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S.A. No.617 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

S.A. No.617 of 2015
and M.P. 1 of 2015

A. Devaram S/o. Aruldoss (deceased) ... Appellant / Defendant

1. J. Anbarasi W/o. (late) D. Jabanesan Devaram
2. Praveen Kumar S/o. Jabanesan
3. Prema W/o. Elangovan
4. A. Sujatha W/o. (late) Sathya Kumar Devaram
5. Abinow S/o. (late) Sathya Kumar Devaram
6. JoiceStella W/o. Selvam and D/o. Devaram
7. Samathanam W/o. Devaram (2nd Wife)
8. Prabu S/o. Devaram
9. Beula Santhakumari D/o. Devaram
10. Nirmala W/o. Samadhanam and D/o. Devaram
11. Parimala D/o. Devaram
12. D. Raja S/o. Devaram

[Since the appellant A. Devaram died, the 1 to 12 appellants
Have been impleaded as legal heirs of A. Devaram vide
Order dated 07.07.2025 in C.M.P. No.1985 of 2024]

Vs.

N. Radhakrishnan ... Respondent / Plaintiff

PRAYER: ∴ The Second Appeal has been filed praying to set aside and
judgment and decree dated 23.12.2014 on the file of the 1st Additional
District and Sessions Judge, Vellore reversing the Judgment and Decree dated



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31.10.2012 on the file of the Sub-Court, Vellore, wherein the appellant herein

has preferred an appeal as against the judgment passed by the trial Court

namely Sub Court, Vellore in O.S. No.107 of 2006 dated 31.10.2012.

For Appellant : Mr. S. Kalyanaraman

For Respondents: Mr. M. Mushtaq Ahmed

JUDGMENT

The Second Appeal has been filed as against the decree and judgment passed by the First Appellate Court i.e., I Additional District and Sessions Court in A.S. No.3/2014 dated 23.12.2014, wherein the appellant herein, has preferred an appeal as against the decree and judgment passed by the Trial Court in O.S. No.107 of 2006 dated 31.10.2012.

2.The brief averments of the Plaint are as follows:

The defendant had borrowed a sum of Rs.3 lakhs from the Plaintiff on 12.09.2005 and agreed to repay the same with interest at 24% per annum and also he executed a Promissory Note in favour of the Plaintiff. In spite of repeated demands made by the Plaintiff, the defendant failed to repay the said loan amount. Therefore, the Plaintiff issued a Legal Notice on 03.06.2006



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and the defendant received the said notice and issued a reply notice on 07.06.2006 with false averments and failed to make any payment. Therefore, the Plaintiff filed a Suit for recovery of money.

3. The bried averments of the Written Statement filed by the defendant are as follows:-

The Suit is false, vexatious and frivolous and the Plaintiff is not entitled to any relief as claimed by him in the Suit. The defendant did not borrow Suit money from the Plaintiff and he never executed any promissory note. The said Promissory note is a forged one and not signed by the defendant. The Plaintiff issued a Legal notice dated 03.06.2006 and the same has been suitably replied on 10.06.2006. In fact, the Plaintiff borrowed a sum of Rs.3 lakhs from the defendant on 19.02.2003. The mode of payment was through a cheque dated 19.02.2003 for Rs.1 lakh and Rs.2 lakhs by way of cash. For the said loan, the defendant made payment towards interest. On 12.09.2006, he revived back the documents executed by him for the said borrowal promising to pay the balance in a week or so. At that time, he handed over a Chit calculating the amount paid by him and the amount payable. Since the Plaintiff paid the entire principal amount in one lumpsum,



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this defendant returned the documents hoping that he will pay the amount due very soon. In fact, this defendant has been demanding the Plaintiff for the

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payment of balance amount due to him as noted in the Chit given by him.

Because of the same, to defraud this defendant, the Plaintiff issued a notice containing false averments and the same was suitably replied by the defendant. The Promissory Note filed along with the Plaint must be a created one, after the notice sent by the Plaintiff. The defendant is owning agricultural lands and he is a retired elementary School Teacher and not doing any business or commercial finance business as alleged by the Plaintiff. Therefore, the Suit is liable to be dismissed.

