



S.A.No.283 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 11.07.2025

CORAM:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal. No. 283 of 2013

and

M.P.No. 1 of 2013

K. Rangasamy

.. Appellant

Versus

K. Devaraj

.. Respondent

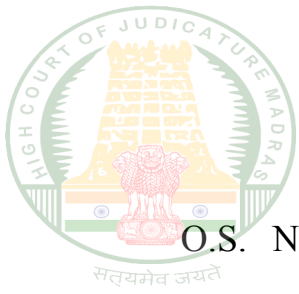
Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 26.11.2012 in A.S. No. 2 of 2012 on the file of the learned District Judge, Nilgiris reversing the Judgment and Decree dated 08.11.2011 in O.S. No. 36 of 2007 on the file of the learned Sub Judge, Nilgiris, Udthagamandalam.

For Appellant : Mr.R.Vivekanandan
for Mr.R.Subramanian

For Respondent : Ms. Aishwarya & Mr. Nathan
for Mr.T.K.Bhaskar

J U D G M E N T

This Second Appeal had been filed to set aside the Judgment and Decree dated 26.11.2012 made in A.S. No. 2 of 2012 on the file of the learned District Judge, Nilgiris, reversing the Judgment and Decree dated 08.11.2011 passed in



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O.S. No. 36 of 2007 on the file of the learned Sub Judge, Nilgiris,
Udhagamandalam.

2. The Defendant in O.S. No. 36 of 2007 on the file of Sub Court, The Nilgiris, Udhagamandalam is the Appellant in this appeal. The Respondent herein has filed the said suit in O.S. No. 36 of 2007 for recovery of a sum of Rs.1,72,000/- due and payable on the suit promissory note.

3. As per the plaint averments, the Plaintiff and Defendant are residing at Uthagamandalam, Nilgiris District. On 20.04.2004, the Defendant approached the Plaintiff, borrowed Rs.1,00,000/- and executed the Suit promissory note agreeing to repay the said amount with interest at 24% p.a. However, after receipt of the amount, the Defendant neither paid the principal or interest inspite of repeated demands made by the Plaintiff. Therefore, on 28.04.2005, the Plaintiff issued a legal notice dated 28.04.2005 calling upon the Defendant to pay the principal sum of Rs.1,00,000/- together with interest. Even thereafter, the Defendant has not repaid the principal and interest amount. Therefore, the Suit was filed for recovery of a sum of Rs.1,72,000/-.

4. On notice, the Defendant filed a written statement contending that the Suit is false, frivolous and vexatious. It was stated that the Plaintiff and



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Defendant are brothers and this fact was suppressed in the Plaint, for the reason

best known to Plaintiff. The Defendant also denied having executed a promissory note in favour of the Plaintiff or borrowed any amount from the Plaintiff. The Defendant further submitted that his brother-in-law one Easwaran was running Hotel Vasantham at Charing Cross, Uthagamandalam from the year 1996 to 1999. The Defendant used to visit the said Hotel and helped his brother-in-law in running the Hotel business. During such period the Plaintiff has also used to visit the Hotel and helped the said Mr. Easwaran for running the Hotel business. While so, during the period between 1996 to 1999, while extending financial help to Mr. Easwaran this Defendant was made to sign in blank cheques and promissory notes for business purpose of Mr. Easwaran. It is under such circumstances, the suit promissory note was also signed by the Defendant without any consideration. Therefore, from the year 2000, the relationship between the Plaintiff and the Defendant and other brothers strained and there were several litigations, both civil and criminal cases have been initiated between the Plaintiff and Defendant. The Defendant further submits that his wife has given police complaint against the Plaintiff on 11.01.2003 based on which the case in Cr.No.13/2003 on the file of B-1 Police Station, Uthagamandalam for the offence under Section 75 and 354 of IPC was registered. The Police investigated the case and filed the charge sheet against the Plaintiff and the Plaintiff is contesting the criminal case. That apart, the



