



S.A.No.535 of 2016

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. 535 of 2016

K. Devaraj

.. Appellant

Versus

K. Rangasamy

.. Respondent

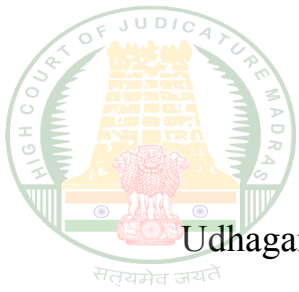
Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 06.01.2016 made in A.S.No.44 of 2013 on the file of the learned Sub Judge, Udhagamandalam reversing the Judgment and Decree dated 27.09.2013 made in O.S.No.98 of 2007 on the file of the learned District Munsif, Udhagamandalam.

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

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

J U D G M E N T

This Second Appeal had been filed to set aside the Judgment and Decree dated 06.01.2016 made in A.S. No. 44 of 2013 on the file of the learned Sub Judge, Udhagamandalam reversing the Judgment and Decree dated 27.09.2013 made in O.S. No. 98 of 2007 on the file of the learned District Munsif,



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Udhagamandalam.

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2. The brief averments in the Plaint are as follows:-

The Defendant approached the Plaintiff for financial assistance and on 23.04.2004, the Plaintiff paid a sum of Rs.50,000/- to the Defendant. Upon receipt of the said amount, the Defendant executed a promissory note and promised to pay the Plaintiff, on demand, the sum of Rs.50,000/- with interest at 24% p.a. However, the Defendant failed to pay the amount to the Plaintiff in spite of repeated demands and hence, the Plaintiff issued a legal notice on 28.04.2005 to the Defendant calling upon him to pay the amount. The Defendant received the said notice, but did not issue any reply thereof. Therefore, the suit was filed for recovery of Rs.84,660/- representing Rs.50,000/- towards principal and Rs.34,660/- towards interest.

3. The brief averments in the written statement are as follows:-

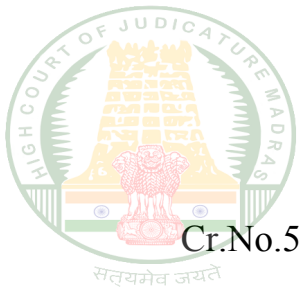
The Defendant has denied the execution of the promissory note in favour of the Plaintiff as well as the receipt of Rs.50,000/- as loan. The Plaintiff and Defendant are brothers, but the Plaintiff has not even disclosed such relationship in the Plaint. The Plaintiff is the youngest brother of the Defendant and he was working as an ordinary staff in Hotel Vasantham at Charring Cross run by the brother-in-law of the Plaintiff and Defendant during the year 1996 and 1999. During the said period, the Defendant and his wife



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used to help financially his brother-in-law Mr. Easwaran to run the Hotel business. In the course of the said financial help to his brother-in-law, the Defendant out of good faith used to part with blank signed promissory notes, cheque leaves for emergency payment, for the Hotel business which was usually kept in the cash box. The Plaintiff who was having access to the cash box had taken away few blank signed promissory notes and cheques signed by the Defendant, misused the same after a lapse of several years due to previous and existing enmity. No consideration was passed at any point of time from the Plaintiff to the Defendant and hence there is no scope for executing the alleged promissory note. Further, there was no source for the Plaintiff to advance the alleged money and there is no necessity for the Defendant to borrow money from the Plaintiff. The Defendant was working in a Government Unit and was drawing a comfortable monthly salary of Rs.15,000/- per month. The relationship between the Defendant and his family with the Plaintiff strained as early as 2000 itself as the Plaintiff wanted to take over the entire Hotel business. Since then the Defendant is not in talking terms with the Plaintiff. On a Complaint given by the wife of the Defendant on 11.01.2003, a criminal case was registered in Cr.No.13/2003 for the offences punishable under Sections 75 and 354 IPC and the Plaintiff was prosecuted by the State. The Plaintiff and another brother of the Defendant indulged in criminal assault of the Defendant and on a Complaint given on 08.04.2003 a case in



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Cr.No.53/2003 was registered by the Ketti Police for the offences under

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Sections 341 and 323 of IPC against the Plaintiff and his brother one K.Ramachandran and ultimately they were convicted by paying a fine of Rs.500/-. While so, there was no scope either for the Plaintiff to advance money to the Defendant or for the Defendant to execute the alleged promissory note. The Plaintiff, has misused another blank signed promissory note of the Defendant and filed similar Suit before the Sub Court in O.S. No.36 of 2007 for a sum of Rs.1,00,000/- on 20.04.2004. The Plaintiff has filed this Suit by misusing an old blank promissory note signed by the Defendant which was taken away from the same cash box of Hotel Vasantham several years back. Hence, the Suit is liable to be dismissed with exemplary costs.

