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*A.S.NO.216 OF 2014***IN THE HIGH COURT OF JUDICATURE AT MADRAS****JUDGMENT RESERVED ON : 31 / 07 / 2025****JUDGMENT PRONOUNCED ON : 03 / 11 / 2025****CORAM:****THE HONOURABLE MR. JUSTICE R.SAKTHIVEL****APPEAL SUIT NO.216 OF 2014**

Mr.Suresh Bafna,
Proprietor,
M/s.Madras Mercantile Agency,
No.3, Strotten Muthiah Mudali Street,
Chennai – 600 079.

... Appellant / Plaintiff

Vs.**1.V.Mangayarkarasi Ammal (Died)**

Note: First respondent passed away. Memo dated July 28, 2022 was filed stating that Respondent Nos.3 to 5 are the legal representatives of deceased first respondent. Vide Order of this Court dated July 28, 2022 made in the Appeal Suit, the aforesaid memo was recorded, Respondent Nos.3 to 5 were recorded as the legal representatives of the deceased first respondent and Respondent No.5 was brought on record while Respondent Nos.3 and 4 were already on record.

2.M.Velayudham (Died)



A.S.NO.216 OF 2014

Note: The Second respondent passed away. Fifth respondent was brought on record as legal representative of the deceased second respondent vide Order of this Court dated July 28, 2022 made in C.M.P. Nos.10471 and 10473 of 2022 in A.S. No.216 of 2014.

3.V.Mahendran

4.V.Elango ... Respondent Nos.1 to 4 /
Defendant Nos.1 to 4

5.A.Vasugi ... Respondent No.5 /
Defendant No.5

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated September 04, 2013 passed by the XVIII Additional City Civil Judge at Chennai in O.S.No.5989 of 1997.

For Appellant : Ms.T.Jayalakshmi
for M/s.Paul and Paul

For Respondent-1 : Died – Steps taken

For Respondent-2 : Died – Steps taken

For Respondent-3: Mr.R.Chandrasudan

For Respondent-4: Mr.R.C.Manoharan

For Respondent-5: Served on August 30, 2023.
No appearance.

J U D G M E N T

Page No.2 of 26



WEB COPY

Feeling aggrieved by the Judgment and Decree dated September 04, 2013 passed in O.S.No.5989 of 1997 by the 'XVIII Additional City Civil Court at Chennai' ['Trial Court' for brevity], the plaintiff therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3. The plaint was originally presented before this Court (High Court, Madras) on July 17, 1995. Later, in view of Act No.28/1995 and G.O.(Ms) No.1742, Home (Court) Department, dated November 23, 1995, the pecuniary jurisdiction of City Civil Court, Chennai has been enhanced from Rupees One Lakh to Rupees Ten Lakhs. Hence, the plaint was returned by this Court on December 12, 1995 for representation before the City Civil Court, Chennai. Accordingly, the plaint was represented before City Civil Court, Chennai and taken on file as Original Suit No.5989 of 1997.



PLAINTIFF'S CASE

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4. Case of the plaintiff is that he lent Rs.51,000/- under Suit Promissory Note dated January 6, 1988 and Rs.1,53,000/- under the remaining three Suit Promissory Notes dated June 22, 1988 (Rs.51,000/- under each), total sum being Rs.2,04,000/-, to the defendants at their request, repayable with 24% interest per annum. In respect of the same, the defendants jointly executed the Suit Promissory Notes. On March 31, 1989, the defendants repaid Rs.39,329/-. Similarly, they repaid Rs.22,000/- on March 31, 1990, Rs.56,000/- on March 31, 1991, Rs.41,600/- on March 31, 1992 and Rs.4,080/- on July 18, 1992. As on the date of plaint viz., July 15, 1995, Rs.5,69,700/- is due from the plaintiff. Repeated demands of the plaintiff calling upon the defendants to repay the same did not yield any result. Hence the Summary Suit under Order XXXVI Rule 1 of CPC praying for recovery of money along with interest at the rate of 24% per annum from the date of plaint till full payment.