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Defendant also lodged another complaint against the Plaintiff and another brother Ramachandran based on which the case in Cr.No. 153/2003 on the file of Ketti Police Station was registered for offences under Sections 341, 323 of IPC. However, the Plaintiff, by misusing another blank promissory note, filed another Suit in O.S. No. 97 of 2009 for recovery of Rs.50,000/- before the District Munsif, Uthagamandalam. These facts have been totally suppressed in the Plaint. Due to aforesaid litigations and criminal cases, there is severe enmity between the Plaintiff and the Defendant from 2000. Therefore, it is false to allege that in the year 2004, the Plaintiff lend money to this Defendant. This Defendant further submits that he is Government Servant and he is drawing a sum of Rs.15,000/- towards monthly salary and he is living in comfortable position and therefore, there is no need for him to borrow amount from the Plaintiff. There is no cause of action for the Suit. Hence, the Suit may be dismissed with costs.

5. After perusing the records and on hearing the arguments of both sides, the learned Sub Judge, Nilgiris had framed the following issues:-

1. Whether the Plaintiff is entitled for Suit claim?
2. To what relief?

Additional Issues:-

1. Whether the Defendant signed in blank promissory



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note at Hotel Vasantham, Uthagamandalam run by Defendant's brother-in-law Easwaran, for business purpose, during the year 1996 – 1999?

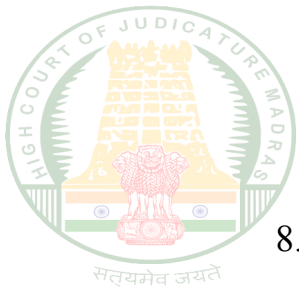
2. Whether Plaintiff misused the blank promissory note signed by Defendant during the year 1996 – 1999 at Hotel Vasantham?

3. Whether there is no cordial relationship between the Plaintiff and Defendant from the year 2000?

4. Whether there is no consideration on Suit promissory note?

6. During trial, on the side of the Plaintiff, Plaintiff was examined as P.W-1 and his brothers were examined as P.W-2 and P.W-3 and Ex.A-1 to Ex.A-4 were marked. On the side of the Defendant, the Defendant examined himself as D.W-1 and Ex.B-1 to Ex.B-4 were marked.

7. On perusal of records and after hearing both sides, the learned Sub Judge, Nilgiris had dismissed the Suit. Aggrieved by the same, A.S. No. 2 of 2012 was filed by the Plaintiff before the learned District Judge, Nilgiris, Udhagamandalam. The Appellate Court reversed the Judgment and Decree of the Trial Court and allowed the Appeal. Challenging the same, the Defendant has come forward with this Second Appeal before this Court.



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8. The learned Counsel for the Appellant invited the attention of this Court to the averments in the Plaint in O.S. No. 36 of 2007 and submitted that there is no pleadings regarding the witness to the promissory notes. It is also the further contention of the learned Counsel for the Appellant that the Plaintiff and Defendant are brothers and even that was suppressed by the Plaintiff at the time of filing Suit. The learned Sub Judge, Nilgiris by Judgment and Decree dated 08.11.2011 dismissed the Suit in O.S. No. 36 of 2007 on the ground that P.W-2 and P.W-3, who are examined as attesting witness, have admitted in their cross-examination that they were not attesting witness to the promissory note. However, the Appeal preferred by the Plaintiff in A.S. No. 2 of 2012 was allowed by the learned District Judge, Nilgiris by Judgment and Decree dated 26.11.2012 on the ground that the Defendant admitted his signature in the promissory note. Based on the said fact alone the learned District Judge, Nilgiris had allowed the Appeal Suit.

