



S.A(MD) No.62 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.62 of 2014

Arunachalam

... Appellant

-Vs-

Michellammal (Died)

2.Michael @ Durai

3.Arockiaraj

... Respondents

*[R2 and R3 are brought on record as LRs of the deceased sole respondent vide order of this Court dated 09.07.2021 made in C.M.P(MD).No.5633 of 2021 in S.A(MD).No.62 of 2014]*

**PRAYER:** Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed in A.S.No.8 of 2009 dated 22.08.2013 on the file of the Sub-Court, Sankarankovil confirming the judgment and decree passed in O.S.No.121 of 2006 dated 28.10.2008 on the file of the District Munsif Cum Chief Judicial Magistrate Court, Sivagiri.

For Appellants : Mr.H.Arumugam

For Respondents : No appearance for R2 & R3

R1-Died

\* \* \* \* \*



*S.A(MD) No.62 of 2014*

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## **JUDGMENT**

The defendant in the suit is the appellant herein. The deceased first respondent filed a suit for recovery of money. The suit was decreed by the trial Court and the first appeal filed by the appellant was also dismissed. Hence, the appellant is before this Court. Pending the second appeal, the first respondent/plaintiff passed away and hence, her legal representatives were brought on record as respondents 2 and 3.

2. Heard the arguments of the learned counsel for the appellant. Though the names of the respondents 2 and 3 have been printed in the cause list, there is no representation.

3. According to the respondents, the appellant herein borrowed a sum of Rs.20,000/- (Rupees Twenty Thousand only) from the deceased first respondent on 10.05.2003 and executed the suit promissory note and agreed to pay interest at the rate of 12 % per annum. Since the appellant failed to pay the amount on demand, a legal notice was given by the deceased first respondent on 06.03.2006 and the same was refused. Therefore, the deceased first respondent was



*S.A(MD) No.62 of 2014*

constrained to file a suit for recovery of money, based on promissory note mentioned above.

4. The appellant raised a plea that on 10.05.2003, he was not at all available in Narayanapuram Village, where the suit promissory note was said to have been executed.

5. Before the trial Court, the deceased first respondent/plaintiff was examined as P.W.1 and witness to the suit promissory note was examined as P.W. 2. On behalf of the respondents, three documents were marked as Ex.P1 to Ex.P3. Appellant herein was examined as D.W.1 and four documents were marked on behalf of the appellant as Ex.D1 to Ex.D4.

6. The trial Court held that based on evidence of P.W.1 and P.W.2, execution of suit promissory note was proved and decreed the suit. Aggrieved by the same, the appellant preferred an appeal before the Sub Court, Sankarankovil. The First appellate Court also affirmed the findings of the trial Court. Aggrieved by the same, the appellant is before this Court.



S.A(MD) No.62 of 2014

WEB COPY

7. At the time of admission, this Court formulated the following substantial questions of law vide order dated 05.01.2014 :

*" a) Whether the Courts below have committed error in taking presumption under Section 118 of Negotiable Instrument Act when the appellant has rebutted the presumption and proved that he was attending the marriage of his daughter at Kerala on 10.05.2003 through Ex.B1 to Ex.B5?*

*b) When the appellant has specifically denied the signature in the pro-note and when the respondent has not taken any steps to get the opinion of hand writing expert whether the Courts below are right casting the burden of proof on the appellant as against Sections 101 to 103 of Indian Evidence Act?*

*c) Whether the Lower Appellate Court is right in rejecting Ex.B1 to B-4 on the ground it is not admissible evidence when the documents are certified copies public document admissible in evidence as per Sections 65 and 66 of Indian Evidence Act?*

*d) Whether the Lower Appellate Court is right in rejecting Ex.B5 and Ex.B6 namely the marriage Photograph and the Compact Disk as the same is not in accordance with Section 65B of Indian Evidence Act, 1982 when the marriage is not disputed. "*



*S.A(MD) No.62 of 2014*

WEB COPY

8. The deceased first respondent filed a suit for recovery of money based on promissory note dated 10.05.2003. The appellant denied the execution of the promissory note. Therefore, it is incumbent on the respondent/plaintiff to prove the execution of the promissory note. In order to prove the same, the deceased first respondent was examined as P.W.1. During the course of cross examination, he deposed that at the time of lending money and execution of promissory note except the plaintiff, no other person was present. He also deposed that the appellant/defendant came to his house at about 10.00 p.m., and he was accompanied by two persons. The witness to the promissory note - P.W.2 in his evidence deposed that he was present at the time of execution. He also admitted that the marriage of the appellant's daughter was solemnized 5 years and one month ago at Kerala and he attended the marriage.