4. The trial Court framed the following framed in the suit for consideration and they are:

- (i) Whether the Plaintiff is entitled for recovery of money of Rs.84,660/- as prayed for?
- (ii) Whether no consideration passed against the Defendant?
- (iii) To what other relief?

5. During trial, on the side of the Plaintiff, he examined himself as PW-1 and brothers of the Plaintiff 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 Exs. B-1 to Ex.B-5 were marked.

6. On perusal of the records and after hearing both sides, the learned District Munsif, Udhagamandalam decreed the Suit in O.S. No. 98 of 2007. Aggrieved by the same, the Defendant preferred A.S. No. 44 of 2013 before the learned Sub Judge, Udhagamandalam. On hearing the argument of the learned Counsel for the Plaintiff and Defendant, the learned Sub Judge, Udhagamandalam allowed the Appeal and reversed the judgment and decree passed by the trial Court. Therefore, the Plaintiff is before this Court with this Second Appeal.

7. At the time of admission of this Second Appeal, this Court formulated the following substantial questions of law for consideration and they are:-

(i) Whether the Court is justified in giving finding which is not the case of either the Plaintiff or Defendant?

(ii) Whether filling up of a blank promissory note in which Defendant has affixed his signature is not illegal and it will become a inchoate document which is a valid promissory note under Section 20 of Negotiable Instruments Act?

(iii) When the Court gives a finding that the Suit promissory note contain the true signature of the Defendant. Whether the



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Court is justified in holding that is it not valid?

(iv) Whether the earlier dispute between the parties will disprove the truth of Suit promissory note especially when his signature found in promissory note is admitted by the Defendant himself?

(v) Whether the trial Court as well as the first Appellate Court failed to draw the presumption under Section 118 of the Negotiable Instruments Act?

8. The learned Counsel for the Appellant invited the attention of this Court to the cross-examination of P.W-1 in O.S.No.36 of 2007 and O.S.No.98 of 2007. In the last three lines in the cross-examination he has stated as follows:

“கடிதம் பி.வா.ஆ.2 எந்த தும்நிலையில் எழுதினேன் என்று நினைவு இல்லை. 2002ம் ஆண்டு பிரதிவாதியின் மகளுக்கு திருமணம் நடந்த போது எங்களுக்குள் கமக உறவு இருந்தது என்றும் திருமணத்திற்கு நான் போனேன் என்றால் சரிதான். 2003ம் ஆண்டு முதல் எங்களுக்குள் கமக உறவு இல்லை என்றும் ஒருவருக்கொருவர் பேசிக் கொள்வதில்லை என்றும் வீட்டுக்கு செல்வதில்லை என்றும் சொன்னால் தவறு.”

9. In the deposition, P.W-2/Natraj who is the brother of the Plaintiff and Defendant admits that they were in good terms during the marriage of the daughter of one of the brothers. The evidence of P.W-2 is the same in O.S.No.98 of 2007. Further, when the signature in the suit promissory note is admitted, the presumption that it was an enforceable instrument. Further, the



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consideration has been duly paid thereof by the Plaintiff to the Defendant. In fact, even for the pre-suit notice, the Defendant has not chosen to send any reply. If the assertion of the Defendant is true, he could have issued a reply to the notice of the Plaintiff. While so, it is an after-thought for the Defendant to allege that the suit promissory note kept in the cash box in the hotel run by the Defendant was removed by the Defendant to institute the suit. Even for having allegedly removed the cheque leaf, the Defendant did not give any complaint to the police. In any event, the plaint averments have been duly proved by the Plaintiff through oral and documentary evidence. The Plaintiff had examined two witnesses who had deposed in his favour regarding execution of promissory note by the Defendant and passing of consideration to the Defendant. Mere denial by the Defendant will not help to wriggle out from law. It is the contention of the learned Counsel for the Appellant that under in law it is not mandatory to have attesting witnesses for a promissory note.

