



A.S.No.202 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 09.06.2025

Pronounced on: 18.06.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.202 of 2022
& C.M.P.No.7326 of 2022

1. K.K.Ganesh @ Kaliyannan (Died),
S/o.Kaliyannanagounder,
Residing at P.K.Kaliyanna Street,
Sathy Main Road, Kasipalayam,
Gobichettipalayam Taluk.

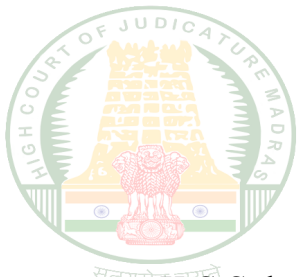
2. K.K.Karthikeyan,
S/o. Late Kaliyannan,
No.119/49, Sathy Erode Main Road,
Kasipalayam Post Office, Gobichettipalayam Taluk,
Erode District – 638 054.

3. Mrs.Vijayalakshmi,
W/o.Chelliannan,
No.3, Gandhi Street, Ariyappampalayam,
Sathyamangalam Taluk, Erode District – 638 402.

4. Mrs.Revathi,
W/o.Sembanan,
No.75, Kaliyannan Vaikal Road,
Gobichettipalayam Taluk, Erode District.

... Appellants

Sole Appellant died A2 to A4 are brought on record as LR's of deceased sole appellant vide order of Court dated 12.08.2024 made in C.M.P.No.15910 of 2024 in A.S.No.202 of 2022 (SSKJ)



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/versus/

K.S.Subramaniyan,
S/o.(late) Somasundaram,
Residing at D.No.6/3, P.K.Kaliyannan Street,
Kasipalayam, Gobichettipalayam Taluk,
Erode District.

... Respondent

Appeal Suit has been filed under Section 96 r/w Order XLI, Rule 1 of the Civil Procedure Code, pleaded to all this First Appeal and set aside the decree and judgment passed by the Learned III Additional District and Sessions Court, Erode, Gobichettipalayam, dated 07.09.2019 passed in O.S.No.20 of 2015 and allow the appeal with costs.

For Appellants :Mr.R.Venkatesulu

For Respondent :Mr.S.Parthasarathy

J U D G M E N T

The suit filed for recovery of money based on the promissory note, decreed in favour of the plaintiff by the trial Court in O.S.No.20 of 2015 (III Additional District and Sessions Court, Erode), Gopichettipalayam.

2. Being aggrieved by the judgment, the plaintiff has preferred this appeal suit.



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3. For the sake of convenience, the parties are referred as per their ranking and status in the suit.

4. The case of the plaintiff:

Mr.K.S.Subramaniyan is the plaintiff. From him defendant/ K.K.Ganesan @ Kaliyannan (deceased) borrowed a sum of Rs.10,00,000/- on 14.03.2015 to meet his family expenses. The deceased defendant agreed to pay the money with 12% interest on demand and executed a pro-note to that effect but failed to repay the amount, despite repeated demands. Hence, the suit for recovery of money.

5. The defendant strongly opposed the said contention on the ground that the pro-note is a forged document and no transaction between him and the plaintiff exists. He further claimed that he is well-settled and has no necessity to borrow money. The suit was filed without demand and notice. For recovery of money based on the pro-note, demand is necessary, is liable to be dismissed. Without demand suit is not maintainable. Hence, it the fundamental ingredient to



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enforce a pro-note are demand and refusal. Without demand, claim in the pro-note not payable.

6. The defendant further alleges that there was rivalry between him and the plaintiff. Due to political allegiance, the pro-note has been fabricated and used for suing him.

7. The trial Court, based on the pleadings framed the following issues:-

- (i). Whether the plaintiff is entitled for the suit claim as prayed for?
- (ii). Whether the suit promissory note is forged one?
- (iii). To what other relief?

8. On the side of the plaintiff, the plaintiff and the scribe of the pro-note were examined as witnesses. On the side of the defendant, the defendant and one Karthikeyan were examined as witnesses (D.W.1 & D.W.2). Except the pro-note which is marked as Ex.A.1, no other documents placed before the Court on either side.



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9. The trial Court decreed the suit in favour of the plaintiff, holding that the defendant after making a denial of his signature and execution of the suit pro-note Ex.A.1 had not adduced any evidence to disprove the pro-note by establishing that his signatures were forged. Whereas, the plaintiff, by examining P.W.2, had discharged the initial burden of proving the execution of the pro-note Ex.A.1 by the defendant. The trial Court had observed that to discharge the presumption, the defendant had not let in any evidence. No circumstances whatsoever brought in the cross examination of P.W.1 & P.W.2 or in the chief examination of D.W.1 lead to rebuttal of the legal presumption cast on the defendant.

