



Second Appeal No.903 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 06.06.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No. 903 of 2013
and M.P.No. 1 of 2013

-
- 1.Chinnusamy Reddiar (Died)
- 2.C. Sampathkumar
- 3.Sathyamoorthy
- 4.Rajmohan (Died)
- 5.Gopinathan
- 6.R. Ezhilarasi
- 7.R. Dhanush
- 8.R. Nikkil

.. Appellants

(Appellants 2 to 4 were brought on record as Legal Representatives of the deceased first Appellant viz., Chinnusamy Reddiar as per the order dated 06.01.2022 made in C.M.P. No. 17600 of 2021 in S.A. No. 903/13)

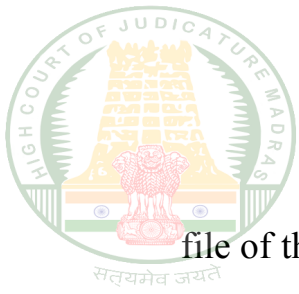
(Appellants 6 to 8 were brought on record as Legal Representatives of the deceased fourth Appellant viz., Rajmohan as per the order dated 06.01.2022 made in CMP No. 17600 of 2021 in S.A.No.903 of 2013)

Versus

R.Srinivasan

.. Respondent

Second Appeal filed under Section 100 of Code of Civil Procedure, 1908, to set aside the Judgment and Decree dated 18.09.2012 made in A.S. No. 6 of 2012 on the file of the learned Sub Judge, Namakkal confirming the Judgment and Decree dated 15.07.2011 made in O.S. No. 377 of 1997 on the



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file of the learned Principal District Judge, Namakkal.

For Appellants : Mr. N. Subbarayalu
For Respondent : Mr. T. A. Srinivasan

JUDGMENT

This Appeal is filed to set aside the Judgment and Decree dated 18.09.2012 made in A.S. No. 6 of 2012, on the file of the learned Principal District Judge, Namakkal confirming the Judgment and Decree dated 15.07.2011 made in O.S. No. 377 of 1997 on the file of the learned Sub Judge, Namakkal.

2. For the sake of convenience, the parties to this Appeal are referred to as per the status in the suit as “Plaintiff” and “Defendants” as the case may be.

3. The Defendants in O.S. No. 377 of 1997 are the Appellants in this Second Appeal. The suit in O.S. No. 377 of 1997 was filed for recovery of a sum of Rs.1,53,000/- representing Rs.1,00,000/- towards principal and Rs.53,000/- towards interest and costs

4. As per the plaint averments, the first Defendant – Chinnasamy



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Reddiar (since deceased) requested the Plaintiff for a loan of Rs.1,00,000/- to purchase a land. The first Defendant also agreed to pay Rs.2/- per Rs.100/- per month towards interest. Accordingly, the Plaintiff paid the amount on 15.09.1991 and upon receipt of the sum of Rs.1,00,000/- the first Defendant executed a demand promissory note, promising to pay the sum of Rs.1,00,000/- together with interest, on demand. After receiving the amount, on 04.09.1994, the first Defendant paid a sum of Rs.1,000/- which was duly given credit to the amount payable by the first Defendant. Thereafter, many demands have been made by the Plaintiff for repayment of the loan amount, but the first Defendant evaded and avoided to pay. Therefore, on 28.04.1997 and 17.07.1997, notices have been sent to the first Defendant demanding repayment of the amount. However, the first Defendant neither sent any reply nor repaid the amount. Therefore, the Plaintiff has filed the suit as against the first Defendant and his children, the Defendants 2 to 5 for recovery of a sum of Rs.1,53,000/-.