10. In support of his contention the learned Counsel for the Appellant relied on the Judgment of the this Court in the case of ***R.Pandyan and another vs. M.Palgani*** reported in ***2015 (2) MWN (Civil) 264*** wherein it has been observed as follows:

“18. In ***Bharat Barrel & Drum Manufacturing Co.v. Amin Chand Pyarelal***, 1999 (1) CTC 497 (SC) : 1999 (3) SCC 35, it was held that the Plaintiff, who comes to the Court seeking recovery of money on the foot of a Negotiable Instrument viz., the Promissory Note must prove due execution of the Promissory Note. On his such proving arises the



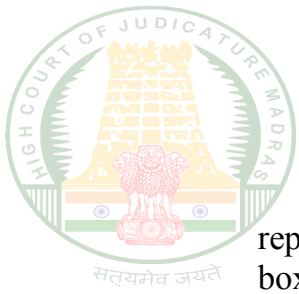
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presumption under Section 118 of the Negotiable Instruments Act. It is a rebuttable presumption. It is a legal presumption. Thereupon the Defendants has to disprove it. He should set up a probable defence. He should show to the Court either by direct evidence or by the circumstances of the case, record of the case the passing of consideration is improbable, doubt or illegal, in the circumstances a reasonable prudent man disbelieve passing of consideration. The duty to prove due execution of Promissory Note is permanently fixed on the Plaintiff. It will not change. It will never change. But disproving of it, is also permanently fixed on the Defendant. It will also not change. Once, the Defendants disproved the legal presumption, then the Plaintiff has to reiterate the execution of Promissory Note. If the Defendants fails to disprove, then the legal presumption arose under Section 118 of the Negotiable Instruments Act will remain as it is. This is the gist of the dictum of Hon'ble Apex Court in the said case.

20. The specific plea in the Plaint is that Defendants 1 & 2, who are brothers have borrowed Rs. 2,00,000/- on 21.2.2002 from the Plaintiff in the presence of Witnesses and they have executed Ex.A1. This is the evidence of PWs. 1 & 2. PW2-Sankar deposed in *extenso* as to the passing of consideration, as to his attesting of Ex.A1 and also spoken about other Witnesses, who were present at the time of execution. What more is expected from the Plaintiff to prove execution, he cannot do any magic. The Trial Court also expected examining other Witnesses such as Radhakrishnan. As per Section 134 of Evidence Act that a fact in issue has to be proved not by number of Witnesses but by the quality of the evidence of witness even it may be by a sole witness. In fact there is no law that the Promissory Note is to be attested by the Witnesses. Even in the absence of the Attesting Witnesses, if the Plaintiff is a sole witness, if he can be believable the Court can safely record a finding as to due execution of Promissory Note in such circumstances the insistence upon the examination of Radhakrishnan to prove the execution of Ex.A1 made by the Trial Court is not a correct approach.

22. Reading the pleadings in the Written Statement of the Second Defendant it is seen that it is stated that they have not executed the Promissory Note. They must specifically deny their signature in Ex.A1. They must challenge that the signatures in Ex.A1 is not of them. The plea must be clear and categorical. It is a material aspect that has to be stated clearly that the signatures in Ex.A1 is not of Defendants 1 & 2. Our reading and understanding of the pleadings in the Written Statement shows that there is no clear cut specific denial from the Defendants that the signatures in Ex.A1 is not of them.

25. The plea that on the date of execution, the First Defendant was not in Dindigul, but in Chennai has been taken by the Second Defendant in his Written Statement. That was not endorsed by the First Defendant. Suit notice has been received by the First Defendant at Dindigul and he



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replied to the Plaintiff at Dindigul. Above all, he must come to the witness box and say that on the date of execution of Ex.A1, he was not at all in Dindigul, but was in Chennai. But he did not do so.”

