



A.S.(MD)No.66 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.66 of 2009
and M.P.(MD)No.2 of 2009

1.T.Kalyani
2.Chithra
3.Kavitha
4.Renuka
5.Jyothy

... Appellants / Defendants

Vs.

P.L.M.Nagappan (Died)
2.N.Kalyani
3.N.Muthu Annamalai
4.M.Shanthi
5.S.Yegammai
6.S.Usha

(Respondents 2 to 6 are brought on record as
Lrs of the deceased sole respondent vide
Court dated 27.06.2022 made in C.M.P.
(MD)Nos.3886 and 3887 of 2017)

... Respondents / Plaintiff

PRAYER: This Appeal Suit is filed under Section 96 of C.P.C. against the judgment and decree passed in O.S.No.300 of 2004 dated 30.06.2008 on the file of the Additional District Sessions Court, (Fast Track Court No.1), Trichy.



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For Appellants : Mr.S.Ramsundar Vijayaraj
for Mr.C.Jeganathan
For Respondents : Mr.M.Muthukumaran for R3

JUDGMENT

Aggrieved over the judgment and decree passed in O.S.No.300 of 2004 dated 30.06.2008 on the file of the Additional District Sessions Court, (Fast Track Court No.1), Trichy.

2. For the sake of convenience, the parties are referred to herein, as per their own ranking before the Trial Court.

3. The brief facts, leading to the filing of this Appeal, are as follows:-

The first defendant is the wife of one A.K.Jeyaraman and the defendants 2 to 5 are the daughters of the said Jeyaraman. The husband of the first defendant viz., Jeyaraman and the first defendant borrowed a sum of Rs.3 lakhs from the plaintiff on 17.05.1993 and agreed to pay the interest at the rate of 24% per annum and also executed a pro-note on the same day. After borrowed the amount, as the first defendant and her husband failed to pay that amount, the plaintiff issued a legal notice dated 10.06.1995. Despite the same, that amount has not been paid.



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Hence, the plaintiff has filed the suit. Before the suit has been laid, the husband of the first defendant died. Therefore, the defendants 2 to 5 were impleaded as legal representative of the said Jeyaraman.

4. The first defendant, who is said to have executed a pro-note, filed a written statement denying the allegation that on 17.05.1993, she and her husband borrowed a sum of Rs.3 lakhs and executed a pro-note and agreed to pay the said amount with the interest at the rate of 24%. It is the contention of the first defendant that her husband was a subscriber to the chit run by the plaintiff and he was a successful bidder of a sum of Rs.1 lakh. At the time of chit transactions, he has executed a blank pro-note in favour of the plaintiff and the same has been misused after the death of her husband. Hence, it is her contention that either the defendant has borrowed the amount nor executed the pro-note.

5. Defendants 2 to 5 filed a written statement stating that there was no necessity or occasion to borrow any money from the plaintiff as alleged by him and denied the execution of the pro-note.



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6. Based on the above pleadings, the trial Court has framed the following issues?

- “1. Whether the pro-note is validly executed and true?*
- 2. Whether the suit amount is borrowed for business purpose?*
- 3. Whether the defendants were liable to pay that amount?*
- 4. Whether the interest claimed by the plaintiff is excessive?*
- 5. To what other relief, the plaintiff is entitled to?”*

7. On the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and four documents were marked as Ex.A1 to A4. On the side of the defendant, the first defendant was examined as D.W.1 and no document has been marked.

8. The trial Court after considering the oral and documentary evidence, has decreed the suit. Challenging the same, the present appeal has been filed.