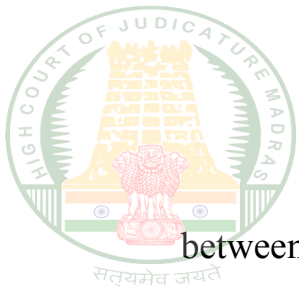
5. On receipt of summons, the first Defendant entered appearance and filed written statement denying the plaint averments. According to the first Defendant, he never approached the Plaintiff for a loan or received Rs.1,00,000/- on 15.09.1991. He also denied the execution of the promissory



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note and also the payment said to have been made on 04.09.1994 towards interest. The first Defendant also denied having made any endorsement on the reverse of the promissory note while making the payment of Rs.1,000/- on 04.09.1994. It was also stated that the amount of Rs.1,00,000/- alleged to have been made on 15.09.1991 and the suit was filed only in the year 1997. The suit is hit by the principles of limitation and only to save the limitation, it was alleged that on 04.09.1994, the first Defendant paid Rs.1,000/- towards interest.

6. It was further stated that the first Defendant is none other than the husband of the Plaintiff's own sister. The Plaintiff is a money lender carrying on business in the name and style of "Levadevi" in Nallipalayam, Namakkal District. On 29.04.1990, the first Defendant borrowed Rs.50,000/- from the Plaintiff and executed a blank promissory note. The first Defendant also paid interest for the sum of Rs.50,000/- borrowed from the Plaintiff. Subsequently, on 06.03.1994, the first Defendant paid the entire principal amount of Rs.50,000/- to the Plaintiff and demanded for the return of blank promissory note. However, the Plaintiff did not return the promissory note but assured to return it within 2 or 3 days. After sometime, the first Defendant totally forget to receive the promissory note from the Plaintiff. Subsequently a dispute arose



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between the family members of the Plaintiff and first Defendant and they are not on talking terms. While so, on 28.04.1997 the first Defendant received a lawyer's notice and was shocked to note the contents thereof. Therefore, he called upon the “Oor Panchayatdars” to resolve such dispute with the Plaintiff. In the presence of the Panchayatdars an enquiry was conducted during which the Plaintiff even tendered his apology for having sent the notice. It is in those circumstances, the first Defendant did not issue any reply to the notice dated 28.04.1997. However, on 17.07.1997, the Plaintiff issued another notice to the Defendants 4 to 5 who are residing in Trichy.

7. The first Defendant further submitted that he sought the permission of the trial court to inspect the suit promissory note on 17.08.1999 and after obtaining such permission, he had perused the promissory note. It came to be known that the signed blank promissory note has been made use of by the Plaintiff to file the suit. The endorsement made on the back side of the promissory note is forged and fabricated. The thumb impression made in the promissory note as well as the endorsement thereof are fabricated. As mentioned above, only in order to save the limitation for filing the suit, it was projected as if on 04.09.1994, a sum of Rs.1,000/- was paid as interest. The suit is not maintainable as there is no cause of action for instituting it. The



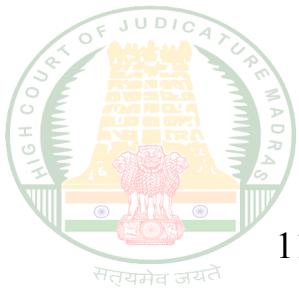
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relief claimed by the Plaintiff in the suit is barred by the principles of limitation. Accordingly, the first Defendant prayed for dismissal of the suit as it is devoid of merits.

8. Before the trial court, the Plaintiff examined himself as PW1 and one Sankaran was examined as PW2. Exs. A1 to A5 were marked on behalf of the Plaintiff. On the side of the Defendants, the first Defendant examined himself as DW1 along with three other witnesses as Dws 2 to 4. Exs. B1 to B7 were marked as documents on the side of the Defendants. That apart, a finger print expert was appointed, whose report was marked as Ex.C1. The certified copy of the ration card was also marked as Ex.X1 as Court document.

9. The trial court, on analysing the oral and documentary evidence, decreed the suit and directed the Defendants to pay the suit claim of Rs.1,53,000/- with interest at the rate of 9% per annum from the date of plaint till the date of decree and thereafter at the rate of 6% till the date of realisation.

10. Aggrieved by the Judgment and Decree dated 15.07.2011 passed in O.S. No. 377 of 1997, the Defendants 1 to 5 have filed Appeal Suit No. 6 of 2012. The first Appellate Court by the Judgment and Decree dated 18.09.2012 dismissed the appeal and confirmed the decree and judgment of the trial court.