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11. Relying on the above rulings, the learned Counsel for the Appellant/Plaintiff contend that there is no necessity for a promissory note to be attested by witnesses and if the version of the Plaintiff is believable, then the Court can pass a decree based on the same. The learned Counsel for the Appellant/Plaintiff also relied on the reported ruling in **2014 (1) MWN (Cr.) DCC 49 (Mad.)** in the case of **A.Gunasekaran Vs. P. Velusamy**. In this judgment in Para 5, 7 and 8 relied by the learned Counsel for the Appellant which reads as under:

“5. In the case cited on the side of the petitioner, our High Court dealt with the question as to whether amount advanced under a promissory note for the purpose of celebrating a marriage contrary to the provisions of the **Child Marriage Restraint Act** of 1929, is recoverable. The issue was decided in the light of **Sections 10 and 23** of the Indian Contract Act and under the provisions of the **Child Marriage Restraint Act**. It is held by our High Court that the word 'object' in **Section 23** of the Contract Act was not used in the same sense as 'consideration' but was used as distinguished from consideration and means 'purpose or design'. If then the purpose of the parties was to defeat the provisions of the Bankruptcy Law, there can be no doubt that the assignment or transfer would be inoperative under the provisions of **Section 6** of the Transfer of Property Act. Our High Court by following other judgments, as referred to in the same judgment, observed that if the object of the transfer of the property is immoral, the transfer is void and there cannot be any conveyance of any interest effected by the transfer. The issue raised therein was appreciated in the light of such principle and was ultimately decided that as the act of a guardian or parent in celebrating the marriage of his minor or ward is also against public policy, and as the object of the loan is also to enable the guardian to perform an act contrary to the public policy, the purpose of the borrowing is unlawful within the meaning of **Section 23** of the Indian Contract Act and therefore, the promissory note is not enforceable.

7. There can be no dispute about the legal position laid down in



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the judgments cited on both sides. In the present case, the specific allegation raised in the complaint is that the accused borrowed money for his family expenses and having agreed to repay the amount with interest at 24%pa, executed a pro note for the amount in question. The complainant has also along with the complaint, stated the list of documents, first of which is the xerox copy of the pro note dated 10.5.2007 executed by the accused in favour of the complainant.

8. It is sought to be contended by the learned Counsel for the respondent as the borrowal is supported by pro note, both the provisions of law under the [Money Lenders Act](#) and Tamil nadu Act 38 of 2003 are not applicable to the loan transaction in hand in the present case. This Court finds much legal force in the contention so raised on the side of the respondent. Though an argument is sought to be advanced on the side of the accused that the definition of 'loan' and 'money lender' in this case is different and distinct, this court is not inclined to accept such contention at this stage on the following reasons.”

12. It is the contention of the learned Counsel for the Appellant that the Appellate Court while dismissing the evidence did not consider the evidence available before the Court, but taken note of only the strained relationship between the parties to dismiss the suit. The Appellate Court also did not take note of the fact that the Defendant failed to discharge the burden cast upon him and therefore, the Plaintiff is entitled to Suit claim. The Plaintiff was able to withstand cross-examination regarding where from and how he was able to pay the loan amount to the Defendant. According to the learned Counsel, the Plaintiff's case was rightly accepted by the learned trial Judge and a decree was passed. However, such a well considered decree and judgment of the trial Court was overturned by the first Appellate Court without any basis. Therefore, the learned Counsel for the Appellant-Plaintiff prayed for allowing



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13. Per contra, the learned Counsel for the Respondent submitted that the relationship between Plaintiff and Defendant was not good. While so, it is too hard to conclude that the Defendant would have approached the Plaintiff for a loan and executed the suit promissory note. The suit promissory note has not been signed by any one as a witness or the suit promissory note has not been signed by the Defendant in favour of the Plaintiff for receipt of a loan. Therefore, it must be concluded that there is no consideration much less a legally enforceable consideration received by the Defendant upon signing the suit promissory note. The Defendant is working in a Government Organisation and he has no necessity to borrow loan from the Plaintiff, who is only working as an Assistant in the hotel run by the brother in law. In any event, there were disputes and quarrel between the Plaintiff and the Defendant. The wife of the Defendant also given a complaint against the Plaintiff and criminal prosecution has been launched. While so, the Defendant could neither approach the Plaintiff for a loan nor the Plaintiff paid the loan amount upon execution of a promissory note. The suit for recovery of money based on the suit promissory note is devoid of any merits.

14. The learned Counsel for the Respondent invited the attention of



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this Court to the reported decision in **(2008) 7 SCC 655** in the case of

Mallavarapu Kasivisweswara Rao Vs. Thadikonda Ramulu Firm and others

and submitted that where the Defendant established his defence before the trial Court as per the reported ruling the suit against him for recovery of money has to be rejected. The learned Counsel for the respondent/Defendant also relied on several complaints given each other to show that the parties are not in talking terms at the relevant point of time.

