



WEB COPY

A.S.No.357 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-10-2025

CORAM

THE HONOURABLE MR.JUSTICE S. SOUNTHAR

A.S.No.357 of 2011

R.Thangavelu,
S/o Ramasamy Gounder,
16-A, Kuttai Theru, Sandhaipettaipudur,
Namakkal Town and District.

... Appellant

Vs.

1. K.Subramani (died),
S/o Karuppanna Gounder,
D.No.5/10, Bharathi Nagar,
Kondichettipatti Village, Namakkal Town and District.

2. Palaniamma, D/o Karuppa Gounder (died)

3. Pavayee, W/o Ramasamy

4. Eswaran, S/o Karuppa Gounder
R2 to R4 residing at Door No.M2/33,
Mullai Nagar, TNHB, Mohanur Road,
Namakkal 637 001.

(R1 died, R2 to R4 are brought on record as
LRs of the deceased first respondent, viz.,
K.Subramani, vide order dated 12.07.2023
made in M.P.No.1 of 2015 in A.S.No.357/2011



5. Senthil, S/o Karuppannan

6. Rani, D/o Karuppannan

both are residing at Door No.M2/33, Mullai Nagar,
TNHB Mohanur Road, Namakkal 637 001.

(R2 died. R5 and R6 are brought on record as

LRs of deceased R2 vide court order dated 19.09.2025

made in CMP No.10310,10312, 10315 of 2025 in

A.S.No.357/2011)

... Respondents

PRAYER:

Second Appeal filed under Section 96 of CPC r/w Order 41, Rule 1 of CPC to set aside the judgment and decree dated 28.01.2010 made in O.S.No.17 of 2007 on the file of the Principal District Judge, Namakkal.

For Appellant(s) : Mr.T.Dhanyakumar

For Respondent(s) : Ms.Shruthi Varshini S.

for M/s I.Abrar Mohammed Abdullah

for R3 to R6.

JUDGMENT

The unsuccessful plaintiff in a suit for recovery of money is the appellant herein.

2. The appellant/plaintiff has filed a suit in O.S.No.17 of 2007 before the Principal District Court, Namakkal for recovery of a sum of Rs.4,80,000/- from



the respondent/defendant, based on a promissory note dated 12.05.2025.

According to the appellant/plaintiff, the respondent/ defendant borrowed a sum of Rs.4,80,000/- from him on 12.05.2025 and on that date, he executed the suit promissory note, agreeing to pay interest at the rate of 18% p.a. Inspite of several demands made by the plaintiff, the defendant failed to repay the said amount. Hence, the appellant was constrained to file a suit for recovery of money.

3. The respondent/ defendant filed a written statement denying the execution of the suit promissory note. According to him, there was no cordial relationship between him and the plaintiff for the past 15 years and hence, there was no possibility for him to borrow the amount from the plaintiff. It was further stated by the defendant that prior to 15 years, the plaintiff and the defendant were in good relationship. At that point of time, there was money transactions between them. Hence, the plaintiff obtained blank, signed promissory note from the defendant and the same could have been used to file the present suit. It is further stated that in the year 2006, the plaintiff abducted



the defendant's brother Eswaran and obtained a power deed from him and the same was cancelled, based on the police complaint lodged by the defendant. In view of the above, the plaintiff has come with this suit.

4. Before the Trial Court, the plaintiff was examined as PW1 and the suit promissory note was marked as Ex.A1. On behalf of the defendant, he was examined as DW1 and no documentary evidence was adduced on his side.

5. The Trial court, based on the evidence available on record, came to the conclusion that the plaintiff has not proved the execution of the promissory note by the defendant and hence dismissed the suit. Aggrieved by the same, the plaintiff has come forward with this appeal suit.

6. The learned counsel for the appellant/plaintiff would submit that the defendant had admitted his signature in the suit promissory note and therefore, the plaintiff is entitled to the benefit of presumption available under Section 118 of Negotiable Instruments Act. He further submitted that the Trial Court



committed a serious error in ignoring the statutory presumption and dismissing the suit.

7. The learned counsel for the respondents would submit that the plaintiff failed to examine the attesting witness to prove due execution of the promissory note and therefore, the Trial Judge was justified in dismissing the suit.

8. Based on the pleadings and the submission made by the counsel on either side, the following points were raised.

1. Whether the execution of the suit promissory note is proved or not?
2. Whether the appeal is liable to be allowed?

9. **Discussion on point No.1:**

The execution of the suit promissory note has been specifically denied by the defendant in his written statement. It is settled law that admission of the signature would not amount to admission of due execution and passing of consideration. When the execution of promissory note is denied by the



defendant, it is incumbent on the plaintiff to prove the due execution of the same.

10. In order to prove the execution of the suit promissory note, except the interested testimony, the plaintiff as PW1, no other evidence is available on record. It is seen from the records that the Ex.A1, promissory note was prepared by one Ponvellappan and he signed in Ex.A1 as scribe. The plaintiff during his cross examination, clearly admitted that the said Ponvellappan was his close relative. However, for the reason best known to him, he failed to examine him. Further, one Janakumar had signed the promissory note as attester. However, the plaintiff has not taken any steps to examine him as a witness to prove the execution of the promissory note.

11. A perusal of Ex.A1 would indicate that there is a difference in the ink used for filling up the printed promissory note and the one used for signing by the executant. The PW1, in his evidence deposed that single pen was used for preparing the promissory note and for signing by executant. However, a close



scrutiny of Ex.A1 would indicate that there is a difference in the shade of the ink used for filling up printed promissory note and the one used for signing.

Therefore, this court has no hesitation to come to the conclusion that the plaintiff has miserably failed to prove the due execution of the promissory note.

The Point No.1 is answered accordingly against the appellant/plaintiff.

12. Point No.2

In view of the conclusion reached by this court in Point No.1, the Point No.2 is also answered against the appellant/plaintiff.

13. Accordingly, the appeal suit is dismissed, by confirming the judgment and decree passed by the learned Principal District Judge, Namakkal in O.S.No.17 of 2007 dated 28.01.2010. There shall be no order as to costs.

10.10.2205

Index: Yes/No

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Neutral Citation: Yes/No

MST



A.S.No.357 of 2



To

WEB C The Principal District Judge,
Namakkal.



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S.SOUNTHAR. J.

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