4. Based on the above said pleadings and upon hearing both sides and perusing the documents, the trial Court had framed the following issues:

(i) Whether the Suit Pronote is a forged one.

(ii) Whether no consideration passed for the execution of the Pronote.

(iii) Whether Plaintiff is entitled to a decree for Rs.3,60,000/-

(iv) To what reliefs, the Plaintiff is entitled to.

5. In order to prove the case of the Plaintiff, he examined PW1 and



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PW2 and marked Ex.A.1 to Ex.A.5 and on the side of defendant, DW1 was examined and Ex.B.1 to Ex.B.3 were marked. After analysing the oral and documentary evidences adduced on either side, the trial Court decreed the Suit. Aggrieved by the said decree and judgment passed by the trial Court dated 31.10.2012, the unsucceeding defendant preferred an appeal before the First Appellate Court i.e., I Additional District and Sessions Court, Vellore in A.S. No.3 of 2015.

6. The First Appellate Court after hearing both sides and perusing the records, framed the *point for determination* that *whether the judgment and decree of the learned Subordinate Judge, Vellore in O.S. No.107 of 2006 dated 31.10.2012 is sustainable or not.* After analysing the evidences adduced on both sides and perused the records including the judgment of the trial Court, the First Appellate Court dismissed the appeal by confirming the decree and judgment passed by the trial Court. Aggrieved by the said decree and judgment, the present Second Appeal has been preferred by the appellant / defendant.

7. This Court, at the time of admitting the second appeal, has framed



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the following substantial questions of law:

a. Whether the Court below erred in law in holding the claim of the Plaintiff is proved when the Plaintiff had failed to discharge the burden of proving the execution of Ex.P.1 by producing expert evidence regarding the genuineness or otherwise of the writings in Ex.A.1 particularly in view of the specific plea that A1 was stated to be fabricated by the Plaintiff.

b. Whether the Court below was right in resorting to comparison of the writing in Ex.P.1 under Section 73 of the Evidence Act especially when the case of the defendant is that Ex.P.1 is forged and when it has been repeatedly held by the Supreme Court and this Hon'ble Court that such a course is unsafe and risky.

c. Whether the Courts below were right in holding that the Plaintiff had discharged the onus without properly considering the testimony of PW1 and PW2 and the evidence of DW1 and the effect of Ex.P.3, Ex.B.1 and Ex.B.2.

8. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.



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9. The learned counsel appearing for the appellant / defendant would

submit that the Plaintiff has filed the Suit as against the defendant alleging that the defendant borrowed money from the Plaintiff to the tune of Rs.3 lakhs agreeing to repay the said amount with interest @ 24% p.a. and also executed a Promissory Note dated 12.09.2005 and thereafter, issued a notice and the same was replied and therefore filed the Suit. The trial Court decreed the Suit and the same was challenged before the First Appellate Court. The First Appellate Court also, without considering the evidences adduced on the side of the defendant, dismissed the appeal.

9.1. The Courts below failed to appreciate that the Suit Pronote is a forged document and the claim of the Plaintiff is false. The Courts below failed to see that the Plaintiff, who had borrowed money from the defendant, had paid the principal amount in partial discharge of the debt and not the defendant. Both the trial Court as well as the First Appellate Court, had not properly scrutinized the evidences adduced on both sides and arrived at the findings and the same are perverse. The Courts below failed to consider that the Plaintiff has not taken any steps to have the documents examined by the handwriting expert to find out the genuineness of the handwritings found in



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the Promissory Note. When the defendant categorically denied the execution

of Pronote, it is the duty of the Plaintiff to take steps to send the Promissory

Note for expert opinion, but he failed to do so. The Plaintiff has not denied

the reply notice issued by the defendant and the Plaintiff also admitted the

receipt of cheque for a sum of Rs.1 lakh, but the Courts below failed to

consider the said vital aspect. Therefore, the Plaintiff failed to discharge its

burden in proving the execution of promissory note and the Courts below are

not experts to compare the handwritings found in the Pronote under Section

73 of Indian Evidence Act and the Courts below ought not have compared the

signatures found in Ex.A.1 and they ought to have sent the same for expert

opinion. Therefore, the decree and judgments of the trial Court as well as the

First Appellate Court are liable to be set aside and the Second Appeal is to be

allowed.

