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AS No.169 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-02-2025

CORAM

**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR**

**AS No. 169 of 2022**

L. Saraswathi  
W/o. Loganathan,  
No.25, Power House Road, Somanur, Coimbatore  
District.

Appellant(s)

Vs

G.Saraswathi  
W/o. Late. Govindasamy,  
No.339, Thaneer Thotti Road, Senthil Nagar,  
Somanur, Coimbatore District.

Respondent(s)

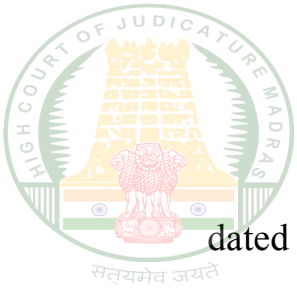
**Prayer:** This Appeal Suit has been filed to set aside the judgment and decree dated 28.10.2021 in O.S.No.347 of 2015, on the file of the V Additional District Court, Coimbatore.

**For Appellant(s):** Ms.M.V.Saranya

**For Respondent(s):** Ms.M.Adhisree, for Mr. N.Manokaran

**JUDGMENT**

This Appeal Suit has been filed, challenging the judgment and decree



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dated 28.10.2021 in O.S.No.347 of 2015 passed by the learned V Additional District Court, Coimbatore, dismissing the suit filed for recovery of money based on the promissory note dated 12.06.2012.

2. The parties, hereinafter arrayed at as their own ranking before the trial Court.

3.The brief facts of the plaintiff's case are as follows:

The defendant's son, one Sukumar has borrowed a sum of Rs.9,00,000/- on 12.06.2012 from the plaintiff and executed a pro-note agreeing to pay interest @ 12% per annum. The said Sukumar died two years back leaving behind the defendant alone as his sole legal heir. Therefore, the plaintiff issued a legal notice to the defendant on 10.01.2015. However, the same was rejected. It is the contention of the defendant that his son had never borrowed any amount from the plaintiff at any point of time. In fact, the property has already been mortgaged by the said Sukumar with a Bank and half of the property was sold away to settle the Bank loan. It is also the contention of the defendant that the signature of the Sukumar



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has been forged and filed the suit after the death of Sukumar and hence, the claim has been disputed.

4. Based on the pleadings, the trial Court framed the following issues, viz.,

- (i) Whether the suit pro-note dated 12.06.2012 is true and valid?
- (ii) Whether the defendant had succeeded to any estate of Late. Sukumar? If so, to what extent?
- (iii) Whether the plaintiff is entitled for the suit claim as prayed?
- (iv) To what relief, is the plaintiff entitled to?

5. On the side of the plaintiff, PW1 to PW3 were examined and Exs.A1 to A3 were marked. No oral and documentary evidence has been adduced on the side of the defendant. However, the trial Court considering the contradictions found in the evidence of PWs.1 to 3 with regard to the execution of the pro-note by the deceased Sukumar, disbelieved the execution and dismissed the suit. Challenging the same, the plaintiff has filed the present Appeal before this Court.

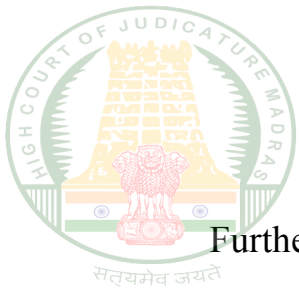


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6. The learned counsel for the appellant would submit that the execution of the pro-note has been clearly established as required under law.

PWs.1 to 3 have in one voice clearly deposed about the execution of the pro-note by the said Sukumar. Therefore, when a pro-note's execution is proved, a legal presumption can be drawn that the pro-note was made for consideration, unless the defendant rebuts this presumption with evidence. The learned counsel pointed out that the defendant having taken the plea that pro-note was a forged one. She never taken any steps to prove forgery. Further, she has not entered into witness box. The trial Court has not considered this aspect and erroneously dismissed the suit in its entirety.

7. The learned counsel for the respondent/defendant would submit that the execution of the pro-note was not at all established. The plaintiff in her evidence has stated that pro-note has been executed at Pollachi, whereas, other two witnesses have stated contra. That apart, in the legal notice, different amount has been claimed. Moreover, except the plaintiff, PWs.2 & 3 were not in a position to identify the photographs of the said Sukumar. This fact would also clearly indicate that the pro-note has been fabricated at later point of time and its execution was not established.



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Further, it is the contention of the learned counsel that the plaint proceeds as if the defendant had received the money which is also totally contrary to the document. Hence, the burden has been discharged by the defendant by way of circumstances in the documents and the plaintiff has failed to prove her claim.

8. Heard the submissions of the learned counsel on either side and perused the entire material available on record.

9. The specific case of the plaintiff is that one Sukumar, who is the son of the defendant had borrowed a sum of Rs.9,00,000/- on 12.06.2012 and executed Ex.A1, Promissory note. According to the plaintiff, by examining Pws.2 & 3, who categorically deposed the execution of the pro-note by the said Sukumar, therefore, the initial burden of proving the execution of the pro-note is discharged by the plaintiff and thereby, the presumption under Section 118 of the N.I Act can be drawn that the pro-note was executed for a valid consideration. Once the initial burden is discharged by the plaintiff, the burden shifts on the defendant to prove the contrary.