DEFENDANTS' CASE

5. The defendants filed an Interlocutory Application under Order 37 Rule 3(5) of the Code of Civil Procedure, 1908, in I.A.No.15374 of 1998 in O.S.No.5989 of 1997 seeking leave to defend the Suit unconditionally



and the same was allowed by the Trial Court vide Order dated June 24, 2002. The defendants are family members; the first defendant is the mother, second defendant is the father, third and fourth defendants are the sons.

5.1. The fourth defendant, being the power holder of the defendants 1 to 3, filed written statement for himself and on behalf of the other defendants. In the written statement, the defendants averred that one of the alleged Suit Promissory Note *viz.*, the one dated January 6, 1988, though the names of all the defendants are written on it, has only the first defendant's signature. Hence, it is an incomplete and in-valid document suffering from material alteration. Further, one Suit Promissory Note, dated June 22, 1988, bears 30% interest on it is in-valid in view of not mentioning the name of the promisors.

5.2. Further averred that the claim of the plaintiff to the aggregate sum of Rs.5,69,700/- without Suit Promissory Note wise split up and bifurcation of principal and interest is abuse of process of Court and on that ground, the plaint is liable to be rejected.



5.3. Further averred that, the statement of accounts and particulars of payment of interest stated in the plaint, more particularly the payment of Rs.4,080/- on July 18, 1992, are self-serving, false and not related to the Suit.

5.4. Further the first defendant borrowed some amounts from the plaintiff in the year 1986 and have deposited some Title Deeds to the plaintiff. Later, the plaintiff proposed to purchase the properties covered thereunder, but the first defendant was not willing to do so. Aggrieved by the said act, the plaintiff along with his close associate namely Mr.Ashok Sharma forcibly obtained the signatures of the first and second defendants in stamp papers, using which he forged a power of attorney in favour of his close associate as if it was executed by the first and second defendants and conveyed the said property in his favour on July 15, 1992. The plaintiff further threatened and initiated false complaints for non-bailable offences, for which, the defendants have moved for an anticipatory bail before the concerned Court. In turn, the first defendant has filed criminal complaint in Crime No.1808/1992 on August 18, 1992, taken on file as C.C.No.8321 of 1995 against the plaintiff for fabricating the aforesaid power of attorney. In these circumstances, the alleged last interest payment of Rs.4,080/- on July



18, 1992, is not believable. Hence, the amount of last interest payment is false, only pleaded with a view to bypass the limitation aspects. The Suit is barred by limitation as the Suit has been filed on July 17, 1995, more than three years after the alleged payment made by the defendants on March 31, 1991.

5.5. Further averred that the plaintiff attempted to obtain a Decree in his favour in this Suit by preventing service of summons on the defendants by providing a false address. Only from a publication in 'Malai Murasu' Newspaper dated August 27, 1998, the defendants learnt about the Suit and entered appearance.

5.6. Further averred that the plaintiff is bound to produce the Promissory Notes mentioned in the plaint cause of action in Paragraph No.7. Stating so, the defendants prayed to dismiss the Suit.

TRIAL COURT

6. Originally the Suit was originally filed before the Court of Additional District and Sessions Judge, Fast Track Court No.VI, Chennai.

6.1. Based on the above pleadings, the said Court framed the following issues:



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1. *Whether the suit promissory notes are true and valid?*
2. *Whether the defendants have paid amounts as stated by the plaintiff?*
3. *Whether the suit is barred by limitation?*
4. *Whether the plaintiff is entitled to the relief as prayed for ?*
5. *To what relief the plaintiff is entitled?'*

6.2. Then the parties went to trial before the said Court. On the side of the plaintiff, one G.Narasimmalu was examined as P.W.1, and Ex-A.1 to Ex-A.6 were marked. On the side of the defendants, the fourth defendant was examined as D.W.1 and Ex-B.1 and Ex-B.7 were marked.