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

16. Perused the records and the Judgment of the learned District Munsif, Udhagamandalam and the Judgment of the Sub Judge, Udhagamandalam.

17. The Plaintiff in O.S.No.98 of 2007 had preferred this Second Appeal. The Plaintiff, as P.W-1, admitted in his cross-examination that there were disputes between him and his brother based on which they were not in talking terms. He also admitted that his sister-in-law, the wife of the Defendant, had preferred a Complaint against him based on which, FIR was registered in Cr.No.13/2003 for offence under Sections 75 and 354 of IPC. He

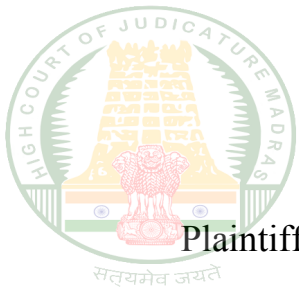


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also admitted that he was sentenced in that case in the Court. The Plaintiff as P.W-1 also admitted that nowhere in the plaint, he had mentioned that the Defendant is his own brother. The Plaintiff as P.W-1 admitted that the Plaintiff and Defendant have only one sister and her husband is running a hotel by name Vasantham in which the Plaintiff as well as the Defendant used to assist him in his business. The suggestion on behalf of the Defendant that the Plaintiff was assisting his brother-in-law Eswaran as an employee of the Hotel was denied by him and claimed that he is the Manager and also partner in the business. In the further cross-examination, when confronted as to whether whether there is any document to prove that Eswaran and the Plaintiff/Devaraj are partners of Hotel Vasantham, he admitted that there is no document.

18. It is the case of the Defendant in the written statement that he is employed as a Technical Assistant in the Central Water and Soil Research Centre and he is earning not less than Rs.15,000/- per month during the relevant period. According to the Defendant, there is no necessity for him to borrow money, that too from the Plaintiff, who is employed in the Hotel run by Eswaran, brother-in-law of the Plaintiff and Defendant. The Defendant clearly stated in the written statement that as a Government Servant, he used to assist his brother financially, therefore he had kept unfilled promissory note, signed by him in the box in the Hotel which was surreptitiously removed by the



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Plaintiff, filled up and filed the Suit. The contention in the written statement was denied by the Plaintiff in his cross-examination, but from the normal human contact, it can be presumed to be the truth. The probability from the defence of the Defendant is that he is a person who is employed in a Central Government job, having a regular salary and therefore, he has no necessity to borrow money from his younger brother employed as helper in the Hotel. This is found to be proper from the normal human contact. Apart from that the promissory note pressed into service as Ex.A-1, promissory note has no witness who had seen the Defendant signing it. There is no signature of any witness whereas a witness by name Ramachandran was examined on behalf of the Plaintiff in O.S. No. 98 of 2007 who in his cross-examination, admitted that he had not signed the promissory note under Ex.A-1 as a witness, but asserted that the Defendant had borrowed money. In the course of the cross-examination, he admitted that the Plaintiff is not in good terms with his brother/Defendant. Also, P.W-2 had quarrel with the Plaintiff based on which Police Complaint was given and subsequently, as both happened to be brothers, the same was amicably settled in the Police Station. He admitted that the Plaintiff filed a Suit in O.S.No. 42 of 1996 claiming that he is the owner of Hotel Vasantham. After full trial, the Suit was dismissed. The evidence of P.W-2 has no evidenciary value considering the fact that there is animosity between the Defendant and the Plaintiff and the Defendant and P.W-2. P.W-2



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admitted that there was a criminal Complaint registered for offence under Sections 341 and 323 of IPC in Cr.No.53 of 2003 based on the Complaint given by the Defendant that P.W-2 attacked him. In the said case, he was found guilty by the Court and fine was paid. The evidence of P.W-2 does not have evidentiary value particularly when he had not signed the promissory note. Further, P.W-2 has no knowledge of the denomination of the amount given as loan, whether in Rs.100 or Rs.500.

19. On perusal of the Judgment, the reasoning by the learned District Munsif decreeing the Suit on the ground that the Defendant had admitted his signature is found to be perverse, in the promissory note. Based on presumption under Section 118 of the Negotiable Instruments Act, the learned District Munsif decreed the Suit by stating that the Defendant had admitted his signature in the promissory note . The District Munsif placed reliance on the decision of the Hon'ble Supreme Court in the case of **Basalingappa Vs. Mudibasappa** reported in **(2019) 5 SCC 418**, the learned District Munsif had decreed the Suit which is found erroneous.

