



A.S.No.221 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date :14.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.221 of 2022

Basheera Gani

... Appellant

Versus

Usha

... Respondent

PRAYER : This Appeal Suit has been filed under section 96 read with Order XLI Rule 1 of Code of Civil Procedure to set aside the judgment and decree dated 27.01.2021 made in O.S.No.106 of 2013 on the file of the IV Additional District Judge, Tiruvallur at Ponneri.

For Appellant : Mr.E.Prabu

For Respondent : D.Gopinathan

JUDGMENT



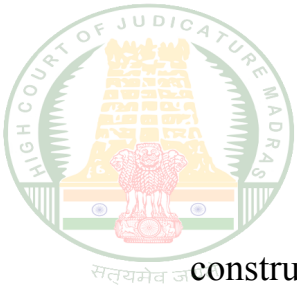
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Challenge has been made against dismissal of the suit filed by the plaintiff for recovery of money, in the present appeal.

2. The parties are arrayed as per their own ranking before the trial Court.

3. The plaintiff filed the suit for recovery of a sum of Rs.12,88,125/- with subsequent interest at the rate of 15% per annum on the principal sum of Rs.9,00,000/- from the date of filing of the suit till its realization and to pay the cost of the suit. The case of the plaintiff is that she was selling clothes and organizing chits and also used to lend money for interest to trusted people. The defendant is her neighbor. She has also participated in a chit organized by the plaintiff. At the initial stage, the defendant was honest and prompt in her transaction with the defendant. The defendant purchased the property in which she was residing in the year 2003. Thereafter, further construction has also been made by the defendant. The defendant raised loan from the bank and also from third parties for putting up



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construction. The defendant agreed to sell two cents of land at Vembakkam at the rate of Rs.3,50,000/- per cent. As the defendant is the most trusted lady at that time, the plaintiff did not get any receipt for the amount. Similarly, the defendant has also raised a loan of Rs.2 lakhs from Panchatcharam Mudaliar of Ponneri and requested the plaintiff to stand as a surety. The plaintiff also executed a promissory note and the plaintiff had to settle the amount to the said Panchatchara Mudaliar as she stood as a surety to the defendant. To settle the said amount, the defendant has issued a cheque bearing No.877177 dated 26.07.2010 for a sum of Rs.9,00,000/-. When the said cheque was presented for encashment, the same was dishonoured on ground of 'insufficient funds'. Since, the plaintiff got oral information about dishonor of cheque, the plaintiff had lodged a complaint before the police station stating that the defendant has to pay a sum of Rs.6,25,000/- However, as the amount has not been paid, the present suit has been filed.

4. According to the defendant, she is a headmistress in a Government High School. The plaintiff is her neighbor. The plaintiff is running an unregistered chit and lending money to third parties. The defendant also joined the chit for Rs.1,00,000/- and monthly subscription payable is 2000/- for



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50 months. The defendant became a successful bidder from the fourth month and signed some documents. This has happened in the year 2005 and 2006.

Similarly, the defendant was also subscriber of various other chits and the plaintiff kept other documents as a security for the same. The plaintiff introduced instalments scheme for buying gold ornaments for which the defendant introduced many of her co-employees. The co-employees after getting the gold suspected the gold and returned the same to the defendant. The defendant has paid the monthly instalments regularly. Whereas, the plaintiff has claimed a sum of Rs.3,33,000/- to close the account. The defendant has also lodged a complaint with the Inspector of police, Ponneri and during enquiry, the defendant was forced to give a letter of undertaking to sell her house. Hence, disputed the suit claim.

5. On the basis of the above pleadings, the following issues have been framed for consideration in the suit :

1. Whether the plaintiff is entitled to claim Rs.12,88,125/- with subsequent interest from the defendant as claimed in the suit?



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2. Is it correct that no consideration has been given by the plaintiff to the defendants over the suit document?

3. Whether the suit is bared by limitation?

4. To what other relief?

6. On the side of the plaintiff, plaintiff examined herself as P.W.1 and Ex.A.1 to Ex.A.8 marked. On the side of the defendant, defendant examined herself as D.W.1 and Ex.B.1 to B.4 have been marked. However, the trial Court has dismissed the suit mainly on the ground that Ex.A.2 to A.5 have been obtained in the police station and factum of running chit by the plaintiff has been established.

7. The learned counsel appearing for the appellant would submit that the trial Court has not considered fundamental facts with regard to the promissory note and has dismissed the entire suit. In fact, the defendant has admitted issuance of cheque, but contended that it is towards chit transaction. However, the defendant has not proved the fact that the cheque was issued only in a chit transaction.



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8. It is further contended by the appellant that once a cheque has been issued, the burden lies on the defendant to prove that the cheque has not been issued towards discharge of any debt and it has been issued only as a security for some other transaction, which has not been done so. Further, Ex.B.3 is nothing but the First Information Report given by the defendant. In the said First Information Report, she herself has clearly stated that the plaintiff has pledged the gold ornaments and the defendant utilized the same for construction of her house. These facts and admission of D.W.1 clearly shows that there were several transactions. Once a cheque has been issued and it was admitted that there were several transactions, legal presumption will automatically apply to the cheque. Hence, submitted that the trial Court is wrong in dismissing the suit.

