

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on
20.12.2021

Judgment Pronounced on
01.02.2022

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CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

S.A.No.821 of 2021
and
CMP.No.15880 of 2021

Suresh Kumar

... Appellant/Appellant/Defendant

..vs..

1.Sivagami
2.Sundar Rajan
3.Hemalatha
4.Vanitha

... Respondents/Respondents/Plaintiffs

This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 09.11.2020 made in A.S.No.7 of 2019 on the file of the learned II Additional District Judge, Vellore at Ranipet (A.S.No.9 of 2019 on the file of Principal District Court, Vellore), confirming the judgment and decree dated 27.10.2017 made in O.S.No.233 of 2010 on the file of learned Subordinate Judge, Ranipet (PDJ Court, Vellore O.S.No.84 of 2008).

For Appellant :Mr.S.Kingston Jerold

For Respondents :Mr.A.Prabhakaran

JUDGMENT

Appellant/defendant, who lost the case before the courts below filed this Second Appeal against the judgment and decree of learned II Additional District Judge, Vellore at Ranipet, in A.S.No.7 of 2019 dated 09.11.2020 (A.S.No.9 of 2019 on the file of Principal District Court, Vellore) confirming the judgment and decree of learned Subordinate Judge, Ranipet in O.S.No.233 of 2010 (O.S.No.84 of 2008 on the file of PDJ Court, Vellore) dated 27.10.2017.



2. Respondents/plaintiffs filed the suit for recovery of a sum of Rs.7,99,359/- with future interest at 24% p.a. from the date of suit till the date of realisation and for costs.

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3. The case of the respondents, in brief, is as follows:-

The suit was originally filed by one Kathirvelu, husband of first respondent and father of other respondents. Appellant borrowed a sum of Rs.50,000/- from Kathirvelu on 29.07.2005, agreeing to repay the principal with interest at Rs.2/- per hundred per month. He has executed a promissory note shown as 'A' promissory note on the same date. Subsequently also, appellant borrowed the following amounts on the same interest and executed promissory notes. The details of borrowings are as follows:-

Date of borrowal	Amount borrowed	Date of execution of promissory note
26.05.2006	Rs.50,000/-	26.05.2006 - B promissory note
03.06.2006	Rs.75,000/-	03.06.2006 - C promissory note
03.06.2006	Rs.1,50,000/-	03.06.2006 - D promissory note
03.06.2006	Rs.75,000/-	03.06.2006 - E promissory note
03.06.2006	Rs.50,000/-	03.06.2006 - F promissory note
09.06.2006	Rs.75,000/-	09.06.2006 - G promissory note

4. After filing the suit, Kathirvelu died and his legal heirs are impleaded as plaintiffs 2 to 5. Defendant had not paid any amount towards principal or interest inspite of repeated demands. He issued legal notice dated 27.06.2008 with an ulterior motive. Plaintiff sent a reply dated 14.07.2008 calling upon the defendant to pay the amount due under 'A', 'B', 'C', 'D', 'E', 'F', and 'G' promissory notes. Even thereafter, defendant has not paid any amount. Therefore, this suit was filed.

5. Appellant/defendant filed written statement denying the borrowal and execution of promissory notes as claimed in the plaint. It is the case of the appellant that in June 2005, he borrowed a sum of Rs.5,25,000/- from the plaintiff, agreeing to repay the amount with interest at Rs.2/- per hundred per month. But he did not execute any promissory note in favour of the plaintiff as mentioned in the plaint. He discharged his



dues to the plaintiff as follows:-

Sl.No .	Date on which amount paid and plaintiff signed	Amount paid
1	04.08.05	Rs. 4,500/-
2	13.08.05	Rs. 1,500/-
3	21.08.05	Rs. 1,000/-
4	24.08.05	Rs. 1,000/-
5	28.08.05	Rs. 2,000/-
6	03.09.05	Rs. 1,000/-
7	05.09.05	Rs. 1,000/-
8	08.09.05	Rs. 1,000/-
9	15.09.05	Rs. 1,000/-
10	22.09.05	Rs. 1,000/-
11	17.09.05	Rs. 1,000/-
12	01.10.05	Rs. 10,000/-
13	07.10.05	Rs. 1,000/-
14	January, 06	Rs. 1,000/-
15	January, 06	Rs. 1,000/-
16	February, 06	Rs. 1,000/-
17	March, 06	Rs. 1,00/-
		----- 40,000.00
18	By cash in December, 2005	50,000.00
		----- 90,000.00
19	Bulb 576 Dhal 680 Canteen 662 Cash 70 Chain 330 Kammal ... 1850 Cut-note ... 100 ----- 4268.00	4,268.00