10. The trial Court has further compared the admitted signatures of the defendant and found that the signature in the Vakalat and the pro-note are similar and therefore, the defendant is liable to pay the debt specified in the pro-note, along with interest.



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Point for consideration:

Whether the reasoning given by the trial Court to decree the suit suffers infirmity?

11. The Learned Counsel appearing for the appellants submit that when the signature in the pro-note denied as forged signature, it is the duty of the plaintiff to prove that the signature is genuine. It is contended that the trial Court erred in invoking the presumption under Section 118 of the Negotiable Instruments Act, 1881, when the initial burden always on the plaintiff who propounded the pro-note.

12. Further, the Learned Counsel appearing for the appellants submitted that the trial Court had compared the signatures in the pro-note through naked eye concluded that the signatures of the defendant found in Vakalat and written statement were similar to the signature found in the disputed pro-note. Such comparison by the Court through naked eye been highly deprecated by the Hon'ble Supreme Court. When the plaintiff failed to prove his capacity to advance loan of Rs.10 lakhs and when the defendant had no necessity to borrow such a huge money, the burden to prove the execution passing of consideration is on the



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plaintiff. Whereas, the trial Court merely based on the superficial evidence of P.W.2, erred in allowing the suit.

13. The Learned Counsel appearing for the respondent submitted that the suit under the Negotiable Instruments Act was duly proved by the plaintiff by examining the lender as well as the scribe to the pro-note. The defendant failed to disprove the contrary, except suggesting that there are political enmity between the parties. There is no evidence to suspect about the genuineness of the signature found in the pro-note. Though, the plaintiff did not issue a formal notice through Lawyer before instituting the suit, it does not mean that no demand was made to repay the promised amount under the pro-note.

14. Heard the Learned Counsel for the appellants and the Learned Counsel for the respondent. Deposition and Ex.A.1 examined.

15. It is a case of recovery of money based on the pro-note. The defence taken by the appellant that there was political enmity between the plaintiff and the son of the defendant. Hence, by forging his signature, suit filed. The



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defendant denies and asserts the signature found in the pro-note. There is no necessity for him to borrow money and no consideration received by him on executing the pro-note.

16. In the chief examination, the defendant had stated on oath that his son and the plaintiff belongs to two different parties and to disgrace his son, the suit for pro-note been initiated against him by forging his signature. If this contention is true, the defendant ought to have examined his son or any other independent witness to substantiate the same. Furthermore, if the political rivalry was between the defendant's son and the plaintiff, the forgery of signature and laying a suit based on the forged pro-note must have been against the defendant's his son and not against the defendant. The other contention in his evidence is that, the plaintiff have no wherewithal to advance Rs.10 lakhs as a loan.

17. In the cross examination of P.W.1, when a suggestion put to the plaintiff, about his financial capacity to lend Rs.10 lakhs, it has been denied by the plaintiff. He had also explained his source of income. One of the source, mentioned in his cross examination, appears to be Tmt.Chitradevi, from whom he



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has alleged to have borrowed Rs.5 lakhs. The other source is the income derived from 5 acres of agricultural land.

18. The Learned Counsel appearing for the appellant submitted that the plaintiff has failed to examine the said Chitradevi to substantiate his source to advance loan of Rs.10 lakhs. However, this contention of the appellant does not hold water since the plaintiff has stated that part of the pro-note was raised from Chitradevi, remaining amount was his savings. In support of his case, the scribe of the pro-note examined as P.W.2, who had spoken about the passing of consideration. No doubt, there is a contradiction between the evidence of P.W.1 and P.W.2 in respect of who brought the printed pro-note. P.W.1 had deposed that the printed pro-note was brought by the defendant and on his information it was filed. Contrarily, P.W.2 had deposed, the plaintiff took the printed pro-note and revenue stamp from his house and asked to write the pro-note. On the information provided by the defendant, he wrote the pro-note. This contradiction cannot be a reason to suspect the genuineness to the pro-note.