9. Whereas the learned counsel appearing for the respondent would contend that trial Court has clearly recorded the fact that Ex.A.2 and A.5 have been obtained in the police station out of coercion. That apart, the alleged cheque has been issued in a chit transaction in the year 2006. The suit has



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been filed only in the year 2013, which is barred by limitation and also passing of consideration has not been established. The defendant has dislodged the legal presumption. Hence, submitted that the judgment of the trial Court is well balanced and does not require any interference. In support of his contentions relied on the following judgments :

1. **G.Prankajakshi Amma and others Vs. Mathai Mathew [D] through LR**s and another reported in **2004 12 SCC 83**
2. **Sri Dattatraya Vs. Sharanappa** reported in **2024 5 Supreme 671**
3. **M/s.Chinthamani Foods & Feeds [P] Limited Vs. D.Chandrasekar** reported in **2017 2 MLJ [CrI] 42**
4. **M.A.Nachimuthu Vs. N.Ravichandra** reported in **2007 2 MLJ [CrI] 1684**

10. In the light of the above submissions, the following point arises for consideration in this appeal :

1. Whether the suit cheque is supported by consideration?
2. Whether the defendant has dislodge the the legal presumption attached to the cheque?



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11. Points 1 & 2 :

It is the specific case of the plaintiff that the defendant being a neighbor, gained confidence and trust with her. The fact that parties are neighbours is not disputed. It is the specific case of the plaintiff that the defendant for the purpose of construction of the building tried to mobilize funds by offering sale of two cents of her land to the plaintiff at the rate of Rs.3,50,000/- per cent. The plaintiff agreed to purchase the property and paid the advance amount. Since the defendant is very close and she is a neighbor, no documents came to be executed. Further, it is the case of the plaintiff that the defendant has also borrowed a loan from Panchatcharam Mudaliar for which the plaintiff stood as a guarantor and that loan has been cleared by the plaintiff. According to plaintiff, towards entire transaction, the defendant issued a cheque dated 26.07.2010 for a sum of Rs.9,00,000/-. Hence, the suit claim.

12. Whereas, disputing the borrowal, it is the contention of the defendant in the written statement that the blank cheques have been issued

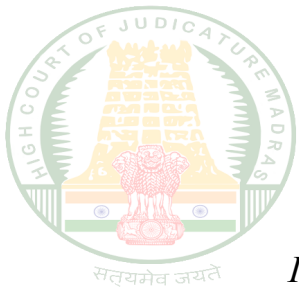


during the chit transaction in the year 2007. Besides, she had also purchased gold from the plaintiff and sold it to her co-employees. However, disputed the suit claim.

13. Though it is the stand of the defendant that the cheque has been issued only in a chit transaction in the year 2005 or 2006 or 2007, whether the defendant has joined the chit transaction has not been established. Once, a person has admitted issuance of cheque, even a blank cheque, the burden lies on him to discharge the legal presumption. It is relevant to note that a cheque remains as a bill of exchange, till it gets filled and the drawee is entitled to fill the cheque. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court in the case of *Bir Singh vs. Mukesh Kumar* reported in (2019) 4 SCC 197, which reads as follows:

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable



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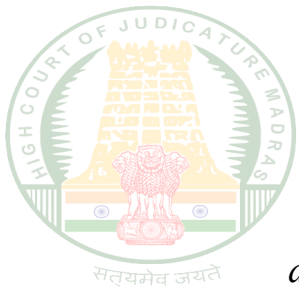
Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

14. It is also relevant to note that the Hon'ble Supreme Court in the case of *Kundan Lal Rallaram vs. The Custodian, Evacuee Property Bombay* reported in *AIR 1961 SC 1316* has dealt with as to how the burden has to be discharged by the parties based on the Negotiable Instruments Act. The relevant paragraph reads as follows:

5. This section lays down a special rule of evidence applicable to negotiable instruments. The presumption is one of law and thereunder a court shall presume, inter alia, that the negotiable instrument or the endorsement was made or endorsed for consideration. In effect it throws the burden of proof of failure of consideration on the maker of the note or the endorser, as the case may be. The question is, how the burden can be discharged? The rules of evidence pertaining to burden of proof are embodied in Chapter 7 of the Evidence Act. The phrase "burden of proof" has two meanings — one the burden of proof as a matter of law and pleading and the other the burden of establishing a case; the former is fixed as a question of law on the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduces sufficient evidence to raise a presumption in his favour. The evidence required to shift the burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by opposite party; it may comprise circumstantial evidence or presumptions of law or fact. To illustrate how this doctrine works in practice, we may take a suit on a promissory note. Under Section 101 of the Evidence Act, "Whoever desires any court to give judgment as to