10. The learned counsel appearing for the respondent / Plaintiff would

submit that the Plaintiff filed the Suit for recovery of money and the

defendant borrowed a sum of Rs.3 lakhs and executed a Promissory Note and

the Plaintiff also issued notice and the same was replied by the defendant

with false averments and thereafter only the Plaintiff filed the Suit. In order

to prove the case of the Plaintiff, he examined PW1 and PW2. PW1 is the



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Plaintiff, who deposed about the borrowal of money by the defendant and the

execution of promissory note by the defendant. PW2 is the attesting witness

in the Promissory Note and he categorically deposed about the execution of Promissory Note. Therefore, the Plaintiff has discharged his burden and mere non-sending the handwritings found in the promissory note for expert opinion alone is not sufficient to disbelieve the case of the Plaintiff. When the Plaintiff examined the attesting witness in the Promissory Note, he discharged his initial burden and it is for the defendant to rebut the evidence of the Plaintiff. But the defendant failed to do so. Therefore, the trial Court, after elaborate discussions and after analysing the evidences, decreed the Suit in a proper perspective manner.

10.1. The First Appellate Court also dismissed the appeal, by confirming the judgment and decree passed by the trial Court after elaborate discussions. The judgments and decree passed by both the trial Court as well as the First Appellate Court are very reasoned judgments. There are no perversity in the judgments of Courts below and there are no substantial questions of law involved in this case. By examining the witnesses to prove the Promissory Note, the Plaintiff has discharged his burden. In all cases,



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expert opinion is not necessary. The Courts below have also compared the signatures under Section 73 of Indian Evidence Act. Therefore, the Plaintiff has discharged his duty and proved his case and the Courts below have correctly decreed the Suit and this Second Appeal is liable to be dismissed.

11. This Court heard both sides and perused the entire materials available on record.

12. In this case, the Plaintiff has filed the Suit based on the Promissory Note. According to the Plaintiff, the defendant borrowed a sum of Rs.3 lakhs agreeing to repay the said amount along with interest @ 24% p.a. and executed a Promissory Note dated 12.09.2005 and thereafter, failed to repay the same. Therefore, the Plaintiff filed the Suit. The defendant has denied the borrowal of money and execution of promissory note. Per contra, according to the defendant, only the Plaintiff had borrowed money from the defendant and out of the said amount, Rs.2 lakhs was borrowed by way of cash and Rs.1 lakh by way of cheque on 19.02.2003. For the said loan, the Plaintiff made payments towards interest and the defendant had not borrowed any money from the Plaintiff. The alleged Promissory Note is a forged one.



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13. Before the trial Court, the Plaintiff was examined as PW1 and another witness was examined as PW2. The PW1 in his evidence has deposed that the defendant borrowed money on 12.09.2005 for Rs.3 lakhs and the same was paid through cheque dated 12.09.2005 and a Promissory Note was also executed for the said loan. That Promissory Note has been marked as Ex.A.1. He further deposed that the defendant has not repaid the loan amount, thereby, the Plaintiff issued a Notice dated 03.06.2006 and the same was replied by the defendant on 07.06.2006 with false allegations. During the cross examination, the Plaintiff admitted that there was money transaction between the Plaintiff and the defendant. The said payment of money was transacted through bank account. The transaction is dated 12.09.2005, which was encashed by the defendant. The Andhra Bank Pass Book of the Plaintiff has been marked as Ex.A2 and the Indian Bank Pass Book of the defendant has been marked as Ex.B2. As per Ex.A.2, a sum of Rs.3 lakhs was debited from the account of the Plaintiff and credited to the account of the defendant.