20. Section 118 (g) of the Negotiable Instruments Act is extracted hereunder:-

“(g) that holder is a holder in due course – that the holder of



a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.”

21. Here, the preponderance of probability stated by the Defendant in the written statement is found reasonable from the normal human contact. It is the claim of the Defendant in the written statement that he is employed in Government Service as Technical Assistant in Water and Soil Conservation Department and drawing a regular salary and has no necessity to borrow money from his younger brother, who is working as a helper in the Hotel run by the brother-in-law of the Plaintiff as well as the Defendant. Further, considering the fact that there are criminal cases pending against the Plaintiff as well as P.W-2 and they are not in talking terms with the Defendant, the claim made by the Plaintiff that Defendant borrowed Rs.50,000/- from him is found unbelievable. The learned District Munsif ignored the cross-examination of P.W-1 and P.W-2 while decreeing the suit. Section 20 of the Negotiable Instruments Act reads as follows:-

“20. Inchoate stamped instruments.—

Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so



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signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.”

22. In this case, the Defendant is employed in the Central Government Service as Technical Assistant in Water and Soil Conservation Department and he used to help his brother-in-law financially in running the Hotel. The brother-in-law Eswaran is the younger brother of the Plaintiff and Defendant. The Plaintiff is employed or serving as a helper in the hotel and he had surreptitiously removed the promissory note signed by the Defendant, which is kept in the cash box in the counter of Hotel. The observation by the learned District Munsif that the Defendant had not preferred a Criminal Complaint against his younger brother for having played fraud on him does not auger well. When there is animosity between both and they were not in talking terms itself is sufficient to disprove the case projected by the Defendant. The Plaintiff had instituted the Suit, it is for him to prove that the promissory note was executed by the brother. The fact that the promissory note did not contain the signature of a witness who had seen the transaction is sufficient to prove the preponderance of probability in favour of the Defendant. Merely because the Defendant admitted the signature, it cannot be taken for granted to decree the Suit as per Section 20 of the Negotiable Instruments Act.



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WEB COPY23. A person who works as a help in a Hotel cannot be expected to have better resources than a person employed in Government Service, having regular income. For the business of the Plaintiff and Defendant's brother-in-law when he seeks financial help from third parties, they need a person to stand as a security who is having regular job so that they can recover the amount. Therefore, the defence of the Defendant that he had kept unfilled, duly signed promissory note in the cash box in the brother-in-law's Hotel is found probable from the normal human conduct. It was the Plaintiff who had surreptitiously removed the promissory note to file the Suit against his own elder brother.

24. The Defendant did not reply to the statutory notice but it is not a ground to reject the claim of the Plaintiff. A person who does not have regular income as a help in a Hotel run by his own brother-in-law cannot be expected to have the wherewithal to extend the loan of Rs.50,000/- to the Defendant, particularly, when they are not in good terms which is admitted in the cross-examination of P.W-1 and P.W-2. The Defendant never invited the Plaintiff as well as P.W-2 for any of the family functions and they too did not attend any functions in the family of the Defendant. When that be the case, the claim of the Plaintiff is found unacceptable. The learned District Munsif ignored the circumstances available to appreciate the preponderance of probability in



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favour of the Defendant in the case and erroneously granted a decree based on presumption under Section 118 of the Negotiable Instruments Act. How the promissory note came into existence was explained by the Defendant in his written statement. The claim of the Plaintiff in the Suit gives a presumption in the initial stage regarding execution of promissory note but when the circumstances is analysed from the contents in the written statement, the Plaintiff has to explain it as per Section 118 (g) of the Negotiable Instruments Act. Here, it was not from lawful custody as it was available in the cash box of the Hotel run by the brother-in-law which was surreptitiously removed by the Plaintiff. Therefore, the Plaintiff having filed the Suit had taken upon himself the risk of proof of his own case. By all probabilities, the Suit of the Plaintiff cannot be decreed merely based on presumption against the Defendant. The Plaintiff has to prove that he had the wherewithal to extend loan to the Defendant. Under those circumstances, the Plaintiff claiming to have extended a loan of Rs.50,000/- to the brother who is drawing more or less the same amount as a regular salary through a job in the Central Government organisation as a Technical Assistant is found hard to be believed. Therefore, the finding of the learned Sub Judge is found proper on analysis of the evidence. Therefore, the Judgment of the learned Sub Judge, Udhagamandalam is found proper on appreciation of materials available through the deposition of P.W-1 to P.W-3 and D.W-1 and Ex.A-1 to Ex.A-4 and Ex.B-1 to Ex.B-5.



