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S.A.No.1232 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.06.2025
Pronounced on	30.06.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.1232 of 2019

S. Arichandran

...Appellant

Vs.

Soundarajan

...Respondent

Prayer: This Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, praying to set aside the decree and judgment dated 28.01.2019 in A.S. No.22 of 2015 on the file of the Principle Sub-Ordinate Judge Court, Coimbatore, and thereby confirm the decree and Judgment dated 04.02.2015 in O.S.No. 1450 of 2009 on the file of the III Additional District Munsif Court, Coimbatore.

For Appellant : Mr. A. Deivasigamani

For Respondent : Mr.V.K. Vengadesh Durai Raja
for Mr. Deepan Uday



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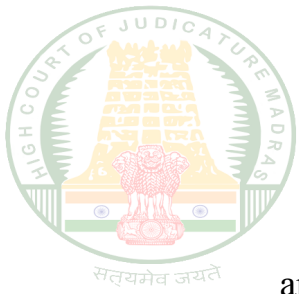
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JUDGMENT

Challenge in this Second Appeal is made to the judgment and decree dated 28.01.2019 passed in A.S. No.22 of 2015 on the file of the Principle Sub-Ordinate Court, Coimbatore, reversing the judgment and decree dated 04.02.2015 passed in O.S.No. 1450 of 2009 on the file of the III Additional District Munsif Court, Coimbatore.

2. In this Second Appeal, the following substantial questions of law have been raised in the memorandum of appeal.

- i. Can the lower Appellate Court, ignore vital and important evidence and come to a conclusion without scrutinizing the evidence and such a conclusion is against law and facts?
- ii. Whether the judgment and decree passed by the Trial Court needs to be interfered by the Lower Appellate Court in the absence of evidence of D.W.1?
- iii. Can the Lower Appellate Court reverse the findings given by the Trial Court contrary to the evidence on record?
- iv. Whether the Lower Appellate Court considered the issue of



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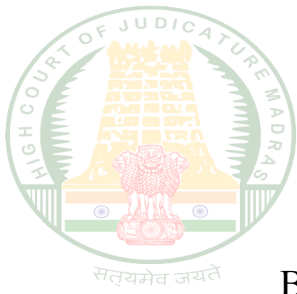
appointment of Power of Attorney (DW2) as per the provisions of Order 3 Rule 2 of C.P.C. and the adequacy of the evidence of D.W.2?

- v. Can the Lower Appellate Court turn down finding given by the Trial Court concluding the FIR as a circumstantial evidence and not as a conclusive proof?
- vi. Whether the Lower Appellate Court misconstrued the Exh.PW2 and Exh.PW4 in the absence of overwhelming evidence on the side of the respondent/defendant?

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

4. Suffice to state that the plaintiff had laid the suit against the defendant for the following reliefs.

- a. Declaration declaring the cheque No.034556, 034557, 034568 to 034575 pertaining to State Bank of Travancore signed but blank in other aspects, cheques pertaining to savings account bearing No. 548902010002095 of Union



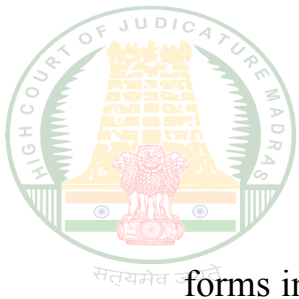
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Bank of India signed but blank in other aspects, a Pronote signed but blank in other aspects, white sheet signed but blank in other aspects, conquer paper signed but blank in other aspects, belonging to the plaintiff and in the unlawful custody of the defendant as null and void, invalid and not binding on the plaintiff.

b. Permanent injunction restraining the defendants, their men, agent, servants and any person claiming through them from any manner use the documents against the plaintiff.

5. Briefly stated, the case of the plaintiff is that the plaintiff is a native of Kumarapuram Village in Virudunagar District. The defendant is none other than his maternal uncle who is carrying on a business of waste cotton. During his employment with the defendant he was looking after the business as instructed by the defendant. The defendant also started a business in the name and style of 'God Ganesh Traders' and made the plaintiff as the proprietor of the said business. The defendant obtained signatures in several

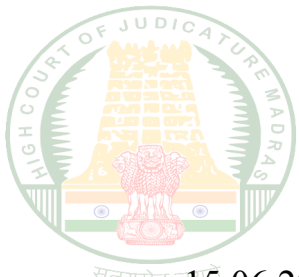


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forms including account opening forms of several banks and opened a current account bearing No. 67005585747 in the name of God Ganesh Traders with State Bank of Travancore, Ramanathapuram Branch, and a savings bank account bearing No. 548902010002095 with Union Bank of India, Peelamedu Branch. Immediately after the bank accounts are opened, cheque books were obtained and the plaintiff was made to sign in all the blank cheques to enable the defendant to draw money using the above cheques. All the pass books and cheque books were under the custody of the defendant.