14. According to the defendant, the Plaintiff borrowed money from the



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defendant on 19.02.2003. But till the notice issued by the Plaintiff, the defendant has not taken any steps to recover the said amount, whereas the Plaintiff has issued notice for the repayment of dues borrowed by the defendant on 12.09.2005. It is for the defendant to prove that he only paid money to the Plaintiff. Even assuming that he paid money, there is no any document to prove that he paid money to the Plaintiff and he had taken steps to recover the money. The trial Court in the judgment, discussed that the Plaintiff in order to prove his case has examined himself as PW1 and the attesting witness in the Pronote was examined as PW2. The PW1 and PW2 have categorically deposed about the borrowal of money by the defendant from the Plaintiff and the execution of Promissory Note by him. The defendant also admitted through his cross examination that the Plaintiff borrowed money on 12.09.2005 and executed a Promissory Note and agreed to pay interest at Rs.2/- per hundred and he did not pay any interest from 19.02.2003 to 12.09.2005, thereby, the defendant failed to prove that he lent money to the Plaintiff. Per contra, the Plaintiff proved the execution of Promissory Note and the borrowal of money through sufficient evidences.

15. The First Appellate Court also in the judgment discussed that by



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examining PW1 and PW2, the Plaintiff has proved and the bank passbooks

also clearly proved the borrowal of money by the defendant and thereafter,

the defendant failed to prove that the said money was repaid to the Plaintiff.

PW1 has denied the Chit and the said details are not in the chit and it is only

rough in nature, thereby the Court cannot place any reliance on the said

document, which is not signed nor has any seal. Further, the First Appellate

Court observed that the details in the paper are of rough estimation. By

looking at the paper, it has got no relevance to the interest, pleaded by the

defendant. Further the First Appellate Court has also compared the signatures

of the defendant in the Pronote, Vakalat and written statement and came to a

conclusion that there are similarities in letters 'A', 'D', 'r' and 'm'. Therefore,

dismissed the appeal.

16. As far as the 1st substantial question of law i.e., a. ***Whether the Court below erred in law in holding the claim of the Plaintiff is proved when the Plaintiff had failed to discharge the burden of proving the execution of Ex.P.1 by producing expert evidence regarding the genuineness or otherwise of the writings in Ex.A.1 particularly in view of the specific plea that A1 was stated to be fabricated by the Plaintiff,*** is concerned, the Plaintiff has filed the Suit based on the Promissory Note, but



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the defendant denied the execution of the Promissory Note. Therefore, according to the defendant, the Plaintiff ought have sent the Suit Promissory Note for expert opinion, but he failed to do so. Therefore, failed to discharge his duty. According to the Plaintiff, he discharged his burden by examining the attesting witness of the Promissory Note.

17. This Court also perused the evidences of PW1 and PW2 and they have categorically deposed about the borrowal of money by the defendant and the execution of Promissory Note. During the cross examination, the defendant failed to corroborate the evidences of witnesses and the evidences of PW1 and PW2 are natural and cogent and in any way, the evidences of PW1 and PW2 cannot be discarded. Therefore, the Plaintiff discharged his burden by examining the attesting witness. Merely because the defendant has taken a plea of forwarding of Promissory note for expert opinion, it cannot be said that without expert opinion, the Suit cannot be proved. When the evidences of PW1 and PW2 are very natural and cogent, that is sufficient to prove the execution of Promissory Note. Moreover, the transaction was through bank and thereafter, the defendant after crediting the amount in his account from the bank account of the Plaintiff, did not repay the amount.



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Therefore, the Plaintiff has discharged his duty. Merely because non-sending the promissory note for expert opinion itself is not fatal to the Plaintiff's case.

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Once the Plaintiff discharged his burden in proving the Promissory Note, it is for the defendant to rebut the evidence of the Plaintiff by way of contra evidence. But the defendant has not done so and only he examined DW1. According to him, he admitted the receipt of money, but that amount was repaid by the Plaintiff for the loan borrowed by him from the defendant. Therefore, it is the duty of the defendant to prove his case and he failed to prove the same. Therefore, the Plaintiff has proved his case and in all cases, expert opinion is not necessary, when other evidences are reliable, cogent and acceptable.