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25. The learned District Munsif, Udagamandalam had decreed the Suit based on the presumption available under Section 118 of Negotiable Instruments Act and on the ground that the Defendant admitted his signature in the Suit promissory note under Ex.A-1. The learned District Munsif failed to consider that the Plaintiff and the Defendant are brothers. The Defendant is serving in Water and Soil Conservation Department, Government of India at Udagamandalam and drawing regular salary whereas the Plaintiff as the younger brother of the Defendant working as a help in the hotel run by brother-in-law of both Plaintiff and Defendant and they are not on talking terms. Further, there are criminal case pending against each other and that much of evidence available in the cross-examination of the Plaintiff as P.W-1. The contents of the written statement denying passing of consideration, the parties are not on talking terms and the employment of the Defendant in a government organization were not considered by the learned District Munsif. However, in Appeal, the learned Sessions Judge on consideration of the circumstances available dismissed the claim of the Plaintiff even though the Defendant had not disputed the signature in the promissory note.

26. The Plaintiff cannot invoke Section 118 of the Negotiable Instruments Act to seek a decree in this case. He has to independently prove



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that he had enough resources to extend the loan. The initial burden is on the Plaintiff under Section 118 (g) of the Negotiable Instruments Act that the promissory note came into his lawful custody. The contention of the Defendant was that he had kept blank promissory note duly signed to help his brother-in-law run the Hotel business and to avail loan from third party. Since the Defendant has regular Government Job, the party who may grant loan will have sureties and that the brother-in-law of the Defendant will repay the loan. Therefore, the Defendant kept unfilled promissory note in cash counter which was surreptitiously removed by the Plaintiff while working as help in the Hotel. The circumstances available in the cross-examination indicate that the parties are not on talking terms. Under those circumstances, the person who is working as help in the Hotel cannot be expected to have enough resources to lend Rs.1,00,000/- or Rs.50,000/- as claim by the Plaintiff in the suits instituted against the Defendant.

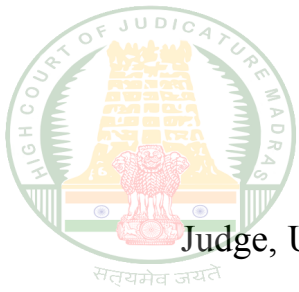
27. In the light of the above discussion, the first Appellate Court, the learned Sub Judge, Udagamandalam is right in giving a finding which is based on the pleadings of the Defendant in the written statement wherein he had clearly stated that he was employed in Government of India and drawing regular salary. Whereas the Plaintiff is working as a help in the hotel run by the brother-in-law of both the Plaintiff and Defendant. Also, the Defendant in



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the written statement had claimed that he is not in talking terms with his brother, the Plaintiff. Also, in the written statement, he stated that there had been criminal cases and Police complaints given by them against each other. Under those circumstances, the relationship between the Plaintiff and Defendant is not cordial and this was put to the Plaintiff when he deposed evidence as P.W-1. In the cross-examination, he admitted the complaints given against each other and the registration of cases. He denied the claim of the learned Counsel for the Defendant that the Plaintiff is working as a help in the hotel run by the brother-in-law of both the Plaintiff and Defendant. While denying the suggestion, he asserts that he is a partner in the hotel. When he was confronted regarding marking of any document to show he is a partner in the hotel along with his brother-in-law, the Plaintiff was unable to furnish any document. Under those circumstances, mere presumption under Section 118 of the Negotiable Instruments Act that the Defendant having admitted his signature cannot be considered that the Plaintiff had resources to extend loan to the Defendant. The learned Sub Judge had, on proper reasoning and on proper analysis of the circumstances mentioned in the evidence of the Defendant, reversed the judgment of the learned District Munsif, Udhagamandalam which she failed to consider and had granted the decree in favour of the Plaintiff ignoring the assessment of evidence from the angle of an ordinary prudent man. Therefore, the judgment of the learned first Appellate Judge, learned Sub

