



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 17.09.2025

Judgment pronounced on : 17.10.2025

WEB COPY

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.280 of 2023

1.P.Samynathan

2.S.Dhanasekaran

..Appellants

Vs.

D.Murugan

..Respondent

Prayer: Appeal Suit filed under Section 96 of CPC, to set aside the judgment and decree dated 27.10.2022 made in O.S.No.70 of 2019 on the file of the I Additional District and Sessions Judge, Vellore, Vellore District.

For Appellants : Mr.N.Saravanan
for M/s.Arul Selvam Associates

For Respondent : Mr.A.Gowthaman

JUDGMENT

The unsuccessful defendants in a suit for recovery of monies to the tune of Rs.10,28,250/-, based on a promissory note and declaration that the settlement deed dated 06.12.2018 executed by the 1st defendant in favour of the 2nd defendant is null and void, are the appellants herein.



WEB COPY

2. The averments in the plaint, set out briefly:

The defendants are father and son. The 1st defendant borrowed a sum of Rs.9 lakhs from the plaintiff on 07.10.2017 and evidencing the borrowing, he executed a on demand promissory note on the same day, undertaking to repay the amount of Rs.9 lakhs, together with interest at the rate of Rs.2/- for every Rs.100/- per month. According to the plaintiff, the debt was incurred by the 1st defendant for family necessity and to meet the family expenses which was known to all the family members of the 1st defendant. The plaintiff was constrained to issue a notice on 01.04.2019, since the 1st defendant committed default in payment of even interest, despite demands made by the plaintiff. It is also averred in the plaint that in order to defraud the plaintiff and other creditors, the 1st defendant had executed a nominal settlement deed on 06.12.2018 in favour of his son, the 2nd defendant. The said settlement deed was also challenged in the suit.

3. The written statement filed by the defendants, set out briefly:

The defendants admit the relationship between the defendants, as also the factum of the 1st defendant carrying on agricultural activities. It is contended by



the defendants that the plaintiff was running a chit business for several years and the 1st defendant was a member and he had joined three chits for Rs.2 lakhs and six chits for Rs.1 lakh, totalling, in all, nine chits and according to the defendants, one of the said nine chits was still alive/going on. The plaintiff was carrying on the chit business, without duly registering the same before the competent authority, which was known to the entire village.

4.It is therefore the contention of the defendants that the promissory note was executed on blank stamp papers only as security for ensuring that the successful bidder would pay the installments without fail. It is also contended by the defendants that the 2nd defendant was a Constable in CRPF and he is earning sufficiently and he has constructed a house, after availing a loan of Rs.10 lakhs from the State Bank of India in August 2018. The 2nd defendant was also married in November 2018 and he has been living there ever since and there was no necessity for the 1st defendant to borrow Rs.9 lakhs, much less agreed to repay the same, together with interest as claimed by the plaintiff.

5.It is the further contention of the defendants that the plaintiff does not have any means to advance the huge sum of Rs.9 lakhs and that the plaintiff



had abused the 1st defendant in unparliamentary language and threatened the 1st defendant for not paying the chit installment, one year preceding the filing of the suit and that the plaintiff had even went to the extent of threatening that he would stop the 2nd defendant's marriage as well as the house warming ceremony. It is also contended by the defendants that the signature of the 1st defendant was forged by the plaintiff to maintain the suit. The defendants have denied that there was any family necessity of family expenses, warranting the borrowing of Rs.9 lakhs. The factum of the marriage of the 2nd defendant being celebrated on 14.11.2018 and the housing loan obtained by the 2nd defendant for constructing a house in the subject property was sufficient to demonstrate that the 1st defendant was not requiring any funds whatsoever.

6.It is also contended that the stamp paper, on which the promissory note has been executed, was purchased at Kalavai, which is 40 kms away from the plaintiff's village and even the writer of the alleged promissory note is from a village, which is 15 kms away. The witnesses, who are alleged to have attested the promissory note, are also not from the same Mothakkal village and therefore, the alleged promissory note is fabricated and the claim itself is frivolous and vexatious. Insofar as the relief challenging the settlement deed, it



is contended that the settlement deed had nothing to do with the suit claim and it was executed much prior to even the legal notice issued by the plaintiff and therefore, the allegation that the settlement deed was executed with an intention to defraud the creditors like the plaintiff is totally denied. In short, the defendants prayed for dismissal of the suit in toto.