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Sl.No .	Date on which amount paid and plaintiff signed	Amount paid
	So, total ..Rs.	92,700.00
	Total amount paid	----- 96,968.00

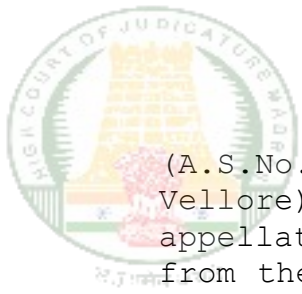
He paid a sum of Rs.1,75,000/- on 03.06.2006 and Rs.75,000/- on 08.06.2006. Totally, He paid a sum of Rs.2,50,000/- and that two promissory notes are in the custody of defendant. Promissory notes marked as 'C' and 'D' are not true and they are forged documents. Plaintiff filed a complaint before Crime Branch at Vellore. The DGP enquired the matter and the defendant paid Rs.55,000/- to the plaintiff on 12.02.2008. Thus, defendant paid a sum of Rs.4,01,968/-. Plaintiff and his son trespassed into the defendant's house and assaulted the defendant. They obtained signatures from the defendant in blank promissory notes and three promissory notes from defendant's wife. Therefore, the defendant issued legal notice on 27.06.2008. 'E', 'F', and 'G' are fabricated promissory notes. Defendant had not signed in these promissory notes. His signatures were obtained under threat and coercion. Therefore, plaintiff cannot claim any relief on the basis of these promissory notes. Therefore, the suit is liable to be dismissed.

6. On the basis of the above pleadings, the trial court framed the following issues:-

- 1) Whether the suit promissory notes are true and valid ?
- 2) Whether the plaintiffs are entitled to the suit claim as prayed for ?
- 3) To what relief, the plaintiff is entitled ?

7. During trial before trial Court, PW.1 and PW.2 were examined and Exs.A1 to A10 were marked on the side of respondents/plaintiffs. DW.1 was examined and Exs.B1 to B4 were marked on the side of appellant/defendant.

8. On considering the oral and documentary evidence, learned trial Judge found that defendant proved the repayment of Rs.1,46,968/- and held that the plaintiff is entitled to recover the balance amount of Rs.6,52,391/- with interest at 12% on the principal amount from the date of presentation of plaint till the date of decree and thereafter at 6% per annum till the date of realisation. Defendant filed appeal in A.S.No.7 of 2019 on the file of II Additional District Judge, Vellore at Ranipet



(A.S.No.9 of 2019 on the file of Principal District Court, Vellore) against the judgment of the trial Court. Learned first appellate Judge has also found that there is no reason to differ from the view taken by the learned trial Judge and confirmed the judgment of the trial Court and dismissed the appeal. Therefore, the defendant filed this Second Appeal.

9. At the time of admission of the second appeal, the following substantial questions of law were framed:-

a) Whether the Courts below are correct in decreeing the suit when there is no plausible explanation for obtaining the signature of Nirmala/wife of Suresh Kumar in all the promissory notes ?

b) When appellant denies the genuineness of signatures of his wife in Exs.A1 to A7, whether it amounts to material alteration?

10. Learned counsel for the appellant submitted that the courts below have failed to consider the oral and documentary evidence in proper perspective. Promissory notes are forged and it is evident from the fact that signatures of appellant's wife, who is in no way connected with the borrowal, are found in the promissory notes. There is no necessity for the wife of the appellant to sign Exs.A1 to A7 promissory notes. It is the specific case of the appellant that his wife's signature in Exs.A1 to A7 are forged and it amounts to material alteration. Both the courts below have failed to consider Exs.B3 and B4, discharged promissory notes. Exs.B3 and B4, promissory notes show that Kathirvelu is in the habit of getting signature of the appellant in promissory notes without properly filling it and after repaying the amount, used to return the promissory notes. This aspect was not considered by the courts below. It is seen from the evidence of PW.2 that he did not know about the signature of appellant's wife. No issue was framed by the trial Court with regard to signing of promissory note by Nirmala and no finding was given. Overall, the suspicion surrounding the execution of promissory notes have not been properly dispelled by the respondents. Both the courts, on wrong appreciation of evidence, have wrongly decreed the suit. Therefore, he prayed for setting aside the judgment of the courts below and for allowing this appeal. He relied on the following judgments for the proposition that what amounts to material alteration and forgery:-