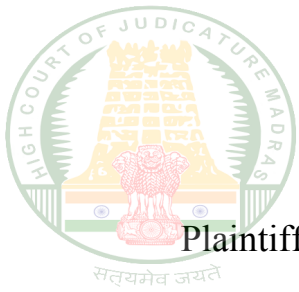


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Judge, Udhagamandalam in A.S.No.44 of 2013 dated 06.01.2016 reversing the judgment of the learned District Munsif, Udhagamandalam in O.S.No.98 of 2007, dated 27.09.2013, is found proper. Accordingly, **the Substantial Question of Law 1 is answered against the Plaintiff in O.S.No.98 of 2007/Appellant herein and in favour of the Defendant/Respondent.**

28. In the light of the above, the affixing of signature on the blank promissory note by the Defendant is not illegal which is inchoate. It is a clear case of the Defendant in the written statement that he had signed blank promissory note and kept it in the cash box of the hotel to help his brother-in-law, who is running the hotel, for availing loan from third parties and as a person in Government service, he takes up the risk of repaying the loan. It is the clear case of the Defendant that the Plaintiff having worked as a help in the hotel of his brother-in-law had surreptitiously removed the blank promissory note and filled it. Therefore, it is for the Plaintiff to prove the initial burden cast upon him under Section 118 of the Negotiable Instruments Act regarding the origin of the promissory note, whether it was from the person authorised. When the Plaintiff failed to prove the initial burden that it originated in the way as stated by the Plaintiff, then what was stated by the Defendant in the written statement was made in his evidence proving the preponderance of probabilities from the normal human conduct. Under those circumstances, when the



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Plaintiff failed to prove that the promissory note was executed by the Defendant in favour of the Plaintiff, the initial burden on the Plaintiff had not been discharged. Merely because the Defendant had not denied the signature in the promissory note cannot help the Plaintiff to get a decree from a civil court against the Defendant, particularly, when he failed to prove the wherewithal to lend the loan. Therefore, **the Substantial Question of Law 2 is answered against the Plaintiff in O.S.No.98 of 2007/Appellant herein and in favour of the Defendant/Respondent.**

29. In the light of the above discussions, the finding by the learned Sub Judge that even though the Defendant had admitted his signature on the promissory note when the Plaintiff is unable to prove his resources for his claim that he had advanced the loan to the Defendant, the first Appellate Court is justified in holding that the promissory note is not a valid promissory note. **The Substantial Question of Law 3 is answered against the Plaintiff in O.S.No.98 of 2007/Appellant herein and in favour of the Defendant/Respondent.**

30. In the light of the substantial questions of law 1 to 3 having been answered against the Plaintiff, the earlier dispute between the parties disproves the claim of the Plaintiff that the suit promissory note was not executed by the



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Defendant in favour of the Plaintiff. Merely admitting the signature on the promissory note by the Defendant will not help the Plaintiff to seek decree in his favour, particularly, when he had failed to discharge the initial burden of wherewithal to advance the amount of Rs.50,000/- to the Defendant particularly in the light of the documents filed by the Defendant. Therefore, **the Substantial Questions of Law-4 is answered against the Plaintiff in O.S.No.98 of 2007/Appellant herein and in favour of the Defendant/Respondent.**

31. The trial Court failed to draw the initial presumption under Section 118 of the Negotiable Instruments Act. Merely because the Defendant had admitted the signatures will not help the Plaintiff to get a decree in favour of the Plaintiff when he had failed to discharge the burden cast upon him. Therefore, **the Substantial Questions of Law-5 is answered against the Plaintiff in O.S.No.98 of 2007/Appellant herein and in favour of the Defendant/Respondent.**

In the result, this ***Second Appeal is dismissed.*** The Judgment and Decree dated 06.01.2016 made in A.S.No.44 of 2013 on the file of the learned Sub Judge, Udhagamandalam reversing the Judgment and Decree dated 27.09.2013



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made in O.S.No.98 of 2007 on the file of the learned District Munsif,

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Udhagamandalam is confirmed. The suit in O.S.No.98 of 2007 on the file of

the learned District Munsif, Udhagamandalam is dismissed. No costs.

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 Munsif,
Udhagamandalam.
2. The Sub Judge,
Udhagamandalam.
3. The Section Officer,
V.R.Section,
High Court, Madras.

Judgment made in
S.A.No.535 of 2016

11.07.2025