



S.A.No.128 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No.128 of 2023

B.Kumar

...Appellant / Defendant

Vs.

B.Ramesh

...Respondent / Plaintiff

PRAYER:- This Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908, to set aside the judgment and decree dated 08.01.2016 made in O.S.No.27 of 2013 on the file of Subordinate Judge, Udthagamandalam as confirmed by the judgment decree dated 02.08.2022 made in A.S.No.32 of 2016 on the file of the District Judge, Nilgiris at Udthagamandalam and allow the above Second Appeal.

For Appellant : Mrs.R.Gouri

For Respondent : Mr.T.Shanmugam

JUDGMENT

This Second Appeal has been preferred by the defendant against the judgment and decree dated 02.08.2022 passed in A.S.No.32 of 2016 by the District Court, Udthagamandalam.



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2. Parties are indicated herein as per their litigative status and ranking before the trial Court.

3. According to the plaintiff, on 04.01.2010, the defendant obtained a loan of Rs.3,00,000/- from the plaintiff at Udhagamandalam and in support of the same, he executed promissory note agreeing to repay 24% interest within three months. As the defendant neither repaid towards the principal nor interest, on 11.05.2012, the plaintiff caused to issue legal notice to the defendant. Having received the legal notice, the defendant with incorrect particulars issued a reply notice on 16.06.2012. Hence, the suit for recovery of money.

4. Per contra, the defendant inter alia would contend that the promissory note was concocted and taking advantage of the fact that the defendant is a government servant, his signature was forged in the promissory note. He did not receive any loan from the plaintiff.

5. The trial Court framed relevant issues. At trial, on the plaintiff's side, the plaintiff has been examined as P.W.1 and five documents have been marked. Ex.A1 dated 04.01.2010 is the suit promissory note. On the defendant's side, the defendant has examined himself as D.W.1 and three



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witnesses, namely, Dhanapathi, Androse Robert Mesaraja and Karthikeyan have been examined as D.W.2 to D.W.4 and five documents have been marked.

6. The trial Court upon consideration of evidence and arguments advanced by the learned counsels on either side, decreed the suit in favour of the plaintiff.

7. Aggrieved, the defendant preferred appeal before the District Court, The Nilgiris. The First Appellate Court in consideration of the case records, having concurred with the findings of the trial Court dismissed the appeal filed by the defendant. Against the concurrent findings of the above said Courts, the defendant has preferred this Appeal.

8. The following substantial questions of law arise for consideration:-

1. Whether the Courts below are right in decreeing the suit for recovery of money when admittedly the plaintiff has candidly admitted that the promissory note has material alteration, overwritten and also he does not know that who has prepared the alleged pronote and the scribe of the alleged pronote?

2. Whether the Courts below are right in decreeing the suit



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when the suit pronote suffers from the plea of material alternation as per Section 87 of the Negotiable Instruments Act?

9. Though the defendant has pleaded that the promissory note is forged by the plaintiff and the suit has been laid on the basis of forged promissory note. On thorough perusal of reply notice (Ex.A3) issued by the defendant, wherein he has stated that execution of promissory note and receipts of loan amount of Rs.2,00,000/- are admitted. In Ex.A3-reply notice, the execution of promissory note is admitted that he received loan amount of Rs.2,00,000/- from the plaintiff. On the defendant's side, three witnesses have been examined in order to prove the fact that his signatures found in Ex.B1 to Ex.B5, the signature differs from one another.

10. The core issue is whether the signature found in Ex.A1-promissory note is his signature or not. But the defendant has admitted to have executed the promissory note and he received a loan amount of Rs.2,00,000/- from the plaintiff. Therefore, though the defendant has taken much pains in examining D.W2 to D.W4, their evidence will not improve the case of the defendant. In view of the above details found in the reply notice of the defendant, presumption arise in favour of the plaintiff under Section 118 of Negotiable Instruments Act, 1881. The said presumption is rebuttable



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one. The defendant may rebut the said presumption arose in favour of the plaintiff through direct or indirect evidence and also through circumstantial evidence. In this circumstances, he may even rely upon the cross-examination of P.W.1.

11. P.W.1 would state that the promissory note was written in pencil and thereafter, it was written in pen. This would not amount to material alteration.

12. Law is well settled that as per Section 20 of Negotiable Instrument Act,1881, once the promisor, namely, defendant has signed in the promissory note, it becomes inchoate document and the promisee may fill up the promissory note provided that the amount to be satisfied therein does not exceed the amount, which could be covered by the stamp itself. In such cases, the initial burden placed upon the plaintiff stands discharged by examining himself and the burden is shifted to the defendant to disprove the claim of the plaintiff as mentioned supra. More so, if the signature found in the promissory note is rank forgery as pleaded by the defendant, the defendant should have taken steps to send the Ex.A1-promissory note for the opinion of the handwriting expert. No such steps appeared to have been taken by the defendant. The First Appellate Court has elaborately discussed



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the testimony of both sides witnesses and came to the conclusion that the plaintiff is entitled for the relief of recovery of money and decreed the suit by confirming the judgment of the Trial Court. This Court also does not find any good reason to upset the finding of the First Appellate Court.

13. The substantial questions of law answered against the defendant. In view of the above narrative, this Second Appeal stands dismissed. Sequel to this, the judgment dated 02.08.2022 passed in A.S.No.32 of 2016 stands confirmed. There is no order as to costs.

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

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Copy to

1. The Subordinate Court, Udthagamandalam
2. The District Judge, Nilgiris at Udthagamandalam

R.KALAIMATHI, J.

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