9. Both P.W.1 and P.W.2 deposed that Promissory note was executed at about 10.00' o clock . P.W.2 in his evidence deposed that promissory note was executed in his presence at about 10.00 a.m., to 10.30 a.m., on 10.05.2003. Even though the learned counsel for the appellant vehemently contented that documents produced by the appellant marked as Ex.B1 to Ex.B4 to prove that the



*S.A(MD) No.62 of 2014*

WEB COPY

marriage of appellant's daughter was solemnized at Kerala on 10.05.2003 at about 11.00 a.m., the appellant produced only Xerox copy of Ex.B.1 to Ex.B3 and he has not explained why the originals of Ex.B.1 to Ex.B3 were not produced. Ex.B4 is the certified copy of the marriage certificate issued by the Registrar of Hindu Marriage, Pallickal Grama Panchayat, Kerala. The said certificate only proves that the marriage was solemnized on 10.05.2003, but there is no proof with regard to the timing of marriage.

10. A perusal of P.W.2 evidence would suggest that P.W.2 also attended the marriage of the appellants's daughter at Kerala. Therefore, the same would suggest that there is no misunderstanding between P.W.2 and the appellant. In such circumstances, absolutely, there is nothing on record to suggest that P.W.2 would speak against the appellant. Based on the evidence of attestor/P.W.2, both the Courts below came to the conclusion that due execution of suit promissory note was proved. Once due execution of suit promissory note is proved, the respondents are entitled to take shelter under the presumption available under Section 118 of the Negotiable Instrument Act. Therefore, there is no difficulty in coming to the conclusion that the promissory note was supported by



*S.A(MD) No.62 of 2014*

WEB COPY

consideration. When there is no material available on record to show that the marriage was solemnized at the very same time in Kerala, the question of law “a” is answered against the appellant in favour of the respondents.

11. The certified copy of the marriage certificate was produced by the appellant. Timing of the marriage is not mentioned in the document. Therefore, the same is not useful to the appellant to prove that on 10.05.2003 at the very same time, the marriage was solemnized at Kerala and therefore, there was no possibility for the appellant to be present in the house of the plaintiff. Even if Ex.B4 is taken into consideration, the same will not advance the case of the appellant that he was not present at the relevant point of time in the house of the plaintiff. Therefore, the question of law “c” is also answered against the appellant.

Answer to the questions of law - b and d:

12. The respondent/ plaintiff by examining himself as P.W1 and witness to the suit promissory note examined as P.W.2 proved the due execution of promissory note and hence, initial burden on plaintiff got discharged and in such circumstances, there is no necessity for the deceased first respondent to take steps to get handwriting expert's opinion to prove that signature found in the



*S.A(MD) No.62 of 2014*

promissory note is not that of the appellant. On the other hand, the appellant denied the signature in the promissory note and no steps were taken by him seeking expert opinion for the reasons well known to him. Therefore, the questions of law “ b” is answered against the appellant.

13. Ex.B5 and B6 are only useful to show that the appellant was present at the time of marriage of his daughter. As mentioned earlier, when the timing of marriage was not proved, the photographs and compact disk produced by the appellant to prove his presence during the solmization of his daughter's marriage would not advance his case in any way. Therefore question of law “d” is also answered against the appellant.

14. In view of the answers to the questions of law a to d, I do not find anything to interfere with the conclusion reached by the Courts below. Accordingly, the Second Appeal is dismissed. No Costs.

**01.04.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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*S.A(MD) No.62 of 2014*

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To

- 1.The Sub-Court, Sankarankovil
- 2.The District Munsif Cum Chief Judicial Magistrate Court, Sivagiri.
- 3.The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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*S.A(MD) No.62 of 2014*

**S.SOUNTHAR, J.**

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**S.A(MD)No.62 of 2014**

**01.04.2024**