



SA.No.784 of 2006

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17 .11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.784 of 2006

R. Kalliappan

... Appellant

- Vs -

1. K. Chinnasami(died)
2. C. Subbathal
3. S. Rajeswari
4. R.Thangamani

... Respondents

(R2 to R4 brought on record as legal heirs
of the deceased Sole Respondent viz.,
Chinnasami vide Court order dated
31.03.2021 made in M.P.No. 1 to 3 of 2015
in S.A.No.784 of 2006)

Prayer: Second Appeal is filed under Section 100 of the Civil Procedure Code
against the Judgment and decree dated 28.02.2006 in A.S.No.52 of 2005 on
the file of Sub Court, Tirupur confirming the Judgment and decree dated
04.02.2006 in O.S.No.1022 of 2004 on the file of District Munsifs Court,
Tirupur.



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For Appellant : Mr.R. Subramanian for K. Meenal

For Respondent-1 : died

For Respondents 2 and 4 : Mr. S. Sabarish for Mr.S.Kingston
Ferald

JUDGMENT

This appeal has been filed at the instance of the defendant.

2. **The brief facts which have given rise to this instant second appeal is as follows:**

According to the plaintiff on 17.08.1993 the defendant had borrowed a sum of Rs.40,000/- by executing two promissory notes and agreed to pay the same. However, inspite of the legal notice and oral request, the defendant failed to pay the said amount. Hence, he instituted the suit for recovery of the money.

3. The said suit was resisted by the defendant by contending that he has not borrowed any amount. On the other hand, plaintiff only had borrowed money from the defendant. Therefore, he prayed to dismiss the suit. Further by relying upon the oral and documentary evidence, the trial



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Court have decreed the suit. Against which appellant preferred an appeal, and the First Appellate Court confirmed the findings of the Trial Court. Aggrieved by the same the defendant is before this Court.

4. When the Second Appeal was admitted before this Court, this Court has framed the following substantial question of law:-

a. Whether in law the Court below are right in holding that the respondent was entitled to the benefit of presumption under Section 118 of Negotiable Instruments Act when the appellant had categorically denied the signatures in the promissory notes

b. Whether in law the Courts below are not wrong in overlooking the admissions of P.W.1 respondent regarding prior disputes between the parties which would improprialise his lending money to the appellant.

5. The learned counsel for the appellant would submit that the suit is barred by limitation, and the presumption under Section 118 of the Negotiable Instruments Act has been wrongly drawn. Therefore, prayed to allow the second appeal.



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6. However, the learned counsel for the Plaintiff/Respondent would submit that the suit has been filed well in time, and the plaintiff have proved the due execution of pronote, therefore, the presumption drawn by the Trial Court is in order. Hence prayed to dismiss the second appeal.

7. I have given my anxious consideration to either side submissions.

8. In respect of the presumption drawn by the Trial Court under Section 118 of the Negotiable Instruments Act, the learned counsel for the respondent would invite the attention of this Court that the plaintiff has examined the attestators and has compared the signature found in the documents and there by proved the execution. Therefore, when execution of pronote proved, then the presumption under Section 118 of the Negotiable Instruments Act, will automatically arise.

9. Further the learned counsel for the appellant/defendant would submit that there are variation in the evidence let in by the attestators. However, the Court below has held that in view of the long delay from the



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date of the execution of the document and the date of examination of the witness, such variances cannot be found fault with.

10. Coming to the next aspect with regard to the limitation, it is the submission of the learned counsel for the appellant that the suit is barred by limitation as, the promissory note was executed on 17.08.1993, and the suit was filed on 10.12.1996. Therefore, the suit is barred by limitation. On perusal of the records, suit was presented before the Court on 16.08.1996. But only due to procedural issues the suit was taken on file on 10.12.1996. Therefore, the submissions made by the learned counsel for the appellant that the suit is barred by limitation cannot be countenanced for the simple reason that the suit was presented before the Court within a period of 3 years.

11. Therefore, this Court is of the firm view that there are no material to deviate from the findings recorded by both the Courts. Therefore, the substantial questions of law framed by this Court is liable to be answered in favour of the respondent.



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12. In the result this second appeal is dismissed. No order as to costs.

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Consequently, the connected miscellaneous petitions are closed.

17.11.2023

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To

1. The Sub Court, Tirupur
2. The District Munsif Court, Tirupur.



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C.KUMARAPPAN, J

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