9. The only contention of the learned counsel appearing for the defendants / appellants before this Court is that when the signature in the pro-note has been denied by the defendants, it is for the plaintiff to discharge the initial onus in establishing the execution. Without proving the execution of pro-note, the trial



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Court has placed the burden on the defendants to discharge their burden for establishing the alleged chit transaction. According to the learned counsel appearing for the defendants / appellants it is not proper. It is further submitted by the learned counsel appearing for the defendants / appellants that one of the witnesses in the pro-note has not been examined. Hence, it is his submission that once the plaintiff has failed to discharge the initial onus for establishing the execution of pro-note, the presumption cannot be drawn automatically. Hence, prayed for allowing of the appeal.

10. The learned counsel appearing for the plaintiff / respondents would submit that the defence itself is a vague and there is no specific denial in the written statement for execution of the pro-note by the first defendant. Even in the evidence of D.W.1, there is no denial for execution of the pro-note and she has specifically admitted that she has signed the pro-note and handed over the same to the plaintiff.

11. In the light of the above submissions, now the points arise for consideration in this appeal are as follows:

1. Whether the plaintiff has not discharged his initial burden for



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establishing the execution of pro-note?

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2. If so, whether he is not entitled to recover of the suit amount?

12. It is the specific case of the plaintiff that the first defendant and her husband borrowed a sum of Rs.3 lakhs and executed a pro-note-Ex.A1 on 17.05.1993. It is the stand of the first defendant in the written statement that though her husband's signature is found in the pro-note, the same has been handed over in a chit transaction. Whereas she has denied her signature in the pro-note. The entire written statement of the first defendant is read and it is found that the denial is in the nature of evasive one and there is no specific denial is made. It is well settled that any facts pleaded in the plaint has to be specifically denied. Unless specific denial is made in the written statement and the denial is made in the form of evasive, it should be deemed to be an admission of the pleadings. Be that as it may. P.W.1 in his evidence has clearly stated that on 17.05.1993, the first defendant and her husband borrowed a sum of Rs.3 lakhs from him and executed a pro-note. It is the specific evidence of P.W.1 that both the husband and wife visited him and executed a pro-note and received the amount. Above evidence has not been denied by the first defendant in her entire cross examination, except



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general suggestion that her signature is not in the pro-note. When it is the specific evidence of P.W.1 that there was execution and followed by passing of consideration and the same has not been denied by the first defendant in her cross examination, such evidence is deemed to be admission on the part of D.W.1. That apart D.W.1 in her cross examination has clearly admitted that she has also executed a pro-note, she and her husband signed the pro-note and handed over to the plaintiff in chit transaction. When the defendant has admitted the signing of pro-note and take a plea of different transactions, the burden certainly lies on the defendants, which has not been discharged by the defendants.

13. As already indicated, when the execution and the passing of consideration has not been denied specifically in the cross examination and D.W.1 herself has admitted the handing over of the signed pro-note, the Court can easily infer that Ex.A1 has been properly executed and the plaintiff has discharged their burden to prove the execution. When the execution of pro-note has been established on record, then the statutory presumption available under Section 118 of the Negotiable Instrument Act, 1881 come into operation. Though such statutory presumption is rebuttable one, there must be some materials in the way of admission and a circumstance should be brought on record to rebut the legal



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presumption. On perusal of the entire evidence, this Court does not find any materials in the form of preponderance of probabilities to even rebut the statutory presumption available in the Negotiable Instrument Act, 1881 viz. the suit pro-note in this case.

14. In view of the above, the judgment of the trial Court decreeing the suit as against the first defendant cannot be interfered. However, the trial Court has passed a personal decree as against the defendants 2 to 5, which is not correct according to law. If at all any decree to be passed, it can be enforced only from the estate of the deceased. Particularly, for the decree of payment of money, the same has to be realized only from the estate of the deceased in the hands of the legal heirs. With the above modification, the judgment passed by the trial Court is confirmed.

15. In the result, this Appeal Suit is dismissed with the above modification. No costs. Consequently, connected miscellaneous petition is closed.

29.03.2023

NCC : Yes /No
Index : Yes/No
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- To
- 1.The Additional District Sessions Court,
(Fast Track Court No.1), Trichy
 - 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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