

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2018

PRONOUNCED ON : 07.02.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1177 of 2003  
and  
C.M.P.No.10545 of 2003

Pachaiappa Chettiar ... Appellant/Respondent/Defendant

Vs.

Muthukrishna naidu ... Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the court of the Civil Judge, Senior Division, (Sub -Court), Kallakurichi in A.S.No.301 of 1996 dated 30<sup>th</sup> April 1998 in reversing the well considered judgment and decree on the court of Principal District Munsif, Kallakurichi in O.S.No.42 of 1993 dated 31.03.1995.

For Appellant : Ms.Thaarini.V.C  
for M/s.V.Raghavachari

For Respondent: No appearance  
Set exparte

J U D G M E N T

Challenge in this second appeal is directed against the judgment and decree dated 30.04.1998 passed in A.S.No.301 of 1996 on the file of the Subordinate Court, Kallakurichi and reversing the judgment and decree dated 31.03.1995 passed in O.S.No.42 of 1993 on the file of the District Munsif Court, Kallakurichi.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for recovery of money.

4.The case of the plaintiff in brief is that the defendant borrowed a sum of Rs.11,000/- from the plaintiff on 27.12.1989

agreeing to repay the said amount with interest at 12% per annum and in evidence of the said borrowal, executed the suit promissory note in favour of the plaintiff and despite several requests, the defendant had not repaid the said amount as promised and as the court was closed from 25.12.1992 to 03.01.1993, on account of vacation, the suit is not barred by time and hence the suit for recovery of money.

5.The case of the defendant in brief is that the suit is not maintainable either in law or on facts and the defendant had been having money transactions with the plaintiff's father Duraisamy Naidu since 1969 onwards and he used to obtain promissory note in the name of his wife Chennammal and after the discharge of the borrowed sum, he would obtain promissory note for the balance amount and accordingly, in respect of the money transactions which the defendant had with Duraisamy Naidu, on verification, it was found that a sum of Rs.11,200/- was due to be paid by the defendant as on September 1989 and accordingly as per the village practice, two promissory notes were obtained from the defendant, one for sum of Rs.11,000/- in the name of the plaintiff and another for a sum of Rs.11,400/- in the name of the plaintiff's brother on the same date, however, bearing different dates and the said promissory notes had been duly discharged by the defendant during August 1992 itself and it is represented to the defendant that promissory notes had been misplaced and assured of the return of the same and accordingly the defendant had also not secured the discharged promissory notes and the promissory note executed in the name of the plaintiff was dated 11.09.1989 and the plaintiff had materially altered the same as dated 27.12.1989 to save the suit claim on the point of limitation. The plaintiff had materially altered the above said date and month in the promissory note without the knowledge of the defendant and his consent and hence, on account of the said above material alterations made in the promissory note, the same had been rendered void and on account of the pathway dispute between the plaintiff's clerk and the defendant, the present suit has come to be laid after making material alterations in the promissory note and to the notice sent by the plaintiff, suitable reply has been given and hence the suit is liable to be dismissed.

6.In support of the plaintiff's case, P.W's 1 and 2 were examined. Exs.A1 and A2 were marked. On the side of the defendant, D.W.1 was examined. Ex.B1 was marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the suit laid by the plaintiff. On appeal preferred by the plaintiff, the first appellate court, on an reappraisal of the materials placed,

was pleased to set aside the judgment and decree of the trial court, and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for. Impugning the same, the present second appeal has been laid.

8. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

1. Whether the lower appellate Court had not committed serious error in misplacing the burden of proof on the appellant to establish the pronote is not materially altered?

2. Whether the lower appellate Court is right in not dismissing the suit when the date and month in the document under Ex.A.1 is materially altered?

3. Whether the lower appellate Court is right in not applying the principles laid down under Section 87 of the Negotiable Instruments Act and whether its judgment in misconstruing the provision had not resulted in serious miscarriage of justice?