9. The learned Counsel for the Appellant relied on the ruling in S.A.No. 283 of 2013 reported in **2024 (1) MWN (Civil) 734** in the case of **T.Mohan Kumar vs. R. Ashok Kumar** to contend that merely because the Defendant did not reply to the notice sent by the Plaintiff it will not help the Plaintiff to seek a decree based on presumption. He also placed reliance on the decision of the Honourable Supreme Court in **1999 (3) SCC 35 [Bharat Barrel**



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& Drum Manufacturing Company vs. Amin Chand Payrelal] and contended

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that the rebuttal evidence need not be by means of positive evidence to prove the negative and it can also be by other materials placed before the court, which would lead the court to disbelieve the case pleaded by the Plaintiff. In this case, the Plaintiff is none other than the younger brother of the Defendant. The Defendant was employed as a Technical Assistant in the Water and Soil Conservation Department, Government of India and drawing regular income. Whereas, the Plaintiff herein was working as a help in the hotel run by the brother-in-law of the Plaintiff and the Defendant by name Eswaran. Further, the Plaintiff in the cross-examination denied the suggestion of the learned Counsel for the Defendant that the Plaintiff is working as a help in the hotel and asserted that he was a partner in the hotel. However, when he was confronted regarding documents in support of his claim that he is a partner of the hotel Vasantham he was unable to mark any document. Therefore, his claim that he was a partner is not proved. When he is working as a help in the hotel, the claim made by the Plaintiff that he had advanced loan of Rs.1,00,000/- to the Defendant who is employed in the Central Government Department having regular income. Further, both the Plaintiff and Defendant were not on talking terms. It is a clear evidence of the Defendant that Plaintiff had removed the duly signed unfilled promissory note kept in the box in the cash counter of the hotel Vasantham run by his brother-in-law Mr. Eswaran to



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avail loan from third parties to help his brother-in-law financially.

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10. Per contra, the learned Counsel for the Respondent/Plaintiff would contend that the suit was dismissed by the trial court on erroneous appreciation of the facts of the case. However, on appeal, the first appellate Court concluded that the Plaintiff has proved the averments raised in the plaint that the Defendant has borrowed the sum of Rs.1 lakhs and did not pay the said amount. The Appellate Court also taken note of the fact that before institution of the suit, a notice was issued by the Plaintiff and it was received by the Defendant, however, the Defendant failed to submit a reply thereof. While so, the appellate Court concluded that the Defendant is estopped from raising any defence when he failed to send a reply to the notice sent on behalf of the Plaintiff. The appellate Court also, by pointing out the cross-examination of the Defendant, rendered a finding that after receipt of the legal notice under Ex.A-2, the Defendant has neither sent any reply, nor met the Plaintiff and sought explanation or given any complaint to the police regarding the alleged misuse of his signature in the promissory note. The Appellate Court further held that once a promisor signs a promissory note, it becomes an inchoate document and thereupon the promissory may fill it up and file a suit. Int his case also, the Defendant admitted his signature in the promissory note and therefore, he is estopped from raising any ground and dispute the execution of



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the promissory note. The learned counsel for the Respondent therefore submitted that the Appellate Court is wholly justified in allowing the appeal and it does not call for any interference by this Court. Accordingly, the learned counsel for the Respondent/Plaintiff prayed for dismissal of this appeal with costs.

11. Also the learned Counsel for the Respondent relied upon the ruling in **(2008) 7 SCC 655 [Mallavarapu Kasivisweswara Rao vs. Thadikonda Ramulu Firm and others]** wherein the Hon'ble Supreme Court had observed that mere denial by the Defendant will not help him to wriggle out from the liability.

12. The learned Counsel for the Respondent relied on the decision in **2015 (2) MWN (Civil) 264 [R.Pandyan and another vs. M. Palgani]**. In the facts of the reported decision, the Defendants in the suit claimed that they have not executed the promissory note. Since there was no specific denial, the suit was decreed. The Defendants 1 and 2 were brothers and written statement was jointly filed by them. The first Defendant had not entered the witness box. Therefore, presumption was drawn against the Defendants. The suit was decreed based on the evidence of the Plaintiff and based on presumption under 118 of the Negotiable Instruments Act, 1881.



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WEB COPY13. This Court admitted this second appeal and the following substantial questions of law are framed for consideration:-

(i) Whether in law, is not the Judgment of the lower Appellate Court vitiated as it has failed to consider the documentary and oral evidence as well as the findings of the trial Court?

(ii) Whether in law, is the lower Appellate Court wrong in overlooking that the Defendant has rebutted the presumption under Section 118 of the Negotiable Instruments Act by documentary and oral evidence.