6.3. The said Court decreed the Suit vide its Judgment and Decree dated September 21, 2004. The aggrieved defendant came to this Court vide A.S.No.276 of 2005 and in the Appeal Suit, the plaintiff filed a petition under Order XLI Rule 27 of CPC. This Court vide Judgment dated June 7, 2010, set aside the Judgment and Decree challenged before it and remanded the matter granting liberty to both sides to file additional pleadings and adduce additional evidence.



6.4. Pursuantly, the Original Suit was restored on its original number and the matter came before the Trial Court i.e., XVIII Additional City Civil Court at Chennai.

6.5. After remand, on the side of the plaintiff, the plaintiff examined himself as P.W.2 and Ex-A.7 to Ex-A.11 and Ex-A.13 to Ex-A.15 were marked. One Ms.N.Shanthi, Inspector attached to Income Tax Department, Chennai was examined as P.W.3 and Ex-A.12 was marked. The defendants' side did not examine any additional witness but marked Ex-B.8 to Ex-.10 in cross examination of P.W.1.

6.6. After full-fledged trial, the Trial Court held that the Suit Promissory Notes are defective and incomplete. The plaintiff failed to prove that the defendants paid interest for the loan amount lastly on July 18, 1992 as alleged, and hence, the Suit filed by the plaintiff on July 17, 1995 is barred by limitation. The plaintiff is not entitled to the relief sought for. Accordingly, the Trial Court dismissed the Suit.

7. Feeling aggrieved, the plaintiff has preferred this First Appeal under Section 96 read with Order XL Rule 1 of the CPC.



ARGUMENTS:

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8. Ms.T.Jayalakshmi for M/s.Paul and Paul, learned Counsel for the appellant / plaintiff would argue that the defendants in Ex-A.9 - Notice clearly admitted the execution of Ex-A.2 to Ex-A.5 - Suit Promissory Notes in favour of the plaintiff. Hence, the Suit Promissory Note attract the presumption under Section 118 of the Negotiable Instruments Act, 1881. It is true that in Ex-A.2 - Suit Promissory Note, the first defendant alone signed though the names of all the defendants were found as executors. Since the Defendant Nos.1 to 4 admitted the execution of Suit Promissory Notes, non-signing of Defendant Nos.2 to 4 in Ex-A.2 loses its significance. Moreover the first defendant stayed away from the witness box for reasons best known to her. As far as Ex-A.5 - Suit Promissory Note is concerned, the Defendant Nos.1 to 4 signed in it and the same is duly stamped. The name of the executant, date, principal amount, interest, *etc.* are all duly filled, except for the fact that the promisee column is left blank. But the consideration under Ex-A.5 has been passed under plaintiff's Cheque No.43854 drawn on Tamil Nadu Mercantile Bank, which shows that the promisee is the plaintiff. Ex-A.6 and Ex-A.11 are the statement of accounts maintained by the plaintiff. The income tax authorities conducted raid in plaintiff's firm and some other firms, and sealed the bureau



containing Ex-A.7 to Ex-A.11, Ex-A.14 and Ex-A.15 which are the records for cheques (Ex-A.7 and Ex-A.8) issued in favour of plaintiff, legal notice from defendant (Ex-A.9), receipt for payment of Rs.4,080/- (Ex-A.10) by defendants to plaintiff on June 18, 1992, *etc.* That is the reason why the plaintiff could not produce the original documents at the time of trial. In Ex-A.10, the fourth defendant paid a sum of Rs.4,080/- towards the interest and acknowledged the debt. Though the defendants deny the signature found in Ex-A.10, they did not take steps to send it for expert opinion. Thus, the Suit is filed well within three years from the date of last acknowledgment of loan vide Ex-A.10. The Trial Court failed to consider Exs-A.7 and A.8 - Cheques dated June 3, 1992 and June 18, 1992 respectively. The Trial Court failed to properly appreciate the evidence available on record and erred in dismissing the Suit. The Judgment and Decree of the Trial Court deserves to be interfered with. Accordingly, she would pray to allow the Appeal Suit and set aside the Judgment and Decree of the Trial Court.

