



WEB COPY



S.A.No.503 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

S.A.No.503 of 2015
and M.P.No.1 of 2015

Mani

...Appellant

Vs.

M.Maliga

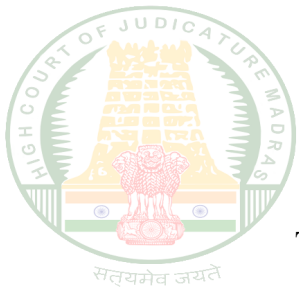
...Respondent

Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 30.09.2013 made in A.S.No.56 of 2012 on the file of the learned Subordinate Judge, Ranipet confirming the judgment and decree dated 26.04.2011 made in O.S.No.100 of 2010 on the file of the learned District Munsif Court, Sholinghur, by allowing the present second appeal.

For Appellant : Mr.A.Gouthaman

For Respondent : No appearance

J U D G M E N T



S.A.No.503 of 2015

WEB COPY

This Second Appeal has been filed to set aside the judgment and decree dated 30.09.2013 made in A.S.No.56 of 2012 on the file of the learned Subordinate Judge, Ranipet confirming the judgment and decree dated 26.04.2011 made in O.S.No.100 of 2010 on the file of the learned District Munsif Court, Sholinghur, by allowing the present second appeal.

2. Heard Mr.A.Gouthaman, learned counsel appearing for the appellant.

3. The learned counsel appearing for the appellant would submit that the respondent herein had instituted the suit for recovery of money as against the appellant based upon a suit promissory note, which had not been executed by the appellant. The suit was resisted by the appellant by contending that he had never executed the promissory note. He would submit that the respondent had not examined herself, she had examined her husband only as a witness, who cannot have spoken about the execution of the promissory note. He would further submit that a specific contention had been raised by the appellant that he had not executed the promissory note. The respondent had not taken any efforts to send the said promissory note for forensic



S.A.No.503 of 2015

examination to prove the signature of the applicant.

WEB COPY

4. On the other hand, the trial Court had compared the signature of the appellant in the promissory note with the subsequent documents viz., the acknowledgment card marked as Ex.B3 and the vakalat filed by the appellant before it and had come to the conclusion that the plaintiff had proved his case that the promissory note has been executed by the appellant while dealing with issue No.2, which was an issue framed as regards to the execution of the suit promissory note Ex.A1. Further on issue No.3 as to whether there has been a consideration based on the promissory note, without any oral or documentary evidence, the trial Court had found that there has been a passing of consideration. It has not even referred to a oral statement made by the plaintiff in that regard. Further PW1, who was the husband of the respondent cannot have spoken about the transaction that had taken place between the appellant and the respondent. On a wrong finding and conclusion, the trial Court had granted a decree as prayed for and the first appellate Court had also fallen in same error in dismissing the appeal filed by the defendant. Therefore, he would submit that when the evidence of PW1 on behalf of the



S.A.No.503 of 2015

respondent itself ought not to have weighed the minds of the Court in

granting a judgment and decree as prayed for and coupled with the fact that the promissory note Ex.A1 has been disputed, the respondent had failed to prove that the promissory note has been executed by the appellant in the manner known to law. The Courts below ought not to have compared with the signature of the documents which were three years subsequent to the execution of Ex.A1 and only a contemporary document should have been taken by the Court, which was also the material error on the part of the Courts below in granting a decree as prayed for.

5. To substantiate his submission, that, inference could not have been drawn on the cross-examination only with regard to a particular answer and that the entire cross-examination should have been gone into by the Court, he had relied upon the judgment of this Court in ***Robinson Vs. Ramachandran*** reported in **2014 (3) LW 644** and the judgment of the Division Bench of this Court in ***Central Bank of India Vs. Antony Hardware Mart*** reported in **2006 (3) LW 58**. He would submit that the Court ought to have compared the disputed signature with a contemporary admitted signature or should have



S.A.No.503 of 2015

called for an expert opinion, and it should not have compared the same with subsequent documents viz., Ex.A3 and vakalat. Hence, he prayed this Court to allow this appeal.

6. I have considered the submissions of the learned counsel appearing for the appellant.

7. This Court had framed the following substantial questions of law by order dated 28.05.2015:

1. *Whether both the Courts below are right in decreeing the suit in spite of the failure on the part of the plaintiff to go into the witness box and to state her own case on oath and does not offer her for cross examination?*
2. *Whether the Courts below ought to have drawn adverse inference against the plaintiff for the failure to examine herself?*

8. From a reading of the judgment and decree of the Court below it



S.A.No.503 of 2015

WEB COPY

could be seen that the trial Court as well as the appellate Court had compared the disputed signature in Ex.A1, which is of the year 2007 with Ex.A3 and vakalat which were admitted by the appellant to come to a conclusion that the respondent/ plaintiff had proved the execution of Ex.A1. The Court itself had compared the signature. The comparison of Ex.A1 with Ex.A3 and vakalat which are subsequent documents could not have been done by the Courts below. The Division Bench of this Court had in ***Central Bank of India Vs. Antony Hardware Mart*** reported in **2006 (3) LW 58** had held that the disputed signature can be compared with the contemporaneous documents and not with admitted signature obtained subsequent to the date of disputed signature and that the only mode is to obtain an expert opinion in that regard. In such view of the matter, the method in which the Courts below have held Ex.A1 to be proved would have to be interfered with. By applying the law laid down in judgment in ***Robinson Vs. Ramachandran*** reported in **2014 (3) LW 644** the Courts below was also in error in only picking up the answer in the cross examination relating to Ex.A3 and the vakalat and discarding the specific stand taken by the appellant in his cross examination with regard to execution of Ex.A1. The finding of the Courts below in this regard is also



S.A.No.503 of 2015

not correct. For the aforesaid reasons this Court answers the questions of law

framed by this Court in favour of the appellant.

9. In fine, the appeal stands **allowed**, the judgment and decree dated 30.09.2013 made in A.S.No.56 of 2012 on the file of the learned Subordinate Court, Ranipet confirming the judgment and decree dated 26.04.2011 made in O.S.No.100 of 2010 on the file of the learned District Munsif Court, Sholinghur are set aside. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

22.08.2025

dsa

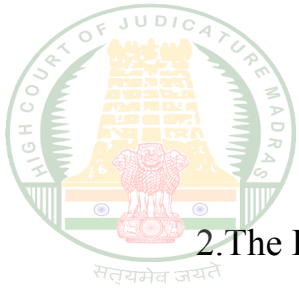
Index : Yes/No

Speaking Order/Non-Speaking order

To

1.The Subordinate Judge, Ranipet.

7/9



S.A.No.503 of 2015

2.The District Munsif, Sholinghur.

WEB COPY
3.The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



S.A.No.503 of 2015

K.KUMARESH BABU, J.

dsa

S.A.No.503 of 2015

22.08.2025