(iii) When the Suit claim is based on Ex.A-1 wherein 24% interest is sought to be charged by the Plaintiff and when there is prohibition of charging exorbitant interest i.e., more than 12% per annum under Section 3 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, is not the first Appellate Court wrong in granting a decree on the basis of Ex.A-1?

(iv) Whether the alleged transaction is hit by Section 23 of the Contract Act?

14. Heard the learned Counsel for the Appellant and the learned Counsel for the Respondent.

15. Perused the records and the Judgment of the learned District Judge, Nilgiris and the Judgment of the learned Sub Judge, Nilgiris, Udthagamandalam.

16. The Plaintiff instituted the Suit in O.S. No. 36 of 2007 before the



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learned Sub Judge claiming that the Defendant had executed promissory note on receipt of a sum of Rs.1,00,000/- but failed to repay the amount. It is the claim of the Plaintiff that he issued a statutory notice which was received by the Defendant, but he did not reply. The Plaintiff had marked Ex.A-1 to Ex. A-4 and examined himself as P.W-1. He also examined his brothers as P.W-2 and P.W-3. The Defendant examined himself as D.W-1 and marked documents under Ex.B-1 to Ex.B-3, which are receipts given by B-1 Police Station, Uthagamandalam for having received the Complaints preferred by the Defendant against the Plaintiff.

17. The learned Sub Judge on consideration of the circumstances available and the materials evidence made available, reached a conclusion that the claim of the Plaintiff is not proved, particularly when P.W-2 and P.W-3 could not state the denomination of the amount having been parted by the Plaintiff to the Defendant besides their admission that they have not attested the promissory note. The scribe of the document under Ex.A-1 was also not examined by the Plaintiff. Merely marking of Ex.A-1 will not help the Plaintiff to seek a decree particularly when P.W-2 and P.W-3 evidence was found to be not inspiring confidence of the Court. The witness of Pws 2 and 3 in their cross-examination is contrary to what had been stated in their chief-examination, particularly, when P.W-1 to P.W-3 are brothers of the Defendant



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and they are not in talking terms with each other.

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18. The Defendant is in a regular job and having a regular income. On the other hand, the Plaintiff was employed as a help in a Hotel run by the brother-in-law/Eswaran. The claim of the Plaintiff is that he was a partner of the Hotel. When confronted regarding documents in support of his claim that he is a partner of Hotel, he was unable to furnish any document. Therefore, from the normal human contact, the claim made by the Plaintiff is found unacceptable. Merely a promissory note was pressed into service which contained the admitted signature of Defendant, it will not help the Plaintiff in getting a decree against the Defendant. When the Plaintiff did not prove his wherewithal to extend a loan of Rs.1,00,000/- to the Defendant, the learned Sub Judge had, on proper appreciation of the evidence, found out that the preponderance of probability in this case is in favour the Defendant, who had successfully rebutted the claim of the Plaintiff to get a decree for recovery of the alleged sum of Rs.1,00,000/- covered under the promissory note.

19. The Defendant himself had let in evidence and discharge the burden cast upon him. However, in the cross-examination of P.W-1 to P.W-3 they admitted that they are not in good terms with the Defendant. The normal human conduct is that if a person is not in good terms or relationship with the



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other, there is no scope for such a person to seek for financial assistance from the other or the other person will lend financial assistance to him. In this case, when there is a strained relationship between the Plaintiff and the Defendant, the Defendant could not have seek money from the Plaintiff, with whom he is not in good relationship. Even if the Defendant asks for financial assistance, the Plaintiff cannot be expected to lend amount.

20. The Defendant admit his signature in the promissory note. However, he has adequately explained the circumstances which led to the signing of blank promissory notes. While so, the first Appellate Court rendered findings as though the Defendant did not admit his signature to conclude that once signature is made in the promissory note it will bind the person who made the signature. However, it is clear that Ex.A-1 did not contain the signature of attesting witnesses. P.W-2 and P.W-3 are unable to state clearly the denomination of the money that was transferred from the hands of the Plaintiff to the Defendant. Under those circumstances, the learned Sub Judge, Udhagamandalam had on proper appreciation of the evidence had arrived at the preponderance of probability available and dismissed the suit.