7. Issued framed by the trial Court:

The trial Court, considering the pleadings available, has framed the following issues:

- 1. Whether the plaintiff is entitled for the recovery of suit amount with interest as prayed?*
- 2. Whether the plaintiff is entitled for the relief of declaration that the settlement deed, dated 6.12.2018 as null and void?*
- 3. Whether the suit promissory note has been handed over by the defendant only for security purpose for chit transaction?*
- 4. Whether the suit promissory note is a forged one?*
- 5. To what relief is the plaintiff entitled?*

8. Witnesses examined and exhibits marked before the trial Court:

On the side of the plaintiff, the plaintiff examined himself as P.W.1 and one of the witnesses to the promissory note, Mr.P.Krishnamoorthy was



examined as P.W.2 and Exs.A1 to A10 were marked on the side of the plaintiff.

On the side of the defendants, the 1st defendant examined himself as D.W.1 and Mr.Ravi and Mr.Elumalai were examined as D.W.2 and D.W.3 and Exs.B1 to B6 were marked on their side.

9.Trial:

The trial Court, found that the plaintiff had established the promissory note and thereby the borrowing and held that the defendants are liable to pay the suit claim and also proceeded to declare the settlement deed executed by the 1st defendant in favour of the 2nd defendant as voidable. Aggrieved by the said judgment and decree of the trial Court, the present Appeal Suit has been preferred.

10.I have heard Mr.N.Saravanan, learned counsel for the appellants and Mr.A.Gowthaman, learned counsel for the respondent.

11.Arguments of the learned counsel for the appellants:

Mr.N.Saravanan, learned counsel for the appellants would firstly contend that the suit promissory note is not supported by consideration and out of two



signatures of the 1st defendant found in the promissory note, only one was admitted and the second signature was forged. He would contend that the plaintiff has not even led any evidence to establish the genuineness of the said second signature of the 1st defendant found in the promissory note/Ex.A1. He would further state that the very execution of the promissory note is shrouded in mystery and suspicious circumstances. Even according to the plaintiff, the plaintiff and defendants are residents of Mothakkal village and there was no necessity for the plaintiff to have procured a stamp paper from a village which was 40 kms away and required the scribe of the promissory note also to be from a totally different village which was 15 kms away, besides also have the promissory note executed by witnesses, who were total strangers to the defendants and also not from the same village.

12.The learned counsel for the appellants would further state that the specific case of the defendants was that the 1st defendant had signed a blank promissory note and the same has been misused to bring about the suit promissory note in Ex.A1. It is also contended by the learned counsel for the appellants that the alleged promissory note is executed within a span of less than a year of the demonetization scheme, which was brought about by the



Central Government in November 2016 and there is absolutely no evidence on the side of the plaintiff to establish that he had a sum of Rs.9 lakhs available in cash, that too, within few months after demonetization in the first place, in order to lend the same to the 1st defendant. The learned counsel for the appellants would also state that the scribe has not been examined and the plaintiff has miserably failed to establish the source of funds to lend such a huge amount of Rs.9 lakhs to the 1st defendant.

13.Referring to the status of the 2nd defendant and his employment in CRPF and referring to his date of marriage and the housing loan availed by the 2nd defendant, the learned counsel for the appellants would state that the 2nd defendant has acted upon the settlement deed executed in his favour and has availed of a housing loan to put up a residential building and therefore, there was absolutely no malafide intention to defraud creditors as claimed by the plaintiff.

14.As regards the witnesses, the learned counsel for the appellants would state that both the witnesses are not trustworthy witnesses and the evidence of P.W.2 ought to have been discarded by the trial Court. He would also invite my



attention to the fact that the defendants, examined D.W.2 and D.W.3, only in order to establish that the plaintiff was carrying on an unauthorized chit business and that the trial Court has not adverted to the vital evidence adduced by the defendants, D.W.2 and D.W.3. He would therefore state that there was absolutely no circumstances made out by the plaintiff to invoke Section 53 of the Transfer of Property Act, in order to invalidate the settlement deed executed by the 1st defendant in favour of the 2nd defendant. He would therefore pray for the Appeal Suit being allowed.