(i) CDJ 1928 MHC 340 (Santhu Mohideen Pillai Tharaganar ..vs.. Jamal Mohammad Jamaludin Labbai), wherein it is



held as follows:-

"Under such circumstances if the document was brought into existence in the presence of the plaintiff, and seeing that it was executed in his favour, it is impossible to hold that the plaintiff was unaware of, or was not a party to, the fraud by which 2nd defendant's name also was included in the document and his mark put by defendant 1. The plaintiff must have, at least, connived at the fraud, even if there is no direct evidence to show that he was instrumental in introducing defendant 2's name. There is no direct evidence to prove that the plaintiff was a party to the fraud. Fraud has to be inferred from the circumstances and probabilities of the case. On a consideration of these I find that the plaintiff must have been a party to the fraud. The finding is submitted accordingly. "

(ii) CDJ 1957 MHC 095 (Rangaswami Reddi ..vs.. K. Doraiswami Reddi), wherein it is held as follows:-

"4.

Section 87 of the Negotiable Instruments Act runs thus :

"Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this Section are subject to those of Sections 20, 49 86, and 125."

.....

7.

Here on account of Section 87 of the Negotiable Instruments Act the promissory note has become void and the plaintiff cannot be permitted to adduce any other evidence to prove the contract of loan. The promise to repay the amount of the loan is certainly a term, indeed an essential term, of the contract. Of course if there was a completed contract which existed before the execution of the promissory note, in which case the promissory note may be treated as a security or voucher, an action would lie on such a contract even though the promissory note executed subsequently cannot be admitted in evidence for any



reason.

.....

8.

All that the aforesaid part of Section 87 says is that if a material alteration is made by the indorsee of a promissory note and on that ground the promissory note becomes void, the indorsee who is himself responsible for the result cannot make the indorser liable. The indorsee has to suffer the loss occasioned by his own fraud. This rule has nothing to do with the liability of the executant of a promissory note to the payee.

9. We, therefore, hold that the plaintiff who has been guilty of a material alteration of the promissory note cannot enforce the promissory note nor can he fall back on the original consideration, nor can he invoke the provisions of Section 65 of the Contract Act to sustain his claim. The suit was rightly dismissed by the learned Subordinate Judge. The second appeal is dismissed with costs. "

(iii) CDJ 1972 MHC 324 (Verco Private Ltd., Padi & Others Versus Newandram Naraindas & Another). The relevant portions are as follows:-

"1. One such defence which was put forward with reference to Ex. A. 2 promissory note was that it had been materially altered by the plaintiff and consequently it was inoperative and no suit could be instituted thereon. The material alteration is said to be insertion of the rate of interest in the document.

2. On the admitted fact that the first respondent inserted the rate of interest and the word month, after the document was executed by the second defendant, it is clear that the promissory note has been materially altered.

3. Section 87 of the Negotiable Instruments Act, so far as in relevant, is as follows. "any material alteration of a negotiable instrument renders the same void as against any one, who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. " it is the last portion of this section which is relied on by the learned counsel, and on which the learned I Additional



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Judge, City Civil Court, Madras, has decided in favour of the first respondent. I am unable to hold that this provision is attracted to the facts of this case. P. W. 1 has not stated in this evidence that there was a common intention of the parties at the time when the promissory note was executed to pay interest at the rate mentioned above and that only for the purpose of giving effect to the common intention he inserted that rate. "