21. On appeal, the learned District Judge, Udhagamandalam had rejected the defence of the Defendant on the basis of the fact that the Defendant



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had not disputed the signature of the promissory note and therefore the presumption under Section 118 (g) of the Negotiable Instruments Act is made out. In this context, the Appellate Judge misdirected himself by relying upon various decisions which are not applicable to the facts of the present case. The Appellate Court also relied on the ruling of this Court reported in ***Balasubramanian vs. Palani Kumar*** reported in **2009 4 MLJ 696** and set aside the Judgment of the dismissal of the learned Sub Judge. In that case, the executant of a promissory note denied his signature. In the present case, the Defendant did not deny his signature in the promissory note but only contends that he signed the promissory note as a security for the loan availed by his brother in law. This was also successfully rebutted by the Defendant by marking document such as Police complaints preferred against the Plaintiff and his brothers, who volunteered as Plaintiff Witnesses 2 and 3. Apart from that in the cross-examination of Plaintiff as well as Plaintiff Witnesses 2 and 3, there are materials available that they are not on talking terms. Also, P.W-1 disputed the claim of the Defendant and contended that the Defendant only assists his brother in law in the Hotel and he was not a partner of the Hotel. When the Plaintiff was confronted as to whether he has any proof to show that he was a partner of the Hotel, he was helpless and did not mark any document regarding the same. Also, he had not mark any document as proof of income to show that he has the wherewithal to extend a loan of Rs.1,00,000/- to the Defendant.



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WEB COPY22. A person having no resources claims to have extended loan of Rs.1,00,000/- to a person who is employed as Technical Assistant and drawing a regular salary from Water and Soil Conservation Department of India. Therefore, the claim made by the Plaintiff in this case is found unacceptable as per the Provisions of the Negotiable Instrument Act and as per Section 23 of the Contract Act. From the normal human contact, an ordinary average prudent man who has better job, better regular salary cannot be expected to seek loan of Rs.1,00,000/- from a person who is employed in a Hotel as a help and who did not have regular income. Contrary to that the Defendant's case is that since he has a regular job, he used to help his brother-in-law financially to avail loan from third-party. In this context, he had executed unfilled promissory note, duly signed and kept it in the box in the cash counter of the Hotel belonging to his brother-in-law but the Plaintiff removed it surreptitiously, filled it up as though Plaintiff had extended loan. Therefore, the Defendant had challenged the resources of the Plaintiff and it is for the Plaintiff to prove it that the promissory note came into existence from lawful custody. The initial burden of the Plaintiff was discharged through P.W-1 to P.W-3 as well as Ex.A-1 to Ex.A-4. When the burden shifted on the Defendant the Defendant was able to prove his defence through Ex.B-1 to Ex.B-4. On proper appreciation of the above evidence and the circumstances available from such evidence, the



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learned Sub Judge, by Judgment dated 08.11.2011 rightly dismissed the Suit.

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However, the learned District Judge failed to consider the circumstances available from the materials. The learned District Judge had mechanically invoked the provision under Section 118 of the Negotiable Instruments Act whereby the admitted signature of the Defendant was pressed into service to grant a decree based on presumption. The Judgment of the learned District Judge is found erroneous and not on proper analysis of evidence.

23. The Defendant is better placed than the Plaintiff in terms of earnings through a regular salary. The Plaintiff and Defendant are not in talking terms. When the brothers are not on talking terms, the younger brother against whom criminal complaint had been launched by the Defendant and his wife, cannot be expected to have extended loan. This was lost sight of by the learned District Judge, Nilgiris at Uthagamandalam. Therefore, the Judgment of the learned District Judge is found erroneous and the Judgment of the learned Sub Judge in O.S.No.36 of 2007 is found well-reasoned Judgment on analysis of the materials and circumstances under which the Exhibits came into existence.