15.Per contra, Mr.A.Gowthaman, learned counsel for the respondent would submit that though the defendants have faintly disputed the signature in the promissory note. Inviting my attention to the written statement and also oral evidence of D.W.1, the learned counsel for the respondent would contend that the 1st defendant has admitted his signature across the revenue stamp in the promissory note and an attempt was made only to dispute the second signature, which is found in the promissory note (not on the revenue stamp). He would further contend that the execution of the promissory note having been admitted candidly by stating that it was only for the purposes of chit transaction, it is not open to the 1st defendant to contend that the promissory note was not true and



genuine. He would further contend that in terms of Section 20 of Negotiable Instruments Act, the plaintiff is entitled to fill up the negotiable instrument being a holder in due course and therefore, he would contend that once the execution of the promissory note has been admitted by the 1st defendant, the burden would stand shift to the defendants to establish that there was no passing of consideration.

16.The learned counsel for the respondent would also submit that once the signature is admitted, the previous questions that have been raised by the defendants with regard to purchase of stamp paper, the scribe and witnesses would become wholly irrelevant. As regards witnesses, the learned counsel for the respondent would further contend that for a promissory note, witnesses were not even required in the first place and therefore, he would state that it is only the defendants, who were burdened to discharge their plea that there was no consideration for the promissory note and the plaintiff was entitled to the statutory presumption in law.

17.As regards, the relief of cancellation of the settlement deed, the learned counsel for the respondent would contend that the plaintiff has clearly



pleaded that only in order to defraud the plaintiff and other creditors like the plaintiff, the 1st defendant has settled the property in favour of his son and therefore, the trial Court was clearly justified in passing a decree, invalidating the settlement deed as voidable. In support of his contentions, the learned counsel for the respondent would rely on the decision of this Court in *Meenakshisundaram Vs. N.Rangasami*, reported in 1996 (1) CTC 613 and the decision of the Hon'ble Supreme Court in *Bir Singh Vs. Mukesh Kumar*, reported in (2019) 4 SCC 197. He would therefore pray for dismissal of the Appeal Suit.

18.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the records placed before me.

19.Points for consideration:

On considering the pleadings, oral and documentary documents adduced by the parties as well as the judgment of the trial Court, I frame the following points for consideration:

- 1.Whether the defendants are liable to meet the suit claim?
- 2.Whether the settlement deed executed by the 1st defendant in favour of the 2nd defendant is hit by Section 53 of the Transfer of Property Act?



WEB COPY

20. Point No.1:

The execution of the promissory note in Ex.A1 is not denied by the 1st defendant. In fact, it is the case of the 1st defendant that the plaintiff was carrying on an unregistered chit business and only as security for ensuring payment of chit amounts, the 1st defendant was required to sign blank papers and that one of the said blank papers signed by the 1st defendant has been fabricated into the suit promissory note in Ex.A1. It is the specific contention of the 1st defendant that the 1st defendant had nine chit transactions with the plaintiff and one of the said chit transactions was alive. According to the 1st defendant, in all, he has executed nine promissory notes. In order to establish the case of the plaintiff, besides examining himself, the plaintiff has also examined one of the witnesses to the promissory note as P.W.2. The witness, P.W.2 has clearly spoken about the factum of the promissory note being executed by the 1st defendant for a sum of Rs.9 lakhs. In his cross-examination, he has also spoken about the fact that the defendants received the amount of Rs.9 lakhs from the plaintiff and thereafter executed the promissory note.



21. In fact, I find that though the argument was advanced with regard to the demonetization and the unlikelihood of the plaintiff having a huge sum of Rs.9 lakhs on the date of execution of the alleged promissory note, in order to lend the same to the 1st defendant, I find that such a plea was never taken in the written statement in the first place and in fact, in the cross-examination of P.W.2, he has also stated that Rs.9 lakhs was lent by the plaintiff by way of Rs.500 rupee notes and Rs.100 rupee notes and that the borrowing took place at the residence of the plaintiff. There is nothing to discredit the evidence of P.W.2, though the argument that the plaintiff could not have been in possession of such huge amount of Rs.9 lakhs, soon after the demonetization appears to be attractive; The defendants have not been able to establish the non passing of consideration and in fact, the evidence of P.W.2 supports the claim of the plaintiff. P.W.2 has clearly stated that the amount was handed over in Rs.500 and Rs.100 currency notes alone, which were admittedly back in circulation, soon after the demonetization in November 2016. The borrowing was several months later in October 2017 and therefore, I am unable to countenance the argument of the learned counsel for the appellants that the plaintiff could not have possessed the said sum of Rs.9 lakhs in cash.