19. The trial Court, after perusing the suit pro-note which has been



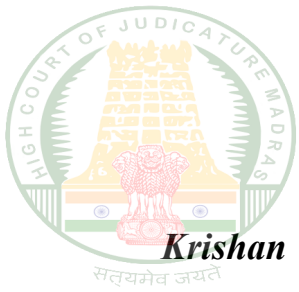
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executed in a printed format duly filled on his instruction and signed by the defendants in the presence of Krishnamoorthy (not examined) and scribed by Namachivayam (D.W.2) after receiving the money. There are two signatures found: one on the stamp paper and another below it. The defendants denies the signatures found in the pro-note. However, he had not taken any steps for obtaining expert opinion about the genuinity of the signatures found in the pro-note by comparing it with the admitted signatures. In the said circumstances, the Court had compared it with his admitted signatures. Hence, the trial Court had compared the admitted signatures of the defendant found in the Vakalat and written statement with the disputed signatures found in the pro-note Ex.A.1 and had opined that all the signatures are similar.

20. The Learned Counsel appearing for the appellants cited the following judgments.

(i). ***Thiruvengadam Pillai -vs- Navaneethammal and another*** reported in ***(2008) 4 SCC 530***.

(ii). ***P.Sood & Co., (Manufacturing), represented by its Partner,***



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Krishan Kumar Sood, 218, Linghi Chetty Street, Chennai – 1 vs. Peerchand

Misrimalji Bhansali, Prop., Meena Metals, No.74, C.P.Road, Bombay – 400 054

reported in ***2005 (3) CTC 12.***

(iii). ***S.Ravikumar -vs- G.Deepa and others*** reported in ***2023 SCC***

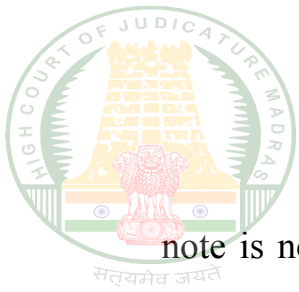
Online Mad 3852.

(iv). ***T.Safarnaz -vs- S.Vedagiri*** in CRP (PD).No.941 of 2020, dated

03.03.2020.

21. In these judgments, the Courts have emphasised that once the signature is denied by the defendant, it is duty of the plaintiff to adduce evidence to prove the genuineness of the signatures.

22. In this regard, it is to be clarified that the proof of execution of the document and the signatures in the document need not necessarily be established by subjecting the signatures for test by an Expert. Reports of handwriting Experts are only opinion and not a conclusive proof. Therefore, the execution of the document can be proved by other means also, especially by examining witnesses to the document. In this case, if the defendant is sure that the signature in the pro-



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note is not his signature, then, to disprove P.W.2 who is the scribe of Ex.A.1 an independent witness corroborating its execution, the burden shifts of the defendants to prove the contrary.

23. In this case, only if the plaintiff had not examined the scribe to the document who had deposed about passing of consideration and the execution of the pro-note by the plaintiff or his evidence found unreliable then the citations relied by the appellant will hold good. Contrarily, in the instant case, the plaintiff had examined the scribe to the document who had deposed in support of the plaintiff and found reliable, since he is not a stranger but a person hails from same village and known to both the parties.

24. Thus, having *prima facie* proved the execution of the document, the burden shift on the defendant, to disprove the signature found on the document which he has miserably failed. Except for the plea that there was no necessity to borrow money, there is no evidence to suspect that the pro-note is a forged document prepared for the purpose of taking vengeance against the defendant's son. There is no material on record to show that the defendant made any attempt



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on his side to disprove the signatures found in Ex.A.1. The evidence of P.W.1, P.W.2 and Ex.A.1 are the evidence available before the Court to substantiate the suit claim. To disprove the pro-note, both the witnesses on the side of the plaintiff were cross examined. However, nothing could be elicited to impeach the reliability of the witnesses or the validity of Ex.A.1. After failed to establish the negative inference about the execution of pro-note and passing of consideration on the pro-note, the defendant ought to have adduced evidence to draw positive inference to disprove its execution.

25. In the absence of any such material to infer that no consideration was passed to the defendants and that the signatures were not affixed by him, the reasoning of the trial Court for passing the decree against the defendant bound to be confirmed and the Appeal Suit is to be dismissed.



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26. Accordingly, the Appeal Suit stands dismissed. There shall be no

orders as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes.

Speaking order/non speaking order

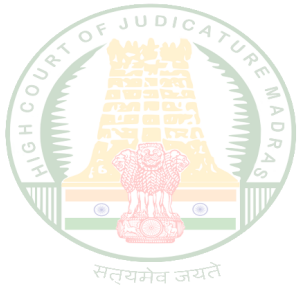
Neutral citation :Yes/No.

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To,

1.The III Additional District and Sessions Court, Erode, Gobichettipalayam.

2.The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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