9. The suit is laid by the plaintiff for recovery of money on the basis of a promissory note. According to the plaintiff, the defendant borrowed a sum of Rs.11,000/- from him on 27.12.1989 and in evidence of the said borrowal, had executed the suit promissory note, promising to repay the borrowed sum with interest as recited in the note abovesaid and inasmuch as the defendant did not honour his promise, despite several requests and the issuance of the notice, according to the plaintiff, he has been necessitated to lay the suit for recovery of the amount.

10. Per contra, it is the case of the defendant that he had been having money transactions with the plaintiff's father since 1969 onwards and in connection with the said money transactions, after the payment of the borrowed sum, on verification, it is found that a sum of Rs.11,200/- was due to be paid by the defendant as on September 1989 and for the said sum as per the village practice, two promissory notes bearing different dates were obtained from the defendant on the same day, one for a sum of Rs.11,000/- in the name of the plaintiff and another for a sum of Rs.11,400/- in the name of the plaintiff's brother and further according to the defendant, he had discharged the above said promissory note executed in favour of the plaintiff dated 11.07.1989 and the plaintiff had materially altered the date and month in the promissory note as December 27 and laid the suit

with the said material alterations and as the material alterations above stated had been made in the promissory note by the plaintiff without the knowledge and consent of the defendant, according to the defendant, the suit promissory note has become invalid and unenforceable on account of its void nature and hence, it is stated that only to save the point of limitation, the said material alterations had been carried out by the plaintiff and hence the suit is liable to be dismissed.

11. On a perusal of the suit promissory note marked as Ex.A1, as rightly found by the trial court, it is obvious and visible through naked eyes that the date and month of the promissory note had been altered and it is found that the month has been altered from September to December by striking of the first three letters in the month of September and by adding two new letters in the month of December. Similarly, the date 11 has been altered as 27 and accordingly, it is found that when the above said alterations, no doubt, being material, are found openly and without any ambiguity, it is for the plaintiff to establish as to how come the said material alterations had crept in the promissory note. In this connection, according to the plaintiff examined as P.W.1, when he was entrusted the promissory note, no correction had been in the same and therefore, it is found that when the promissory note was entrusted to the plaintiff, it was without any correction as such. Similarly, the scribe of the promissory note examined as P.W.2 has also clearly deposed that when he had written the suit promissory note, he did not make any correction in the same and accordingly, it is found that when the suit promissory note had come to be executed, it did not bear any correction and accordingly, only thereafter, without the knowledge and consent of the defendant, the above said alterations have come to be made, as regards the date and month in the suit promissory note. It is not the case of the plaintiff that the above said alterations had been done even at the point of time of the execution of the promissory note by the defendant with his knowledge and consent. Accordingly, it is found that the alterations having been carried out as regards the date and month contained in the note, which alterations, according to the defendant, had been made to save the suit on the point of limitation, when it is further seen that the said alterations had not been carried out with the knowledge and consent of the defendant and when it is further seen that the above said alterations being material and when it is seen that such alterations had adversely affected the interest of the defendant, as per section 87 of the Negotiable Instruments Act, 1881, when it is seen that any material alteration of a Negotiable Instrument would render the instrument void as against any one, who is a party thereto, at the time of making such alterations and does not consent thereto, when it is

further seen that the alteration effected in the suit promissory note as above discussed had not been established to carry out or accomplish the common intention of the original parties and on the other hand, when according to the defendant, the said alterations had been done only to save the suit on the point of limitation, it is seen that, the alterations projected and established to have been made are indeed material alterations and accordingly in view of the same, the suit promissory note had been rendered a void instrument.

12.The position of law on the above subject is that as per Halsbury's Laws of England, Volume 11, 3<sup>rd</sup> edition, Article 599 at P.368:

" A material alteration is one which varies the rights, liabilities, or legal position of the parties as ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and as such void, or may otherwise prejudice the party bound by the deed as originally executed.

The effect of making such an alteration, without the consent of the party bound, is exactly the same as that of cancelling the deed."