any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist”. Therefore, the burden initially rests on the plaintiff who has to prove that the promissory note was executed by the defendant. As soon as the execution of the promissory note is proved, the rule of presumption laid down in Section 118 of the Negotiable Instruments Act helps him to shift the burden to the other side. The burden of proof as a question of law rests, therefore, on the plaintiff; but as soon as the execution is proved, Section 118 of the Negotiable Instruments Act imposes a duty on the court to raise a presumption in his favour that the said instrument was made for consideration. This presumption shifts the burden of proof in the second sense, that is, the burden of establishing a case shifts to the defendant. The defendant may adduce direct evidence to prove that the promissory note was not supported by consideration, and, if he adduced acceptable evidence, the burden again shifts to the plaintiff, and so on. The defendant may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling, the burden may likewise shift again to the plaintiff. He may also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act. Under Section 114 of the Evidence Act, “The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case”. Illustration (g) to that section shows that the court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. A plaintiff, who says that he had sold certain goods to the defendant and that a promissory note was executed as consideration for the goods and that he is in possession of the relevant account books to show that he was in possession of the goods sold and that the sale was effected for a particular consideration, should produce the said account books, for he is in possession of the same and the



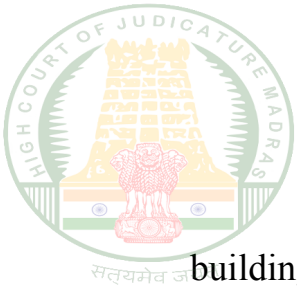
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defendant certainly cannot be expected to produce his documents. In those circumstances, if such a relevant evidence is withheld by the plaintiff, Section 114 enables the court to draw a presumption to the effect that, if produced, the said accounts would be unfavourable to the plaintiff. This presumption, if raised by a court, can under certain circumstances rebut the presumption of law raised under Section 118 of the Negotiable Instruments Act. Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or presumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law.

Therefore, it is for the defendant to establish that there is no consideration at all.

15. It is also relevant to note that though allegations have been pressed into service with regard to filing of the complaint and it is also alleged that Ex.A.2 and Ex.A5 have been obtained in the police station, the fact remains that the very First Information Report Ex.B.3 filed by the defendant, wherein she has admitted that she has issued a cheque in a chit transaction. That apart, she has also admitted that around 100 sovereigns of gold of the plaintiff has been pledged and the money has been utilized for the construction of the



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building by the defendant. Thereafter, it is agreed between the parties that the defendant will pay the interest of Rs.18,000/- per month. The First Information Report given by the defendant clearly indicate that there were several transactions between the parties. The fact that after pledging the gold, the amount has been utilized for construction has also been admitted by D.W.1 in her cross examination. Whereas a complaint has been given by the defendant as if to extract money, a complaint has been given by the plaintiff. She has also admitted that the cheques have been issued only in the year 2003. Whereas, in the written statement, a different stand has been taken as if the cheques have been issued in the year 2005, 2006 and 2007. Therefore, once the evidence of both sides clearly show that there were various transactions between the parties, not only with regard to the chit transaction, but also in other transaction, which resulted in issuance of cheque, merely on the basis of some bald allegations, the legal presumption cannot be dislodged.

16. In Ex.B.3 it is admitted by the defendant that she has to pay a sum of Rs.3,70,000/-. When the evidence of D.W.1 is scanned, this Court is of the view that there were several transactions in respect of which the cheque came



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to be issued. Therefore, though the plaintiff has not clinchingly established the factum of payment on a particular day, the evidence of the parties, particularly the admission of the defendant will probabalize the case of the plaintiff that since the parties are very close and neighbours, initially no sale agreement was executed for sale of two cents by the defendant. However, later cheques have been issued. There was no necessity, whatsoever, for issuance of cheque and keep silent from the year 2006. If really, the defendant has discharged entire amount, only under Ex.B.3 for the first time, a complaint has been lodged as if the plaintiff demanded more amount in the year 2011. The very admission made in her own complaint makes it clear that she owe money to the plaintiff. Therefore, once issuance of cheque is admitted, still the presumption available under section 139 and 118 of the Negotiable Instruments Act will lean in favour of the plaintiff. This aspect has not been considered by the trial Court.

17. The evidence of D.W.1 clearly probabalize the case of the plaintiff that the cheque has not been issued in respect of the chit transaction, but in some other transaction. The very admission of the defendant that she utilized the gold ornaments of the appellant and pledged the gold ornaments and used



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that money for construction activity, clearly show that the cheque is supported by consideration. Hence, the judgments relied by the defendant are not applicable to the facts of the present case. In such view of the matter, this Court is of the view that the judgment of the trial Court dismissing the suit merely on the ground that the documents have been obtained in the police station, require interference. The points are answered accordingly.

18. In the result, this Appeal suit is allowed and the judgment and decree of the trial Court in O.S.No.106 of 2013 dated 27.01.2021 is set aside and the suit is decreed as prayed for with costs. Considering the nature of transaction, interest shall be at the 6% from the date of cheque till the date of realization.

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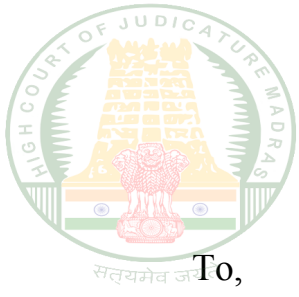
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To,

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The IV Additional District Judge,
Thiruvallur at Ponneri.



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N. SATHISH KUMAR, J.

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