8.1. In support of her contentions, she would rely on the Judgment of Hon'ble Supreme Court in ***Uday Shankar Triyar -vs- Ram Kalewar***



Prasad Singh, reported in (2006) 1 SCC 75].

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9. Per contra, Mr.R.C.Manoharan, learned Counsel for the fourth respondent / fourth defendant would make the following submissions:

- (i) The plaintiff did not submit the daybook and ledger pertaining to Ex-A.6 - statement of accounts. The defendants have not acknowledged Ex-A.6; their signatures are not found in it.
- (ii) Ex-A.11- statement of accounts contains only up to January 18, 1992 and the daybook and ledger corresponding to Ex-A.11 have not been produced.
- (iii) Ex-A.7 and Ex-A.8 - Cheques were not issued by the defendants towards interest. The defendants were conducting a business in the name of Mahindra & Bros. In the course of business, Ex-A.7 and Ex-A.8 were obtained as signed blank cheques by one Ashok Sharma in a business transaction who in turn colluded with the plaintiff and fabricated as if they were issued by the defendants to the plaintiff. Even otherwise, Ex-A.7 and Ex-A.8 cannot be said to be acknowledgement of any debt, as they were returned for insufficient funds.



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(iv) Ex-A.10 document was falsely created as an afterthought only for the purpose of this case. A bare perusal of Ex-A.10 would show that it is fabricated one. Hence Ex-A.10 cannot be considered as an acknowledgement of debt. If really it is an acknowledgement, the plaintiff ought to have filed Ex-A.10 along with the plaint. Further, there is proof to show that Ex-A10 and other documents were seized by the income tax authorities. Further, the plaintiff did not produce the corresponding daybook, ledger book and statement of accounts for Ex-A.10. Hence, the relief sought for by the plaintiff is clearly barred by limitation.

(v) Ex-A.5 - Suit Promissory Note is an incomplete document and no Decree can be granted on the basis of an incomplete document.

(vi) The plaintiff did not approach the Court with clean hands. The plaint was not properly verified. In the plaintiff, it is stated that the plaintiff is the proprietor of Madras Mercantile Agency. But the plaint has been verified by the plaintiff as Partner / Manager of Madras Mercantile Agency. On this ground also, the Suit is liable to be dismissed.

(vii) The Trial Court after considering the evidence available on record in



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the proper perspective, rightly dismissed the Suit and there is no warrant to interfere with it.

9.1. He would rely on the following decisions in support of his contentions:

- (i) Judgment of this Court in ***K.V.Krishnan -vs- B.A.Damodaran***, reported in ***(2006) 4 MLJ 1734***;
- (ii) Judgment of this Court in ***Thangarasu -vs- Arumugam***, reported in ***2012 SCC OnLine Mad 818 : (2012) 3 Mad LJ 658*** ;
- (iii) Judgment of this Court in ***Rangaswami Reddi -vs- K.Doraiswami Reddi***, reported in ***(1957) 2 MLJ 196***;
- (iv) Judgment of this Court in ***Verco Private Limited -vs- Newandram Naraindas***, reported in ***(1973) 86 LW 435 : (1973) 2 MLJ 92*** ;
- (v) Judgment of this Court in ***Ayyakkanu Gounder -vs- Virudhambal Ammal*** reported in ***(2005) 1 MLJ 14*** ;
- (vi) Judgment of this Court in ***S.Ramasamy Gurukul -vs- K.C.Mahalinga Gurukul*** reported in ***(2003) 1 MLJ 281*** ;
- (vii) Judgment of this Court in ***M.Shanmugham -vs- S.Rangasamy Gounder*** reported in ***(2001) 2 MLJ 753***;



(viii) Judgment of this Court in ***Sree Rengaraaj Steel and Alloys Limited -vs- MSTC Limited*** reported in ***AIR 2023 Mad 278*** ;

(ix) Judgment of the Hon'ble Supreme Court in ***M/s.Airen and Associates -vs- M/s.Sanmar Engineering Services Limited***, reported in ***2025 SCC OnLine SC 1562***.