This could be culled out from the decision reported in 1970 (1) SCC Page 56 [Kalianna Gounder Vs. Palani Gounder and another] and it could be further seen that as per the decision reported in AIR 1951 Karnataka Page 102 [ K.M.Basappa And Another Vs. Patel Marule Gowda and Another] , the above subject was analysed as follows:

"The plaintiffs are traders who profess to have dealings to the extent of three or four lakhs of rupees & are not unfamiliar on their own showing with proceedings in Cts. They should have taken care to avoid suspicion being raised against them on account of the date being tampered with. So long back as 1884 it was held by Lord Den-man C.J.in Davidson and Cooper, (1884) 67 R.R.638

"that a party who has the custody of the instrument made for his benefit is bound to preserve it in its original state and that any

material alteration will vitiate the said instrument."

The above said position of law has been discussed in the decision reported in 2014 (5) Law weekly 887 [ A.Thirumoorthy & another Vs. S.Bastin] wherein it is had been held that

"A Negotiable Instrument, afflicted with the disease of material alteration is a void instrument. A void instrument/document cannot be enforced in a Court of law. Promissory note, which is having material alteration, thus cannot be enforced in a Court of law. In such an event, the suit must fail."

It is found that the decision reported in AIR 1966 AP 267 [ Allampatti Subba Reddy Vs. Neelapareddi] has been followed in the above said decision wherein the English Rule that a material alteration of a date makes it altogether void is summarized following the Halsbury's Laws of England as found in III Edition, volume 11, page 367 paras 598 and 599 which is reproduced as follows:

"598. A writing proposed to be executed as a deed may be altered by erasure or interlineation or in any other way before it is so executed, and any alteration so made before execution does not affect the validity of the deed. Any alteration, erasure or interlineation appearing upon the face of a deed is presumed, in the absence of evidence to the contrary, to have been made before the execution of the deed"

(ii) 599. If an alteration (by erasure, interlineation, or otherwise) is made in a material part of a deed, after its execution, by or with the consent of any party thereto or person entitled thereunder, but without the consent of the party or parties liable thereunder, the deed is thereby made void. The avoidance, however, is not ab initio, or so as to nullify any conveyancing effect which the deed has already had; but only operates as from the time of such alteration, and so as to prevent the person, who has made or authorised the alteration, and those claiming under him, from putting the deed in suit to enforce against any party bound thereby, who did not consent to

the alteration, any obligation, covenant, or promise thereby undertaken or made."

Accordingly, the above said position of law being found to be not otherwise in India and coupled with section 87 of the Negotiable Instruments Act, 1881, the effect of alterations whether material or not and the effect thereon had been explained in the above said decision as follows:

"It must be remembered that it is not any and every alteration that avoids the instrument. To have that effect the alteration must be in a material particular. A material alteration can be brought about by change of date or time of drawing or of the place of payment or by change in the sum payable, etc., etc. It is thus evident that the date of a promissory note is a material portion of it, and any alteration of such date will naturally void the promissory note, unless, of course, as stated in the Section such an alteration is made with the consent of the other party, or is made to effectuate the common intention of the original parties. It is wrong to assume that the date of the promissory note is merely a description. It indicates the time when the promissory note was executed. In most cases the date is very material in calculating the date of the performance of the contract and more often fixing the period of limitation within which the plaintiff will have to institute the suit on the foot of such promissory note. It is immaterial whether the alteration is made in the date or month or year. Any such alteration being material must necessarily result in the avoidance of the promissory note.

(7) It is true that in two cases alterations, though material, do not vitiate the instrument; firstly, when the alteration is made before the promissory note is executed, and secondly, if the alteration made was merely to correct a mistake, or to make it what it was originally intended to be. As stated earlier, the Section (S.87) itself states that the alteration can be made with the consent of the parties, or to carry out the common intention of the original parties. Any mistake occurring before the execution of the promissory note can, however, always be corrected before the document

is actually executed.