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11. When this Second Appeal was admitted on 20.08.2013, this Court

framed the following substantial question of law for consideration:-

“Whether the suit promissory note is barred by time in as much as the endorsement dated 04.09.1994 was not proved to be endorsement made by the appellant and no opinion was expressed by the Expert with regard to endorsement Ex.A2.”

12. The learned Counsel for the Defendants submitted that the suit was filed for recovery of amount of Rs.1,53,000/- (Rupees One Lakh and fifty Three thousand only). He invited the attention of this Court to the judgment dated 15.07.2011 in O.S. No. 377 of 1997 passed by the learned Sub Judge, Namakkal. He pointed out that the promissory note was marked as Ex.A-1. As per the plaint averment, the Defendants alleged to have borrowed the amount on 15.09.1991. The suit was instituted by the Plaintiff in the year 1997 beyond the period of limitation. To save the limitation, the Plaintiff himself had alleged to have created an endorsement on the back side of the promissory note marked as Ex.A-2 along with the thumb impression, as though the first Defendant paid Rs.1,000/- and made such endorsement. The said endorsement was alleged to have been made on 04.09.1994 to save the limitation. The Defendants have vehemently objected to the endorsement marked as Ex.A-2 even in the written statement of the first Defendant, wherein it was specifically denied that the first Defendant did not make any thumb impression on the



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reverse of the promissory note. Therefore, in order to discharge their burden, during trial, the thumb impression of the first Defendant was obtained in Court and it was referred to the opinion of Finger Print Expert. The report of the Finger Print Expert was marked as Ex.C1 before the trial Court. Such report was given under Ex.C1 after comparing the admitted signature as the first Defendant along with the so-called disputed signature under Ex.A2. The Finger print Expert given his opinion stating that “The finger impression marked as Ex.D2 (Ex.A2) is unfit for comparison as it is highly smudged and does not reveal sufficient number of clear ridge details.

13. According to the learned counsel for the Defendants, as per the Expert opinion, opinion an opinion could not be given regarding the disputed thumb impression marked as Ex.D-2. However, the trial Judge, in the discussion in Paragraphs 13 to 16 misdirected himself by ignoring the valuable defence of the first Defendant made in the written statement and was carried away by the opinion of the Expert wherein the Expert had stated that Ex. D-1 is the *bona fide* thumb impression. Ex.D-2 is the disputed thumb impression which could not be compared as it was smudged. The learned trial Judge ignored the specific opinion of the Expert and stated that the Expert opinion could not be considered for determining the issues involved in the present suit.



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The valuable defence of the Defendants was that the suit claim is barred by limitation and the endorsement under Ex.A2 is forged. While so, the discussion by the learned Sub Judge, Namakkal is perverse and the suit was decreed on specious grounds without properly considering the opinion of the expert.

14. The learned counsel for the Appellants further stated that on appeal, the learned Principal District Judge, Namakkal in the judgment in A.S.No.6 of 2012 dated 18.09.2012 in Page 4 reached the same conclusion made by the trial Judge without considering the valuable defence of the Defendants made in the written statement. The discussion of the learned Appellate Judge was only based on Ex.A-1 promissory note in which the thumb impression was not disputed by the Defendants.

15. In support of his contention, the learned Counsel for the Defendants/Appellants invited the attention of this Court to the following reported rulings:

15.1. In the case of ***Sundaramoorthy -vs- R.Palanisamy*** reported in ***2009 (1) CTC 728*** it is held as follows:

“Evidence Act, 1872 (1 of 1872), Sections 101 to 103 – Burden of proof – Suit for recovery of money on Promissory Note – Plaintiff to



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establish his case – Defendant need not take steps to disprove Plaintiff's case.”