22.Be that as it may, once the 1st defendant had executed the promissory note and admitted to such execution, a legal presumption arises that such execution was for consideration. Therefore, the burden shifts to the 1st defendant to establish that there was no passing of consideration. In an attempt to prove that the promissory note was supported by consideration, the defendants have examined D.W.2 and D.W.3, who claim to be chit subscribers with the plaintiff. Both D.W.2 and D.W.3 have stated that the plaintiff is carrying on chit business and have also named several other villagers, who are subscribers to the chits with the plaintiff. Even in the proof affidavit, D.W.2 and D.W.3, the witnesses claim that the plaintiff is carrying on chit business for the last 10 years, without the required license and that several villagers have subscribers to the chits and have spelt out names of few in villagers as well. Strangely, the 1st defendant's name does not even find a place as one of the chit subscribers in both the proof affidavit of D.W.2 as well as D.W.3.

23.In cross-examination, the witnesses admit that they have no proof that they are all subscribers to the chit with the plaintiff. In fact, D.W.2 has stated that the 1st defendant was his friend and they use to sign as witnesses for the transaction entered into by the other. In fact, D.W.3, in cross-examination



admits that he is the nephew of the 1st defendant. He has also stated that he has no proof to establish that he was a chit subscriber in the plaintiff's business.

24. From the evidence available on record, it is thus clear that the defendants have failed to discharge the burden that had stood shifted on them to disprove passing of consideration. The plaintiff, by examining himself as well as P.W.2 has discharged the initial burden with regard to due execution of the promissory note, which in fact, is admitted by the 1st defendant himself.

25. This Court in *Meenakshisundaram's case*, referring to Section 118 of the Negotiable Instruments Act, held that every negotiable instrument shall be presumed to be for consideration, until the contrary is proved and further held that once the execution of the promissory note is admitted, the defendant cannot have a case that the promissory note was executed under any vitiating circumstance or that fraud had been committed by bringing about the document under deceitful means, etc. Applying the ratio to the facts of the present case, it is clear that the 1st defendant does not dispute the execution of the promissory note and therefore, the presumption available under Section 118 of the Negotiable Instruments Act kicks in and the burden shifts to the defendant to



dislodge or rebut the statutory presumption. It was for the defendants to establish that the promissory note was not executed for any consideration. As already discussed, the defendants have failed in their endeavour in this regard.

26. In *Bir Singh's case*, the Hon'ble Supreme Court, referring to Sections 20, 87 and 139 of the Negotiable Instruments Act, that a person who signs a cheque and makes it over to the payee remains liable, unless he adduces evidence to rebut the presumption that the cheque has been issued for payment of a debt or in discharge of a liability and that it was immaterial, even if the cheque had been filled up by any other person other than the drawer, as long as the cheque is duly signed by drawer. In the present case as well and more specifically, in term of Section 20, the statute itself provides for the drawee filling up the contents of the negotiable instrument and therefore, there is no merit in the contention of the defendants that the 1st defendant signed a blank stamp paper, which has been misused to create the suit promissory note in Ex.A1. For all the above reasons, I do not find that the trial Court has committed any error in finding that the 1st defendant has executed the promissory note and having failed to discharge their burden to prove that there is no passing of consideration and consequently the 1st defendant was liable to pay the suit claim. Point No.1 is answered accordingly.



WEB COPY

27.Point No.2:

The case of the plaintiff is that the 1st defendant, with an intention to defraud and cheat creditors, including the plaintiff, has settled the property in favour of his son, the 2nd defendant and therefore, the plaintiff is entitled to avoid the said settlement deed. The trial Court found favour with the case of the plaintiff and granted a decree that the settlement deed executed by the 1st defendant in favour of the 2nd defendant is voidable. It is relevant to note that the relief sought for by the plaintiff was to declare the settlement deed as null and void and unenforceable, however, the decree granted by the trial Court is only to the extent that the settlement deed is voidable. In this context, I examined the plaint averments and allegations as well as the written statement filed by the defendants. In the plaint, the plaintiff alleges that the settlement deed has been brought about only to defraud the plaintiff and other creditors in order to avoid paying the amounts due under the promissory note and therefore, the transfer is a malafide act and it cannot be bind the plaintiff.