(8) The general rule in English law followed in India is that a party having custody or control of a document produced in evidence must explain the alteration. When the instrument on its production appears to have been altered, it is a general rule that the party offering it in evidence must explain its appearance, because every alteration in the case of a negotiable instrument renders it suspicious. It is true that it is not on every occasion that a party tendering an instrument in evidence is bound to explain any material alteration that appears upon its face. He must, however, explain when he is seeking to enforce it. It is plain that when the alteration appears to have been made contemporaneously with the document, or if it is made at some subsequent period with the privity of the parties charged and there is no fraud, it does not affect the validity of the instrument."

The above position of law is also followed in the decision reported in 2014 SCC Online Madras 9895 [Mahalingam Vs. Mayalagu] by holding that,

"the onus is only upon the plaintiffs to explain that the suit promissory note was not subjected to any material alteration. As regards the alteration P.W.1 did not open his mount. Almost P.W.2 has become a proxy for P.W.1 on the aspect of alteration in Ex.A1. Therefore, the Trial Court has correctly viewed the factual matrix and correctly applied the law. However, this has been missed by the First Appellate Court and the First Appellate Court misread the evidence and misdirected itself and that has resulted in reversing the well considered judgment of the Trial Court. Thus, this Court is of the view that Ex.A1 is affected by material alteration, as such it is void and it cannot be enforced in a Court of law. Thus, the substantial question of law is answered as against the respondent/plaintiff."

13. Following the above said principles of law, enunciated on the subject matter, when it is seen that the date and month

of the suit promissory note had been materially altered with reference to which no proper explanation has been adduced by the plaintiff and when it is found that on the date of execution of the suit promissory note, no such alterations had been incorporated in the suit promissory note and accordingly, it is further seen that the said alterations had been made out only during the custody of the same with the plaintiff and without the knowledge and consent of the defendant, following the principles adumbrated as aforesaid, it is seen that the above said alterations had been carried out materially one to adversely affect the interest of the defendant particularly to save the suit on the point of limitation. In such view of the matter, as rightly put forth, the alterations carried out in the suit promissory had become fatal to the case of the plaintiff and hence the instrument having been rendered a void one as per section 87 of the Negotiable Instruments Act, 1881, the plaintiff cannot be granted any relief on the basis of the said void instrument.

14. In such view of this matter, it is found that the first appellate court had committed a serious error in not applying the principles laid down u/s.87 of the Negotiable Instruments Act, 1881 and its failure to apply the above said provision of law has resulted in a serious miscarriage of justice and the first appellate court should have held that the suit promissory note had been materially altered both date wise and month wise, as above discussed and on the other hand, it is found that the first appellate court had shifted the burden of proof on the defendant to establish that the promissory note has not been materially altered, which cannot be sustained in the eyes of law and in such view of the matter, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

15. At the end, the the judgment and decree dated 30.04.1998 passed in A.S.No.301 of 1996 on the file of the Subordinate Court, Kallakurichi are set aside and judgment and decree dated 31.03.1995 passed in O.S.No.42 of 1993 on the file of the District Munsif court, Kallakurichi are restored. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition is closed.

MEMORANDUM OF COSTS

SA.1177 OF 2003

Appellants/Petitioners( ) Costs

Stamp for Vakalatnama

Rs. p  
3.00

|                                                |                 |
|------------------------------------------------|-----------------|
| Do. used for the Memo.                         | 1378.50         |
| Do. for do. of the lower Court(13.50 to 14.50) | 28.00           |
| Advocate's fee [certificate not received]      | FC not<br>filed |
| Batta and Postage                              | 8.00            |
| Translation and Printing/Typing charges        | Nil             |
|                                                | -----           |
|                                                | 1417.50         |
|                                                | -----           |

Sd/-  
Assistant Registrar (CS III)

//True copy//

Sub Assistant Registrar

mfa

To

1.The Civil Judge,  
Senior Division, Sub Court,  
Kallakurichi.

2.The Principal District Munsif,  
Kallakurichi.

3. The Section Officer,  
VR Section, High Court,  
Madras.

+1cc to Mr.V.Raghavachari, Advocate SR.No.9964

WEB COPY

S.A.No.1177 of 2003

CA(CO)  
GN(21/03/2018)