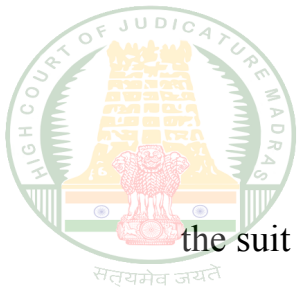
24. It is to be noted that the Defendant did not send a reply to the notice issued by the Plaintiff under Ex.A2. Merely because the Defendant did



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not issue a reply notice, it will not help the Plaintiff to seek a decree. As observed in the decision in ***Bharat Barrel & Drum Manufacturing Company vs. Amin Chand Payrelal*** the rebuttal evidence need not be by means of positive evidence to prove the negative and it can also be by other materials placed before the Court, which would lead to the inference that the Court can disbelieve the case pleaded by the Plaintiff. Therefore, I hold that the non-issue of reply notice by the Defendant will not in any manner help the Plaintiff to get a decree in this case especially when the Defendant has clearly proved his defence through cogent evidence.

25. In all the reported decisions relied by both parties, the judgment of the Honourable Supreme Court in ***1999 (3) SCC 35 [Bharat Barrel & Drum Manufacturing Company vs. Amin Chand Payrelal]*** had been cited whereby it is stated that preponderance of probabilities can be direct or from the circumstance available in the case. Here the Defendant in both the suits is the elder brother of the Plaintiff having regular job in Central Government and they are not in talking terms is admitted by the Plaintiff in cross examination. Under those circumstances, it is hard to believe that the Defendant had sought financial help from the Plaintiff who is working as a help in the hotel run by the brother-in-law of Plaintiff and Defendant which fact was ignored by the learned District Judge in the appeal in A.S. 2 of 2012 against the dismissal of

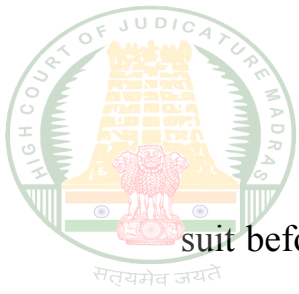


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the suit in O.S.No. 36 of 2007 by the learned Sub Judge. Therefore, the Second

Appeal No. 283 of 2013 filed by the Defendant is to be allowed.

26. The learned Sub Judge, Udhagamandalam, in O.S.No.36 of 2007 had on proper appreciation of evidence rejected the claim of the Plaintiff thereby dismissed the suit. Aggrieved, the Plaintiff in O.S.No.36 of 2007 had filed Appeal in A.S.No.2 of 2012. While re-appreciating the evidence, the learned District Judge had on the strength of the presumption available to the Plaintiff under Section 118 of the Negotiable Instruments Act that the Defendant had not denied his signature, had ignored the well established rule of evidence that the Plaintiff has to establish his burden of proof regarding the wherewithal to have extended the loan of Rs.1,00,000/- to his elder brother, the Defendant. The Defendant who is serving as a Technical Assistant in the Water and Soil Conservation Department, Government of India and drawing regular salary. Whereas the Plaintiff is a help in the hotel run by the brother-in-law of both the Plaintiff and Defendant. The fact that the Plaintiff did not establish his wherewithal, was ignored by the learned District Judge, Nilgiris at Udhagamandalam, while re-appreciating the evidence independently. It is to be noted that the learned Sub Judge, Udhagamandalam, had in the appeal in A.S.No.44 of 2013 set aside the decree granted by the learned District Munsif, Udhagamandalam, in O.S.No.98 of 2007. While so, the very same Judge, in the



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suit before him in O.S.No.36 of 2007, had on proper appreciation of evidence rejected the claim of the Plaintiff on the ground that mere presumption under Section 118 of the Negotiable Instruments Act will not help the Plaintiff to seek a decree against his elder brother, the Defendant, who is employed as a Technical Assistant in the Water and Soil Conservation Department, Government of India and drawing regular salary, whereas the Plaintiff is working as a help in the hotel run by the brother-in-law of both the Plaintiff and Defendant. The Plaintiff has to establish his wherewithal to have extended the loan of Rs.1,00,000/- to the Defendant. The Plaintiff failed to discharge the initial burden cast upon him. Therefore, mere presumption under Section 118 of the Negotiable Instruments Act cannot be taken as granted to grant the decree against the Defendant who had not denied the signature on the promissory note. In the light of the above discussions, **the Substantial Questions of Law 1 and 2 are answered against the Plaintiff in O.S. No. 36 of 2007 and in favour of the Defendant.**

