



S.A.No.583 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.08.2025
Pronounced on	14.11.2025

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.583 of 2019

S. Karunanithi

...Appellant

Vs.

M. Sekar

...Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 26.02.2019 passed in A.S. No.28 of 2017, on the file of the Principal District Court, Tiruvannamalai, reversing the Judgment and decree dated 14.09.2016 passed in O.S.No.305 of 2012, on the file of the Principal Subordinate Court, Tiruvannamalai.

For Appellant : Mr. V. Prakash Babu

For Respondent : Mr. K. Govi Ganesan

JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 26.02.2019 passed in A.S. No.28 of 2017, on the file of the



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Principal District Court, Tiruvannamalai, reversing the Judgment and decree dated 14.09.2016 passed in O.S.No.305 of 2012, on the file of the Principal Subordinate Court, Tiruvannamalai.

2. The appellant is the defendant in O.S. No.305 of 2012 on the file of the Principal Subordinate Court, Tiruvannamalai. The respondent/plaintiff filed the said suit for recovery of money based on the promissory note dated 15.11.2009 executed by the appellant/defendant in his favour for a sum of Rs.3,00,000/- payable with interest at the rate of 12% per annum with costs.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

4. The plaintiff's case is that, the defendant executed a promissory note for Rs.3,00,000/- on 15.11.2009 agreeing to repay the same with interest at the rate of 24% per annum. In spite of repeated demands made by the plaintiff, the defendant failed to repay the said amount. Hence, the



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present suit.

5. The claim of the plaintiff was resisted by the defendant stating that the suit promissory note is a fabricated document and that the plaintiff has no capacity to lend money to the defendant. The scribe and the attestors are the close associates of the plaintiff. One Sivabalan had filed a suit in O.S. No.323/2012 on the basis of a promissory note executed by the plaintiff's brother Murugan for Rs.1,50,000/- on 17.04.2010 and prior to the filing of the said suit, the said Sivabalan issued a legal notice on 20.09.2012 for which the said Murugan replied on 06.10.2012 with false allegations. In the reply notice, it is alleged that this defendant was doing cable TV business and that he approached Murugan during November 2009 for a loan of Rs.3,00,000/- and at the request of Murugan, his brother the plaintiff herein gave a sum of Rs.3,00,000/- to the defendant for which he executed a pro-note on 15.11.2009. The above allegations are concocted for the purpose of the present case. There is no need for the defendant to borrow such a huge amount from the plaintiff. The suit pro note is created at the instigation of



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plaintiff's brother Murugan to defraud the defendant. The defendant is working as a conductor in the Transport Corporation and never conducted cable TV business. He would further submit that the suit is barred by limitation. Hence, prayed for dismissal of the suit.

6. On the basis of the materials on record, the trial court dismissed the suit against which the plaintiff preferred the appeal suit in A.S. No.28 of 2017 on the file of Principal District Court, Thiruvannamalai. The first appellate court reversed the decree and judgment of the trial court and decreed the suit in favour of the plaintiff. Challenging the same the present Second Appeal is filed by the defendant.

7. The learned counsel for the appellant would submit that the first appellate court failed to consider that the suit promissory note bears the Tamil date as "Sarvathari Year Masi month 3rd day' which corresponds to 15.02.2009 and thus the suit is barred by limitation. His further contention is that the suit was filed with deficit court fee and no notice was served on the defendant in the time extension petition. He would



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further submit that the defendant was a conductor in the Government bus at the time of alleged execution of promissory note and that the attesor and scribe of the document examined on the side of the plaintiff are closely associated with the plaintiff and no independent attesor was examined. The plaintiff failed to prove due execution of the promissory note and passing of consideration. The first appellate court failed to consider the above facts in a proper manner and erroneously decreed the suit in favour of the plaintiff which calls for interference by this Court.

8. On the other hand the learned counsel for the respondent / plaintiff would submit that the plaintiff has sufficiently proved the execution of the promissory note and passing of consideration with tangible evidence. The first appellate court has rightly taken into consideration the English date mentioned in the promissory note and concluded that the suit is well within time. The first appellate court understood the concept of Section 149 CPC and rightly held that the trial court has misunderstood the above provision which ended in miscarriage of justice. Hence prayed for dismissal of the Second Appeal.



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10. According to the plaintiff, the defendant has borrowed a sum of Rs.3,00,000/- under the suit promissory note. The defendant has set up a defence contending that in the suit promissory note it is mentioned as, “சர்வதாரி வருடம் மாசி மாதம் 3 ஆம் தேதி “ , which corresponds to 15.02.2009 and thus the suit is barred by limitation. It is not in dispute that, the English date in the suit promissory note is mentioned as 15.11.2009. The first appellate court has held that since the promissory note is in English, the English date is taken into consideration at the time of filing the suit. Since the defendant failed to prove the contra, it has to presumed that the suit promissory note was executed only on 15.11.2009.

11. The next contention of the defendant is that the suit was filed with deficit court fee and extension of time was granted under Section 149 CPC without giving notice to the defendant. Hence, he would submit that the suit was not filed within time limit with correct court fee and therefore the same is barred by limitation. However, the first appellate



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court placing reliance on the judgment reported in **2011 (3) MLJ Page 1037 (P.Kumar v. Sanjay Agarwal)** has rightly held that even without filing an application under Section 149 CPC seeking extension of time for paying deficit court fee, it is not fatal to the case and it is the discretionary power of the Court to grant extension of time, hence the suit is not barred by limitation. No perversity or infirmity is found in the said findings of the first appellate court.

12. As rightly pointed out by the first appellate court the plaintiff has clearly established the factum of execution of suit promissory note by examining the attestor and scribe of the document and about the defendant subscribed his signature on the promissory note. Therefore, when execution of pronote is proved, the legal presumption would arise that consideration was passed. Whereas, the defendant failed to establish that the signature found in the suit promissory note is a forged one. In fact, the evidences of the attestor and the scribe was not rebutted by the defendant.



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13. In the light of the above, it is evident that the defendant has not discharged the onus placed upon him that the suit promissory note was not executed by him and the same is not supported by consideration. In such view of the matter, the arguments put forth by the learned counsel for the appellant / defendant cannot be countenanced. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal.

14. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The judgment and decree dated 26.02.2019 passed in A.S. No.28 of 2017, on the file of the Principal District Court, Tiruvannamalai, is upheld.

14.11.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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To

1. The Principal District Judge, Tiruvannamalai
2. The Principal Subordinate Judge, Tiruvannamalai.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
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Pre delivery Judgment in
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