi is set aside and the Judgment and Decree passed by the trial court in O.S.No. 568 of 2004 dated 12.07.2005 on the file of learned Principal District Munsif, Kallakurichi is restored. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
ssd
To
1. The Subordinate Judge,
Kallakurichi



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2. The Principal District Munsif,
Kallakurichi

P.DHANABAL, J.

ssd

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