11. In response, learned counsel for the respondents submitted that the wife of appellant signed in the promissory notes in her capacity as the wife of appellant, to evidence the borrowing by her husband. The loan amount was borrowed only by the appellant. Though it was not specifically mentioned in the promissory note, wife joined her husband and executed the promissory note as a surety. The suit was filed only against the appellant and not against the wife. The allegation that wife's signature was forged is not correct. Appellant had taken contradictory plea with regard to the execution of promissory notes. Appellant sent the notice on 27.06.2008. That notice is marked as Ex.A8. It is said in that notice that on 24.06.2008, Kathirvelu abducted the appellant with the help of his son and other persons; All of them assaulted the appellant in the residence of Kathirvelu. Then he brought the appellant to his home. Under coercion he obtained signatures of his wife in old blank promissory notes. However, in the written statement, it is pleaded that Kathirvelu and his son trespassed into appellant's house, assaulted him, obtained his signatures in blank promissory notes and from his wife in three promissory notes. When the appellant claims that promissory notes were obtained by exercising threat and coercion, it is his duty to prove the allegations. However, he has not produced any evidence with regard to the alleged abduction, threat and coercion in obtaining signatures in blank promissory notes. It is also seen from the written statement of appellant that he admitted the borrowal of Rs.5,25,000/-. However, he proved only part repayment and not the entire amount. Appellant has not examined his wife with regard to the alleged incident. He admits his signatures in Exs.A1 to A7. Signing in the promissory notes by appellant's wife cannot be considered as material alteration. Both the courts below have elaborately considered the oral and documentary evidence and rightly decreed the suit. Therefore, he prayed for confirming the judgment of the courts below and for dismissal of this appeal.



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12. It is his submission that any alteration, which will have the effect of extending or diminishing the liability thereon or extending its period of limitation or like will amount to material alteration. He relied on the following judgments in support of his case as to the proposition that what amounts to material alteration.

(i) 2012 (2) LW 521 (John Thangadurai and eze ..vs.. Arul Azir), which reads as follows:

"11. The phrase "Material Alteration" has not been defined in the Negotiable Instruments Act, 1881. But, it has been explained judicially.

12. In *Kaliana Gounder .vs. Palsu Gounder* (AIR 1970 SC 1942), it is held as under:

" A material alteration is one which varies the rights, liabilities, legal position of the parties as ascertained by the deed in its original state".

13. In *NATHULAL .VS. GOMTI* (AIR 1940 PC 160) it was held that "the effect of making a material alteration without consent of the party bound is exactly the same as that of canceling the deed."

14. From the foregoings, it is clear that every alteration in an negotiable instrument will not be material alteration. Any alteration which will have the effect of extending or diminishing the liability thereof or extending its period of limitation or of the ilk will make it material alteration. Such instruments are void instruments. Based on such an instrument, a claim cannot be made, enforced in a Court of law. This is what the ratio of the two decisions cited by the learned counsel for the appellants. "

(ii) 2002 AIR (SC) 38 (*Veera Exports ..vs.. T.Kalavathy*). The relevant portion reads as follows:-

".....

The first paragraph of Section 87 makes it clear that the party who consents to the alteration as well as the party who made the alteration are disentitled to complain against such alteration, e.g. if the drawer of the cheque himself altered the cheque for validating or revalidating the same instrument he cannot take advantage of it later by saying that the cheque became void as there is material alteration thereto."

(iii) 2018 (4) CTC 190 (*Pachaiappa Chettiar ..vs.. Muthukrishna Naidu*). The relevant portion reads as under:-



"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.

This could be culled out from the decision reported in 1969 (SLT SOFT) 100=1970 (1) SCC 56, Kalianna Gounder v. Palani Gounder and Another and it could be further seen that as per the decision reported in AIR 1951 Kar. 102, K.M. Basappa and Another v. Patel Marule Gowda and Another, the above subject was analysed as follows:

"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."

"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



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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 v. 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 inter lineation 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 fact of a deed is presumed, in the absence of evidence to the contrary, to have been made before the execution of the deed.

599. If an alteration (by erasure, interlineation, or otherwise) is made in an 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 convincing 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."