WEB COPY 15.2. In the case of ***S.Chinnathai -vs- K.C.Chinnadurai*** reported in (2010) 3 MLJ 65 it has been observed as follows:-

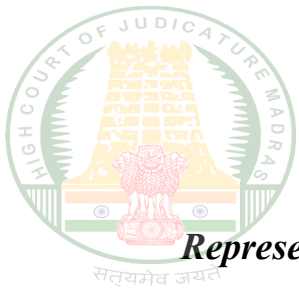
“11. In the judgment reported in ***AIR 1928 Privy Council 277 (Kessarbai Vs. Jethabhai Jivan)***, it has been held that the mere comparison of admitted signatures without expert advice or microscopic examination is dangerous. In the judgment reported in ***1996 (2) SCC 704 (O.Bharathan vs. K.Sudhakaran and another)***, the Hon'ble Supreme Court has held that the Court itself should not compare the disputed signatures without the assistance of any expert when the signatures with which the disputed signatures are to be compared are themselves not the admitted signatures. Similarly, in the judgment reported in ***1997 (1) MLJ 304 (Kothandapani Padayachi Vs. Ranganatha Padayachi and others)***, the Hon'ble High Court has held that it is advisable to have an assistance of handwriting expert and the court shall be slow in venturing on an opinion on the basis of mere comparison. In the judgment reported in ***1997 (2) MLJ 37 (Dhanakodi Padayachi vs. Muthukumaraswami)***, the Hon'ble High Court has again held that the Court shall not compare the disputed and base its conclusion thereon.

12. On a consideration of the above said judgment, it is clear that the Court should avoid the comparison and when such a situation has arisen, the Court itself even without an application by any other parties can invoke the power under Order 26 Rule 10A of the Civil Procedure Code.”

15.3. In the case of ***K.Thangavel Chettiar -vs- Nachimuthu Gounder*** reported in ***2013 AIR CC 971 (Mad)*** it is held as under:

“Negotiable Instruments Act (26 of 1881), Section 4 – Recovery of money – Entitlement to – Burden of proof was heavily cast on drawee – Drawee failed to discharge burden by reliable evidence sufficient at least to prove opposite – Drawee failed to prove drawer's signatures on promissory notes – Drawee not entitled to recover money.”

15.4. In the case of ***Malluru Mallappa (Dead) through Legal***



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Representatives vs. Kuruvathappa and others reported in ***(2020) 4 SCC 313***

WEB COPY it is held as under:

“18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order XLI Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.”

16. In the light of the reported rulings, the learned Counsel for the Defendants/Appellants seek to allow this Second Appeal and to set aside the judgment of both trial Court. The learned Counsel for the Appellant also submitted that as per Order 41, Rule 31 of CPC the Appellate Judge has to re-assess the evidence independently. Here in this case, the first Appellate Judge failed to appreciate independently the evidence before the trial Court and thereby committed an error in dismissing the Appeal preferred by the Plaintiff and confirmed the judgment of the learned trial Judge.

17. Per contra, the learned Counsel for the Respondent/Plaintiff submitted that along with the plaint, the Plaintiff filed (i) demand promissory note for Rs.1,00,000/- (Rupees One Lakh) dated 15.09.1991 executed by the first Defendant in favour of the Plaintiff (ii) Legal notice sent by Plaintiff's



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Counsel to the first Defendant (iii) Acknowledgement card for receipt of legal

notice by the first Defendant and (iv) Legal notice sent by Plaintiff's Counsel

to the Defendants 2 to 5. The suit was duly contested by the Defendants. On

proper assessment of evidence, the learned Sub Judge, Namakkal decreed the

suit in O.S. No. 377 of 1997 by judgment and decree dated 15.07.2011.

Aggrieved by the same, the Defendants filed Appeal in A.S.No.6 of 2012

which was also dismissed by the judgment and decree dated 18.09.2012.