5.1. Due to difference of opinion, the plaintiff was asked to quit his job by the defendant and thereafter, the plaintiff started his own business. Outraged over this, the defendant kidnapped the plaintiff, forced him to drink and obtained several signatures in the blank documents and let of him. The incident was reported to the police and a case in FIR No. 653/2003 was registered against the defendant and his brother and the investigation is in progress. In the mean time the plaintiff had an apprehension that the blank signed cheques of the 'God Ganesh traders' which are in the custody of the defendant must have been misused by the defendant and as such the plaintiff issued a letter to the Branch Manager, State Bank of Travancore on



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15.06.2009 to stop payment of the cheques in case if those instruments are presented for collection. After knowing the registration of a First Information Report against the defendant for the above offences, the defendant openly threatened the plaintiff that he would take vengeance against him by fabricating and falsely filing case against him by using the documents. Fearing that the documents belonging to the plaintiff such as the blank but signed cheques and others which are in the custody of the defendant may be misused by the defendants, the plaintiff come forward with this suit to declare those documents as null and void, invalid and not binding on the plaintiff. Hence the suit.

6. On the other hand, the case of the plaintiff was resisted by the defendant contending that since the defendant did not get and possess any blank cheques signed by the plaintiff in the name of God Ganesh Traders, the question of misusing the same by the defendant did not arise. The apprehension of the plaintiff is baseless. The defendant is unaware of the alleged letter dated 15.06.2009 by the plaintiff to the State Bank of Travancore. It is false to state that the defendant, after registration of FIR ,



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threatened the plaintiff that he would take vengeance by fabricating documents and filing false case. The declaration sought for, therefore, is unwarranted. There is no necessity for injunction against the defendant. The defendant did not obtain any blank cheques and documents allegedly signed by the plaintiff. There is no cause of action for the plaintiff to file the suit. Hence the suit is to be dismissed.

7. Based on the above pleadings, following issues have been framed in the trial court.

1. Whether the plaintiff is entitled for the relief of declaration as sought for?
2. Whether the plaintiff is entitled for the relief of permanent injunction as sought for?
3. To what other reliefs the plaintiff is entitled?

8. On the side of the plaintiff the plaintiff examined himself as P.W.1 and marked EX.A1 to A6. On the side of the defendant, D.W.1 and



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D.W.2 were examined and Ex. B1 and Ex.B2 were marked.

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9. Considering the oral and documentary evidence and the arguments advanced by the respective counsel for the parties, the trial Court decreed the suit in favour of the plaintiff. Aggrieved by this, the defendant preferred an appeal in A.S. No.22/2015 before the Principal Subordinate Court, Coimbatore. The First Appellate Court allowed the appeal by setting aside the judgment and decree passed by the trial court in O.S. No.1450/2009 dated 04.02.2015.

10. Aggrieved over the said findings of the First Appellate Court, the present Second Appeal has been preferred by the plaintiff.

11. Mr.A. Deivasigamani, learned counsel for the appellant/plaintiff submits that the First Appellate Court failed to take note of the fact that on 24.05.2009 at about 7.00 p.m, the appellant was kidnapped and compelled to consume alcohol by the respondent/defendant and the respondent/defendant forcibly obtained signature from the appellant in several stamp papers and



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bond papers and also gave life threat to the plaintiff/appellant. Hence the plaintiff lodged a police complaint and FIR was registered on 26.05.2009. Subsequently to the shock of the plaintiff, he received a notice dated 20.06.2009 under Section 138 of the Negotiable Instruments Act, 1881, by misusing the blank cheques signed by the plaintiff, which was obtained from the plaintiff at the time of commencement of business in the name of "God Ganesh Traders". Immediately, the plaintiff filed the suit in O.S. No.1450/2009 to declare the cheques and blank pronotes as null and void and for permanent injunction restraining the defendant from in any manner use the said documents against the plaintiff. Though the suit was decreed in favour of the plaintiff by the Trial Court, the First Appellate Court failed to consider the evidence let in on the side of the plaintiff and erroneously reversed the judgement and decree passed by the trial court. Hence the plaintiff was constrained to file the present Second Appeal.