13. Considered the rival submissions and perused the records.

14. It is seen from the plaint averments that the appellant said to have borrowed various amounts on various dates and executed Exs.A1 to A7 promissory notes, which are denoted as 'A' to 'G' promissory notes. It is not as though the defendant



totally denied the borrowal. Appellant's case is that he borrowed a sum of Rs.5,25,000/- in June 2005 and repaid to the tune of Rs.4,01,968/- on various dates. Both the courts below have found that appellant was able to prove the repayment of Rs.1,46,968/- and therefore, granted decree only for a sum of Rs.6,52,391/-. It makes clear that the loan transactions between the appellant and Kathirvelu were true. Allegation raised by the learned counsel for the appellant is that the suit was filed against the appellant; his wife is in no way involved in the alleged borrowal, but her signature appears in Exs.A1 to A7 promissory notes. His wife has not signed in Exs.A1 to A7 promissory notes and they are forged signatures and it amounts to material alteration.

15. It is not as though the appellant takes a plea that his wife's signature is forged by Kathirvelu. Specific case of the appellant in Ex.A8-legal notice is that Kathirvelu and his son abducted the appellant, beaten him, then brought him to his home to obtain his signature and his wife's signature in old promissory notes. This case was slightly improved in the written statement saying that his wife's signature was obtained in 3 promissory notes under threat and coercion. There is no specific pleading that his wife's signature was forged. His allegation is that his wife had been made to sign in the promissory notes under threat and coercion. Only if the allegation of forgery is made, it is for the respondents to disprove the allegation of forgery. Here, the allegation is that appellant's wife's signature was obtained by threat and coercion. Appellant has not produced any evidence in support of his case that he and his wife have made to sign in the blank promissory notes under coercion. It appears that no police complaint was given with regard to the alleged abduction, threat and coercion in obtaining signatures in the blank promissory notes. Therefore, the claim of the appellant that his wife's signature in Exs.A1 to A7 were forged by the respondents and it amounts to material alteration cannot be accepted.

16. Perusal of the evidence of DW.1 shows that he admitted his signatures in Exs.A1 to A7 promissory notes and admitted borrowing Rs.5,25,000/-. He marked Exs.B3 and B4. Admittedly, there is no pleadings with regard to these documents in the written statement. Even otherwise, there is no mention in Exs.B3 and B4 about receipt of money by Kathirvelu or his legal heirs. The possibility of creating Exs.B3 and B4 by the appellant himself cannot be ruled out. Therefore, Exs.B3 and B4 are in no way useful to advance the case of appellant. When there is no material to show that appellant's wife's signatures



were forged in Exs.A1 to A7 promissory notes and when there is no evidence to show that the signatures of appellant and his wife in Exs.A1 to A7 promissory notes were obtained by threat and coercion, it has to be necessarily concluded that the suit promissory notes are genuine promissory notes executed by the appellant, after receiving loan amounts mentioned in these promissory notes. When that be the case, the judgments relied on by the learned counsel for the appellant to show that there is material alteration in the suit promissory notes, have no application to the facts and circumstances of this case.

17. Signatures of appellant's wife seem to have been obtained in her capacity as his wife to add strength and confirmation to the borrowings. The suit is filed only against the appellant and not against the wife. In the facts and circumstances of this case, it is quite possible that appellant's wife's/Nirmala's signatures have been obtained to have a solid and binding evidence for the borrowings. It cannot be considered as fraud or material alteration. Therefore, this Court finds that the claim of material alteration in Exs.A1 to A7 promissory notes raised by the appellant has no evidence to support. Both the courts below have appreciated the evidence, applied the law and decreed the suit. Thus, the substantial questions of law are answered. Therefore, this Court confirms the judgment and decree of the first appellate Court/II Additional District Judge, Vellore at Ranipet in A.S.No.7 of 2019 confirming the judgment and decree of trial Court/Subordinate Judge, Ranipet, in O.S.No.233 of 2010. This Second Appeal is dismissed with costs of the respondents throughout.

18. In fine, this Court confirms the judgment and decree of first Appellate Court in A.S.No.7 of 2019 dated 09.11.2020 confirming the judgment and decree of trial Court in O.S.No.233 of 2010 dated 27.10.2017 and dismisses the Second Appeal with the costs of the respondents throughout. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

mra
To

1.The Principal District Judge, Vellore



2.The II Additional District Judge,
Vellore at Ranipet.

3.The Subordinate Judge, Ranipet.

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S.A.No.821 of 2021
and
CMP.No.15880 of 2021

NRL(CO)
CB(10/03/2022)