10. Mr.R.Chandrasudan, learned Counsel for third respondent / third defendant would adopt the submissions of Mr.R.C.Manoharan, learned Counsel for the fourth respondent / fourth defendant.

DISCUSSION:

11. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:

- (i) Whether the defendants borrowed a sum of Rs.2,04,000/- and executed Ex-A.2 to Ex-A.5 - Suit Promissory Notes in favour of the plaintiff ?
- (ii) Whether Ex-A.5 - Suit Promissory Note is a complete and valid document ?
- (iii) Whether Ex-A.7 and Ex-A.8 - Cheques were issued towards the debt under Ex-A.2 to Ex-A.5 - Suit Promissory Notes ?



(iv) Whether the relief sought for by the plaintiff is barred by limitation ?

Point No.(i)

12. The plaintiff is a money lender who is also involved in some *Dal* business. The defendants were also engaged in the same business. It is an admitted fact that the plaintiff and the defendants had some commercial transactions before the Suit transactions.

13. According to the plaintiff, the defendants borrowed a total sum of Rs.2,04,000/-; Rs.51,000/- on January 6, 1988 and Rs.1,53,000/- on June 22, 1988. The defendants in their written statement denied the said borrowal contending that the Suit Promissory Notes are not supported by considerations. The defendants' case is that in 1986, the defendants borrowed money from the plaintiff and deposited the Title Deed relating to the property in Door No.12, Perumal Kovil Garden, Chennai which was absolutely owned by first defendant. Since the first defendant was not willing to sell the property to the plaintiff in adjustment of the balance amount due to him, the plaintiff forcibly obtained signatures from Defendant Nos.1 and 2 with the help of his close associate - Ashok Sharma, in non-judicial blank papers and some other papers. Later, the plaintiff filled it as a Power of Attorney and alienated the said property in



his favour with the aid of said Ashok Sharma on July 15, 1992.

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14. The defendants have filed a criminal complaint on August 18, 1992 against the plaintiff and Ashok Sharma in Crime No.1808 of 1992. Thus, there was some strong previous enmity between the plaintiff and the defendants from June 1992. While so, it is unbelievable that on July 18, 1992, the defendants paid a sum of Rs.4,080/- to the plaintiff and acknowledged the debt. Hence, Ex-A.10 is clearly a fabricated document. The Suit claim is barred by limitation. Above is the case of the defendants.

15. Ex-A.9 is the reply notice dated August 10, 1992 issued by Defendant Nos.1 and 3 to the plaintiff, his Counsel and Ashok Sharma, in reply to the notice dated July 28, 1992 issued by M/s.Meenakshi Enterprises. The said notice dated July 28, 1992 has not been filed. In Ex-A.9 - Reply Notice, the defendants admitted that they borrowed a sum of Rs.2,04,000/- from the plaintiff by way of four cheques each for Rs.51,000/-.

16. According to the defendants, M/s.Meenakshi Enterprises owned by Ashok Sharma was a commission agent under the plaintiff. The defendants owed money to Ashok Sharma in the course of business. Hence



the plaintiff paid the aforesaid amount to the defendants who in turn paid the same to M/s.Meenakshi Enterprises. Thus, the Suit Promissory Notes were obtained by Ashok Sharma in favour of M/s.Meenakshi Enterprises and not the plaintiff.