Against which this Second Appeal has been filed by the Defendants with a

mala fide intention to drag on the issue to the extent possible. Even though the

suit amount of Rs.1,00,000/- was paid on 15.09.1991, till date, the Defendants

have not paid a single rupee. Though the suit filed by the Plaintiff was

decreed by the trial court on 15.07.2011 and it was confirmed by the Appellate

Court on 18.09.2012, the Plaintiff could not enjoy the fruits of the decree. The

Plaintiff has duly instituted the suit after issuing notice to the first Defendant

and another notice to the Defendants 2 to 5. The Defendants have not chosen

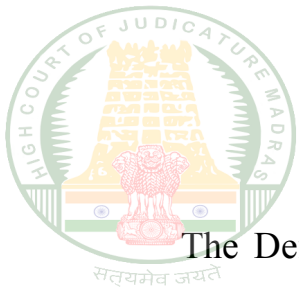
to issue a reply notice thereof. It was the earliest opportunity for the

Defendants to come out with a version but they remained silent. Even though

the first Defendant alleged that after receipt of the notice a panchayat was

convened and the Plaintiff also allegedly repented for issuing the notice, there

is no explanation offered for not sending any notice by the Defendants 2 to 5.



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The Defendants 2 to 5 are the children of the first Defendant. There is no reason assigned as to why they did not issue a reply notice to the notice sent by the Plaintiff through his counsel. Taking note of the above facts, both the courts below have concurrently held against the Defendants. The learned Counsel for the Plaintiff therefore prayed this Court to dismiss this Second Appeal as having no merits.

18. Heard the learned counsel for the Defendants-Appellants as well as the Plaintiff-Respondent.

19. The only question of law arise for consideration is whether Ex.A-2, endorsement said to have been made by the first Defendant, on the reverse of Ex.A1, promissory note, is forged by the Plaintiff. It is true that pending suit, an expert opinion was obtained in which the expert has rendered no opinion as regards the alleged signature in the reverse of Ex.A1. The Expert could not give any opinion on the ground that the thumb impression referred was smudged and no opinion could be rendered thereof. Therefore, it is evident that the so called thumb impression in Ex.A2 remains unproved and a definite conclusion could not be arrived thereof. Unless if the thumb impression is proved, it cannot be said that the suit is filed within time. Or in

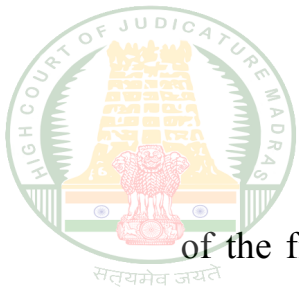


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other words, if the thumb impression is not proved, then it has to be presumed that the first Defendant did not make any endorsement and consequently, the suit filed by the Plaintiff is hit by the principles of Limitation. Thus, if the endorsement under Ex.A2 is excluded from the purview of consideration by holding that Ex.A2 has not been proved by the Plaintiff, then the decree and judgment of both the courts below are liable to be set aside.

20. In this context, in the written submission of the first Defendant, it was vehemently contended that the first Defendant has neither borrowed any amount under Ex.A1 from the first Defendant nor made any such endorsement under Ex.A2. It was the definite case of the first Defendant that he had earlier borrowed Rs.50,000/- from the Plaintiff, executed a blank promissory note and later repaid the sum of Rs.50,000/-. However, when the blank promissory note was demanded, the Plaintiff assured to return within 3 to 4 days, but thereafter, the first Defendant forget to collect the promissory note. This is the sum and substance of the written statement filed by the first defendnat.

21. On perusal of the judgment of both the trial Court as well as first Appellate Court, it is found that nowhere the learned Judge had discussed about Ex.A-2 and the discussion centrers around Ex.A-1 only. The judgment



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of the first Appellate judge is only based on presumptions without regard to the denial of the thumb impression by the first Defendant. It was merely stated that there was an endorsement on the backside of the promissory note marked as Ex.A-2. This will not help the Plaintiff to institute the suit beyond three years. This Court is of the view that when the first Defendant denied the endorsement under Ex.A2 as well as the availment of loan under Ex.A1, then the burden is heavy on the shoulders of the Plaintiff to prove the extension of loan as well as the payment of interest which was endorsed under Ex.A2. But in this case, the Plaintiff has not taken out any application for referring the thumb impression under Ex.A2 to the finger print experts. It was the first Defendant who had taken out an application to refer his disputed thumb impression to the expert for the opinion. As a Plaintiff, it was for him to take out such an application, but he failed to do so. On the other hand, the first Defendant to disprove the case of the Plaintiff, sought the assistance of the opinion of the experts. In this regard, an adverse inference ought to have been drawn by the courts below, but no such inference has been drawn.