27. In so far as Question of Law No.3 is concerned, the grant of decree was merely on the fact that the Defendant had not disputed his signature. Therefore, merely based on presumption, the grant of decree in favour of the Plaintiff is found erroneous. **The Substantial Question of Law 3 is answered against the Plaintiff in O.S. No. 36 of 2007 and in favour of**



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the Defendant.

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28. In so far as **Substantial Question of Law No.4 is concerned**, the alleged transaction is hit by fraud. As per the claim of the Defendant in the written statement, the Defendant had clearly stated that he had signed blank promissory note since he is employed in Government service and he has to help his brother-in-law who runs a hotel in the Nilgiris where the Plaintiff works as a help, the blank promissory note signed by the Defendant was kept in the cash box of the hotel which was surreptitiously removed by the Plaintiff and pressed into service as though the Plaintiff had extended a loan of Rs.1,00,000/- to the Defendant. Also in the same written statement, the Defendant had disputed the fact that the Plaintiff is a younger brother of the Defendant and they are not on talking terms. There had been complaints against the Plaintiff by both the Defendant and his wife. Based on which Police had registered cases. Under those circumstances, from the point of view of an ordinary prudent man, it is unbelievable that the Defendant who is employed in Government of India as a Technical Assistant in Water and Soil Conservation Department and drawing regular salary, would seek financial help from his younger brother, who is working as a help in the hotel run by the brother-in-law of both the Plaintiff and Defendant. The Plaintiff has to prove the wherewithal that he had enough resources to lend a sum of Rs.1,00,000/- as



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loan to the Defendant. Merely based on presumption under Section 118 of the Negotiable Instruments Act, the Plaintiff cannot expect the Court to grant a decree in his favour when he failed to prove his wherewithal. Also, in the evidence, it had been found out by the learned Sub Judge, Udhagamandalam that the Plaintiff had admitted the fact of criminal cases pending against each other. The Plaintiff had also admitted that his brother is working as a Technical Assistant in Water and Soil Conservation Department, Government of India. The Plaintiff claimed that he was not a help in the hotel run by the brother-in-law of both the Plaintiff and Defendant but he is a partner. In the cross-examination, he was unable to prove that he is a partner in the business of hotel run by his brother-in-law. Under those circumstances, considering the preponderance of probabilities while appreciating the evidence from the point of view of an ordinary prudent man, the claim made by the Plaintiff is found not probable in the absence of proof regarding resources of the Plaintiff to extend a loan of Rs.1,00,000/- to the Defendant. Therefore, the alleged transaction is hit by fraud as per Section 23 of the Contract Act. Accordingly, **the Substantial Question of Law 4 is answered against the Plaintiff in O.S. No. 36 of 2007 and in favour of the Defendant.**

In the result, **this Second Appeal is allowed.** The Judgment and Decree dated 26.11.2012 in A.S. No. 2 of 2012 on the file of the learned District



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Judge, Nilgiris at Udhagamandalam, reversing the Judgment and Decree dated 08.11.2011 in O.S.No.36 of 2007 on the file of the learned Sub Judge, Nilgiris, Udhagamandalam is set aside. Consequently, the Judgment and Decree dated 08.11.2011 passed in O.S. No. 36 of 2007 on the file of the learned Subordinate Judge, Nilgiris at Udhagamandalam is restored. The suit in O.S. No. 36 of 2007 is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

11.07.2025

dh

Index : Yes/No

Internet: Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J

dh

To

1. The District Judge,
Nilgiris.
2. The Sub Judge, Nilgiris,
Udhagamandalam.
3. The Section Officer,
V.R.Section,
High Court, Madras.

Judgment made in
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