28.Even in the plaint, the plaintiff has averred that only as a measure of caution, the plaintiff is praying for a relief to declare the settlement deed as a



fraudulent transaction and that it is null and void and not binding on the plaintiff and therefore, it is required to be set aside.

29. In the written statement, the defendants have categorically denied that the settlement deed was executed only with an intention to defraud creditors like the plaintiff. In fact, it is the specific contention of the defendants that even prior to the issuance of pre-suit notice by the plaintiff, the settlement deed was executed and that it was only in contemplation of the marriage of the 2nd defendant. It is also contended by the defendants that the 2nd defendant was gainfully employed as a Constable in CRPF and that he has also availed of a loan from SBI, soon after the settlement deed and from and out of the loan amount, he has also put up a construction in the suit property. The defendants have stoutly denied that the settlement deed is a fraudulent transfer to defeat the rights of creditors like the plaintiff.

30. Section 53 of the Transfer of Property Act is extracted hereunder for easy reference:

“53. Fraudulent transfer.-- (1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.



WEB COPY



Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

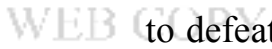
A suit instituted by a creditor (which term includes a decree -holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.”

It is clear from a reading of Section 53 of Transfer of Property Act that any suit filed by a creditor to avoid a transfer on the ground that it has been made with an intention to defeat or delay the creditors of the transferor should have to be instituted on behalf of, or for the benefit of, all creditors. Straight away, it can be noticed that the present suit has not been instituted on behalf of the body of the creditors.

31.The plaintiff is not even able to establish that the 1st defendant is heavily indebted and that in order to defeat the creditors like the plaintiff, he has proceeded to settle the property in favour of the 2nd defendant. In any event,



32. Here, in the instant case, admittedly, there was not even a demand that has been made by the plaintiff on the date of the settlement deed having been executed by the 1st defendant in favour of his son, the 2nd defendant, i.e., on 16.12.2018. It has come out in pleading as well as evidence that the 2nd



defendant was married on 14.11.2018 and only in order to provide for the 2nd defendant, the 1st defendant had settled the property. It is also the specific case of the defendants that the 2nd defendant had availed of a loan from SBI in order to put up a new residential building in the property, which is subject matter of the settlement deed. Therefore, given the proximity of the dates between the marriage of the 2nd defendant, the date of execution of the settlement deed as well as the housing loan availed by the 2nd defendant in order to put up construction over the subject property, I do not find any sinister motive to defraud creditors, including the plaintiff.

33.As already discussed above, the settlement deed was much prior to even the pre-suit notice, demanding recovery of monies payable under the promissory note. The defendants have established that the settlement deed was not executed with any ulterior motive of defeating the rights of the plaintiff. On the contrary, the plaintiff has not been able to establish that the settlement deed was brought about only in order to defraud the claims of the creditors, including the plaintiff. In the absence of such evidence, the trial Court ought not to have granted a decree, declaring the settlement deed as voidable. Therefore, I am constrained to set aside the findings pertaining to the decree



regarding the settlement deed being voidable. Point No.2 is answered in favour of the appellants.

34. In fine, the Appeal Suit is allowed in part and the judgment and decree of the trial Court is modified in the manner following:

(i) The 1st defendant is liable to pay Rs.10,28,250/- to the plaintiff, together with interest at 9% per annum on Rs.9 lakhs from the date of plaint, i.e., 07.06.2019, till the date of decree dated 27.10.2022 and thereafter, at the rate of 6% till the date of realization.

(ii) The decree declaring the settlement deed dated 06.12.2018 executed by the 1st defendant in favour of the 2nd defendant as voidable is set aside.

(iii) The 1st defendant is liable to pay costs of Rs.60,455.50/- to the plaintiff. However, there shall be no order as to costs insofar as the Appeal Suit is concerned.

17.10.2025

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



WEB COPY

To
The I Additional District and Sessions Judge, Vellore.



WEB COPY



P.B.BALAJI.J,

ata

Pre-delivery judgment made in
A.S.No.280 of 2023

17.10.2025