12. On the other hand, Mr.V.K. Vengadesh Durai Raja, learned counsel appearing for Mr.Deepan Uday, learned counsel for the respondent submits that the defendant, considering his relationship with the plaintiff, has

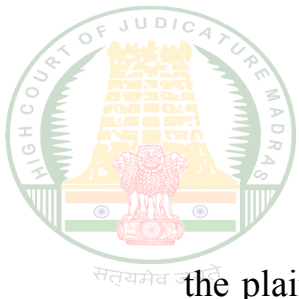


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assigned administrative work to him in his company. After completion of two years, the defendant posted the plaintiff in a key post and trained him in the production activities, purchase techniques and secret of processing. The plaintiff was allowed to handle the transactions of the company, bank dealings, raw material procurements, despatches, etc, and there was a cordial relationship between the plaintiff and the defendant.

12.1. While so, the plaintiff requested the defendant to open a registration under the TNGST and CST Act in his name and permit him to do the business independantly. The defendant bonafidely believed the plaintiff and permitted him to open a separate RC in his name. Accordingly, the plaintiff opened separate RC under the TNGST and CST in the name of "God Ganesh Traders" in the address of the defendant's mill. The plaintiff, under the said RC was dealing in 'God Ganesh Traders' and gradually did not bestow his attention in the work entrusted to him and started misusing the power accorded to him. The plaintiff tendered accounts only for 50% of the transactions. From the year 2003 to 2007, the plaintiff misappropriated a sum of Rs.38,00,000/-. Therefore, the question of obtaining blank cheques from



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the plaintiff is utter false. The plaintiff has lodged a false complaint against the defendant and there is no cause of action to file a suit. Hence, it is submitted by the learned counsel for the respondent that the First Appellate Court rightly set aside the judgment and decree passed by the Trial Court, which requires no interference by this Court.

13. Heard on both side and perused the records.

14. Substantial Questions of Law 1 to 6.

14.1. On a perusal of the judgment and decree of the Trial Court, it is seen that the Trial Court has come to a conclusion based on Ex.A1 FIR and had taken the same as conclusive proof for the case of the plaintiff. Without any corroborative evidence, the Trial Court has straight away taken the version pleaded by the plaintiff and without considering the fact that the FIR was itself came to be registered based on the statement given by the plaintiff. Therefore, the conclusion arrived at by the Trial Court based on the FIR has no significance and the Trial Court erred in decreeing the suit.

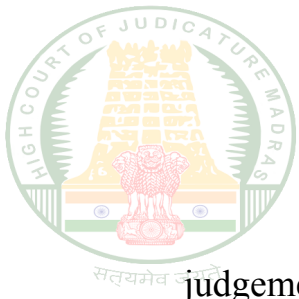


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14.2. Moreover, in the letter dated 15.06.2009 marked as Ex.A2 given by the plaintiff to the banker, it is specifically stated by the plaintiff that the alleged cheques were misplaced, where as in Ex.A4 letter dated 29.05.2009 sent by the plaintiff to the Commercial Tax department, it is stated that RC form was misplaced. The above mentioned letters were sent by the plaintiff after registering the alleged FIR dated 26.05.2009 in which the plaintiff has stated that the abovesaid documents were taken by the defendant under threat. The Trial Court has failed to take note of the contradictory version in each of the above documents and also erred in giving a finding without any basis that the alleged FIR is proved. Moreover, the Trial Court erroneously came to a conclusion that the cause of action for filing the suit is proved by the plaintiff based on Ex.A3 notice sent by the plaintiff which was suitably replied by the defendant vide letter dated 01.07.2009 (Ex.A5).

14.3. Admittedly an FIR cannot be a conclusive proof and there is no corroborative evidence available with the plaintiff to establish that the plaint mentioned documents are available with the defendant. Hence, the findings of the Trial Court is based only on presumptions and hence the



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judgement and decree passed by the trial court was rightly set aside by the First Appellate Court. Further, the findings arrived at by the First Appellate Court is based on the factual aspects and therefore, I am of the considered opinion that no substantial question of law has arisen in this appeal.

15. In view of the above discussions, the present Second Appeal is dismissed. The judgment and decree dated 28.01.2019 passed in A.S. No.22 of 2015 on the file of the Principle Sub-Ordinate Court, Coimbatore, reversing the judgment and decree dated 04.02.2015 passed in O.S.No. 1450 of 2009 on the file of the III Additional District Munsif Court, Coimbatore, is confirmed. No costs.

30.06.2025

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

13/15



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To

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1. The Principle Sub-Ordinate Judge, Coimbatore.
2. The III Additional District Munsif, Coimbatore.
3. The Section Officer, VR Section, High Court, Madras



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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-delivery Judgment made in

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30.06.2025