18. In fact, when the defendant admitted the receipt of money and he alleged that the said money was paid for the previous loan borrowed by the Plaintiff from the defendant, it is the duty of the defendant to prove that receipt of money by the Plaintiff in the past transaction between them. But absolutely, there is no evidence to prove the same. Therefore, the Courts below have not erred in holding that the claim of the Plaintiff is proved and the Plaintiff had discharged the burden of proving the execution of Ex.P.1 by producing cogent evidence and expert evidence is only corroborative in



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nature. Merely because the defendant denied the execution of Pronote, in all cases, expert opinion is not mandatory and it vary case to case. Thus, the ***substantial question of law (a) is answered.***

19. The 2nd substantial question of law (b) i.e., ***Whether the Court below was right in resorting to comparison of the writing in Ex.P.1 under Section 73 of the Evidence Act especially when the case of the defendant is that Ex.P.1 is forged and when it has been repeatedly held by the Supreme Court and this Hon'ble Court that such a course is unsafe and risky, is concerned,*** the First Appellate Court compared the signatures found in Ex.A1, Vakalat and Written Statement. It is well settled law that the Courts have power to compare the signatures under Section 73 of Indian Evidence Act, but the admitted documents should be for the contemporary period of execution of the disputed signature. In this case, the First Appellate Court compared the signatures found in Ex.A.1, which was executed in the year 2005 with the Vakalat and Written Statement which are pertaining to the year 2006, subsequent to the filing of the Suit. It is well settled law that the disputed signatures cannot be compared with the Suit documents i.e, Vakalat and Written Statement. Therefore, the First Appellate Court in comparing the signatures found in Ex.A.1 with Vakalat and the Written statement is



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erroneous. Further, the First Appellate Court has not relied upon, only the comparison made by the Court by comparing the signatures, but also analysed the evidences adduced on both sides and the amount was credited from the bank account of the Plaintiff to the bank account of the defendant and the same has been established through Ex.A.2. The PW1 and PW2 have categorically deposed about the execution of Promissory Note and the payment of money through cheque and the receipt of cheque is also admitted by the defendant. Therefore, the First Appellate Court has analysed the evidences, and then only came to a conclusion and the comparison is in addition to the available evidences. Thus, the *substantial question of law (b)* is answered.

20. As far as the *substantial question (c) i.e., Whether the Courts below were right in holding that the Plaintiff had discharged the onus without properly considering the testimony of PW1 and PW2 and the evidence of DW1 and the effect of Ex.P.3, Ex.B.1 and Ex.B.2, is concerned*, the Courts below have categorically analysed the evidences adduced on both sides and based on the evidences came to a conclusion, thereby the Courts below were right in holding that the Plaintiff had discharged onus after considering the oral and documentary evidences adduced on both sides.



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20.1. Ex.A3 is the notice, where there is a note that the defendant is doing money lending business charging exorbitant interest. Mere note in the notice alone is not sufficient to hold that the Plaintiff borrowed money from the defendant. Ex.B.1 and Ex.B.2 are the calculations made in a white paper, there are no particulars in respect of the names of parties against whom that amount was paid. Even as per the above said amounts, there are corrections in the dates and months and what is the rate of interest and the calculation interest are also not tallied with the figures and moreover, the date of cheque was mentioned as 10.09.2005, as per Ex.A2, on 13.09.2005, a sum of Rs.3 lakhs was debited from the account of the Plaintiff in the name of Devaram i.e., the defendant. As far as Ex.B.2 is concerned, it is a passbook in the name of the defendant, where there is no mention about the payments particulars made to the Plaintiff by the defendant. Therefore, the Courts below have rightly held that the Plaintiff had discharged his onus after considering the evidences adduced on both sides. Thus, the ***substantial question (c)*** is answered.

21. In view of the above discussions and the answers to the substantial



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questions of law, the *Second Appeal fails*.

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22. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
mjs

P.DHANABAL.,J

mjs

To

1. The I Additional District and Sessions Judge, Vellore.
2. The Subordinate Judge, Sub Court, Vellore.

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