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**WEB COPY** 10. On the other hand, it is the specific case of the defendant that her son Sukumar had never executed the pro-note and it has been fabricated one and the plaintiff has not discharged her burden satisfactorily as regards the execution of the pro-note since the witnesses have deposed contrary.

11. Presumption under Section 118 of the Act arises when there is a negotiable instrument which is admitted to have been executed. If the fact of execution itself is in dispute, the plaintiff has to prove the execution, once the execution proved, it is for the defendant to disprove the same. Only when the due execution has been established, the presumption under Section 118 could be raised.

12. Keeping in mind the above legal proposition and in the light of the submissions made by the learned counsel for the parties, the points that arise for consideration in this Appeal are as follows- i) Whether the execution of the suit pro-note has been established or not? ii) Whether the plaintiff has discharged her initial burden proving the execution of the pro-note dated 12.06.2012 by one Sukumar during his life time? iii) Whether



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the plaintiff is entitled to recover the money from the Estate of the deceased? and iv) Whether the suit pro-note is supported by consideration?

13.The trial Court on consideration of both oral and documentary evidence adduced by the plaintiff, came to the conclusion that the plaintiff has not produced any documentary evidence, such as income tax returns to prove that she was in possession of Rs.9,00,000/- on 12.06.2012 and if she was originally in possession of the same, she would have shown this in her returns. The trial Court also found contradictions in the evidence of Pws.2 and 3 since PW.2 deposed that he does not know where the pronote was written, while in his cross-examination, PW.3 admitted that he cannot identify Sukumar in the photograph and thereby, came to the conclusion that the plaintiff has not proved execution of pro-note by the said Sukumar.

14.In fact, some of the photographs of the said Sukumar were shown to PW.3 during his cross-examination and asked him to identify the said Sukumar. But he could not identify the said Sukumar. Further, he claims to be aware of the parents of the said Sukumar, but he was not in a position to identify the said Sukumar. in the photograph. It is hard to believe that a



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person who resides in same Village, is not even able to identify the person,

who is also residing in the same Village. Further, while issuing a legal

notice Ex.A2, the case of the plaintiff is that a sum of Rs.7,25,000/- was

borrowed whereas, the suit has been laid as if the pro-note has been

executed for a sum of Rs.9,00,000/-. Further, the plaintiff herself admitted

that the pro-note came to be executed at Pollachi, whereas, a different stand

was taken in her cross-examination. These facts creates a serious doubt on

the very execution itself, particularly, taking note of the fact that the suit

has been instituted after two years from the death of the said Sukumar.

Therefore, the version of the defendant that signature of her son has been

forged and pro-note has been fabricated, appears to be more probable. These

contradictions pointed out by this Court as discussed above, clearly

probabalise the defence and the circumstances pointed out to infer that it is

highly improbable to believe the version of the plaintiff. This Court found

that the defendant by way of circumstances, has discharged the legal

presumption, as such, again the burden shifts on the plaintiff to establish the

passing of consideration. In this case, no attempt whatsoever made by the

plaintiff even to seek expert aid to prove the signature of the said Sukumar

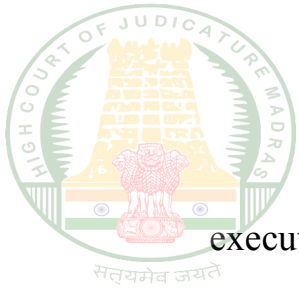
and to prove the execution of pro-note in a better manner. Further, the



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plaintiff has not even explained as regards contradictions found in her stand stated in the legal notice. It is the case of the plaintiff that she has given advance of Rs.7,25,000/- to the said Sukumar. In paragraph no.5 of the plaint, it is her case that she has given advance amount to the defendant, which is totally contradictory to the earlier paragraph mentioned in the plaint. It is the stand of the plaintiff that pro-note was executed at Pollachi and it is contradictory to the evidence of PWs.2 & 3. According to them, the pro-note was executed at Somanur, which is admittedly 50 kilometers away from Pollachi. Yet another circumstance which cannot be ignored altogether is that all the 3 witnesses in one voice stated that pro-note was written by the said Sukumar. But on a perusal of Ex.A1, it is clear that the contents therein have been filled up in different ink while the signature of the maker alone obtained in a different pen. These facts clearly probabalise the version of the defendant that Ex.A1 pro-note was not actually executed by her son Sukumar, but it is a fabricated one and no consideration was made thereof. Merely the defendant has not been examined, it cannot be said that the pro-note is automatically proved.

15. In the light of the above discussion, this Court finds that the



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execution of the pro-note has not been proved by the plaintiff and she has not discharged her burden to prove the same and thereby, she is not entitled to recover the money from the estate of the said Sukumar. Accordingly, the points are answered against the appellant. The Appeal fails and it is dismissed. No costs.

**07.02.2025**

Index : Yes/No  
Speaking order: Yes/No  
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To

The learned V Additional District Judge, Coimbatore.



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**N.SATHISH KUMAR, J**

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