



S.A.No.893 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 03.11.2022

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

S.A.No.893 of 2022

&

C.M.P.No.18541 of 2022

Kamaraj

...Appellant

Vs

1.Dharmalingham

2.Viswalingham

... Respondents

**Prayer:** The appeal is filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 01.12.2021 made in A.S.No.26 of 2018 on the file of the Principal District Judge, Ariyalur, confirming the Decree and Judgement dated 21.04.2018, made in O.S.No.91 of 2017 on the file of Subordinate Judge, Jayankondam.



S.A.No.893 of 2022

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For Appellant : Mr.R.Venkatesulu

### **JUDGEMENT**

The unsuccessful plaintiff in the Courts below has filed the above Second Appeal. The facts culminating in the filing of this appeal is herein below narrated and the parties are referred to in the same rank as before the Trial Court.

2. The plaintiff had filed O.S.No.141 of 2012 on the file of the Sub Court, Ariyalur for recovery of a sum of Rs.6,34,875/-, which was later transferred and re-numbered as O.S.No.91 of 2017 on the file of the Sub Court, Jayankondam. It is the case of the plaintiff that the father of the defendants one Govindasamy had borrowed a sum of Rs.5,00,000/- on 20.10.2009, to meet his family expenses and for construction of houses for his sons from the plaintiff in the presence of



S.A.No.893 of 2022

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witnesses and had executed a promissory note for the said sum, agreeing to repay the same on demand, together with interest at the rate of 12% p.a.

3. After the execution of the promissory note, the said Govindasamy passed away 11 months prior to the filing of the suit and his sons were impleaded as defendants as they were in enjoyment of the estate of the late Govindasamy. Therefore, the plaintiff sought to have the decree as prayed for.

4. The defendants on entering appearance had filed a written statement inter alia denying the very borrowal and also the signature contained in the promissory note. The defendants would submit that they had received a notice dated 17.04.2012 from the plaintiff and they had given a fitting reply on 21.04.2012 setting out the true facts. The defendants would contend that their father is a landlord and there was



S.A.No.893 of 2022

no necessity for him to borrow money by executing a promissory note.

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5. The defendants would submit that in their reply notice they had requested the plaintiff to give them a copy of the alleged promissory note which copy have not been served to them till now. The promissory note is a rank forgery and fabricated with an intent to enrich himself. The defendants therefore sought for the dismissal of the suit.

6. The learned Sub Judge, Jayankondam, by his Judgement and Decree dated 21.04.2018 was pleased to dismiss the suit. The learned Sub Judge, Jayankondam, had on considering the evidence held that there was discrepancies between the evidence of P.W.1, the plaintiff and P.W.2, who has been examined as an attesting witness of the promissory note which had been marked as Ex.A.1.



S.A.No.893 of 2022

WEB COPY

7. Challenging the said Judgement and Decree, the plaintiff had filed A.S.No.26 of 2018 on the file of the Principal District Court, Ariyalur. The learned Principal District Judge, Ariyalur by his Judgement and Decree dated 01.12.2021 was pleased to dismiss the appeal and confirm the Judgement and Decree of the Trial Court.

8. Aggrieved by the same, the plaintiff is the appellant before this Court.

9. The learned Principal District Judge, Ariyalur has disbelieved the evidence of P.W.2, who has been examined to prove the alleged promissory note, since he is an interested witness being the plaintiff's brother in law.



S.A.No.893 of 2022

WEB COPY

10. The learned Principal District Judge, Ariyalur has looked into suspicious circumstances surrounding the alleged execution of the promissory note especially when the stamp papers which has been purchased three years earlier has been utilised to create the promissory note of the year 2009. This would clearly show that the plaintiff had used the stamp papers available in his custody to create the same. The learned Principal District Judge, Ariyalur therefore dismissed the appeal.

11. Heard the learned counsel for the appellant and perused the papers.

12. Though the defendants had clearly and categorically denied the execution of the promissory note and the signature therein, however no steps have been taken by the plaintiff, in this regard to send the signature for the opinion of the hand writing expert. P.W.2 who is



S.A.No.893 of 2022

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claimed to be the attesting witness of Ex.A.1, promissory note, however in his evidence does not corroborate the evidence of P.W.1, with regard to the execution of Ex.A.1 promissory note.

13. In the absence of any effort to prove the same, the Courts below have in depth analysed the evidence on record both oral and documentary and also the pleadings and dismissed the suit and thereafter the appeal.

14. I see no reason to interfere with the well considered concurrent Judgement and Decree of the Courts below. Accordingly, the Second Appeal stands dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

**03.11.2022**

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Index : Yes/No

Speaking order/non-speaking order

7/9



S.A.No.893 of 2022

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To,

1.The Principal District Judge,  
Ariyalur.

2.The Subordinate Judge,  
Jayankondam.



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*S.A.No.893 of 2022*

**P.T.ASHA, J.,**

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**S.A.No.893 of 2022**

**03.11.2022**