22. For proof of the endorsement under Ex.A2, the Plaintiff ought to have examined the witness who had seen the first Defendant affixing his thumb impression. However, no such witness was examined by the Plaintiff



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before the trial Court to prove the endorsement, Ex.A-2 for revival of the promissory note, by paying Rs.1000/-. On behalf of the Plaintiff, PW2 was examined. PW2 was one of the attesting witness to Ex.A1. However, no such person, who had witnessed the first Defendant affixing his thumb impression was examined before the trial court. Therefore, even if Ex.A-1 is genuine or true, when Ex.A2 has not been proved, then, the suit was filed beyond the period of limitation of three years and therefore it is not maintainable. Thus, on scanning of the entire evidence, this Court is of the view that Ex.A-2 is not proved by the Plaintiff by examining a witness, who has witnessed the first Defendant affixing his thumb impression or who is acquainted with the first Defendant affixing his thumb impression. In such circumstances, it has to be held that the Plaintiff failed to prove the endorsement said to have been made by the first Defendant on the reverse of Ex.A1. Further, it is to be noted that on 15.09.1991, the Plaintiff alleged to have paid Rs.1,00,000/- as loan to the first Defendant. The endorsement under Ex.A2 was allegedly made by the first Defendant, by paying Rs.1,000/- towards interest on 04.09.1994, 10 days before the period of limitation to expire. This creates a doubt in the credibility of Ex.A2. In the plaint, there was no averment to the effect that the Plaintiff repeatedly made demands to pay the amount and on such demand, the first Defendant paid Rs.1,000/- on 04.09.1994. On the other hand, the plaint



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averments are to the effect that after the so-called payment made on 04.09.1994, it is alleged that the Plaintiff made repeated demands for payment of the sum of Rs.1,00,000/- together with interest, but when it was not forthcoming, he issued the legal notice and thereafter instituted the suit. Thus, the plaint averments, if read as a whole, would give an impression that the endorsement under Ex.A2 was projected only to save the period of limitation to file the suit. In such circumstances, the written submissions filed by the first Defendant is found acceptable.

23. The endorsement alleged to have been made by the first Defendant has not been proved as per the provisions of Indian Evidence Act. When the first Defendant in the suit had disputed the endorsement made by stating that it is not his signature or thumb impression, the same was sent to the Forensic Expert not at the instance of the Plaintiff but at the behest of the first Defendant. The Forensic Expert had sent a report stating that they were unable to decipher the thumb impression as the same was smudged. Further, for proof of endorsement under Ex.A2, the Plaintiff has not examined any witness. Therefore, it can safely be concluded that the endorsement under Ex.A2 has not been proved. When the endorsement under Ex.A2, is not proved by the Plaintiff, the consequential effect is that the plaint has been filed



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beyond the period of limitation of three years and it is not maintainable. To get over the question of limitation, the Plaintiff had stated that the first Defendant had paid Rs.1,000/- and made endorsement on the back side of the promissory note. However, such endorsement has not been proved. Therefore, the grant of decree by the trial Court and confirmation of the same by the first Appellate Court are found erroneous. In the light of the above discussion, the substantial question of law framed in this appeal for consideration, is answered in favour of the Appellants/Defendants and against the Respondent/Plaintiff.

In the result, **this Second Appeal is allowed** with costs throughout. The judgment and decree dated 18.09.2012 passed in A.S. No. 6 of 2012, on the file of the learned Principal District Judge, Namakkal confirming the judgment and decree dated 15.07.2011 in O.S.No.377 of 1997 on the file of the learned Sub Judge, Namakkal are set aside. Consequently, connected miscellaneous petition is closed.

06-06-2025

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

shl/srm



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To

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



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SATHI KUMAR SUKUMARA KURUP, J.

shl/srm

Judgment made in
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