17. While that is the case of the defendants, there is no acceptable evidence available on record to show that the Suit Promissory Notes were executed by the defendants in favour of Ashok Sharma. They (except Ex-A.5 -Suit Promissory Note) stand in the name of the plaintiff from whom the defendants admittedly borrowed Rs.2,04,000/-. Ex-A.2 to Ex-A.5 are duly stamped and they attract the presumption under Section 118 of the Negotiable Instruments Act, 1881. The defendants have failed to rebut the presumption. Hence, this Court is of the view that the defendants received a sum of Rs.2,04,000/- and executed the Suit Promissory Notes in favour of the plaintiff. **Point No.(i) is answered accordingly.**

Point No.(ii)

18. It is true that Ex-A.5, bears no promisee's name. As stated *supra*, Ex-A.5 is duly stamped. A scanned reproduction of Ex-A.5 is as follows:



18.1. At this point, reference must be made to Section 20 of the Negotiable Instruments Act, 1881. For the sake of convenience, Section 20 is extracted hereunder:

"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 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."

19. Bare reading of Section 20 would show that the plaintiff is statutorily authorised thereunder to make or complete a duly stamped instrument and negotiate the same or file the Suit based on the instrument. However, in this case, though the plaintiff is entitled to fill the particulars as per Section 20 of the Negotiable Instruments Act, 1881, he failed to fill the promisee's name in Ex-A.5. Hence, it is not a complete document. Plaintiff ought to have filled the promisee's name before filing Suit. Therefore, it is an in-complete document on the basis of which the plaintiff is not in not entitled to Decree. **Point No.(ii) is answered accordingly.**

Point No.(iii)

20. According to the plaintiff, Ex-A.7 and Ex-A.8 - Cheques dated June 3, 1992 and June 18, 1992 respectively were issued in favour of plaintiff by defendants and they were dishonoured. Admittedly, the plaintiff and the defendants had some business transaction. In these circumstances, it is the duty of the plaintiff to show that the Cheques were



in respect of interest under the Suit Promissory Notes. Moreover, the said Cheques were not realised; the amount was not deducted. Hence they cannot be considered as an acknowledgment of debt. Even while assuming that Ex-A.7 and Ex-A.8 are acknowledgments of debt, the Suit has not been filed within three years therefrom. **Point No.(iii) is answered accordingly.**

Point No.(iv)

21. From the evidence available on record, it could be discerned that the plaintiff and the defendants are having a strained relationship since June 1992. While so it is not believable that the defendant paid Rs.4,080/- as interest on July 18, 1992. Further acknowledgment as per Section 18 of the Limitation Act, 1963, has to be clear, unambiguous and signed by relevant parties. But here there is no clear evidence to show that the payment of Rs.4,080/- on July 18, 1992 was in acknowledgment of Suit debt. There is nothing to connect it with the Suit debt.

22. Further, the plaintiff ought to have filed Statement of Accounts, day book and ledger relating to Ex-A.10. at the time of filing the Suit. The plaintiff failed to do so. The plaintiff claims that Ex-A.10 and some more documents were seized by the income tax officials. From the evidence



available on record, it could be seen that Income Tax Authority passed prohibition order in 2003. It could be seen that raid was conducted and some bureaus were sealed. But all these were in 2003 while the Suit was filed in 1995. Hence, the reason assigned by the plaintiff is not believable. Even after remand by this Court with the liberty to parties to adduce additional evidence, the plaintiff who marked some documents, failed to file ledger and others corresponding documents to Ex-A.10.

23. Moreover, Ex-A.10 has been signed by only the fourth defendant *qua* partner of 'Malini & Co'. When Ex-A.10 has been signed by only one defendant, that too in his capacity as a Partner of Malini & Co. But in Ex-A.14, it has been stated that Malini & Co., is a Proprietorship Firm. There is no clear evidence to show whether M/s.Malini & Co., is a Proprietorship Firm or Partnership Firm. Hence, there are suspicious circumstances surrounding Ex-A.10. Hence, it cannot be termed as an acknowledgement of the Suit debt. As already stated, as per Section 18 of the Limitation Act, 1963, 'acknowledgment' should be clear and unambiguous. Further, acknowledgment should be made before the expiration of the prescribed period for a Suit i.e., within three years from the execution of Promissory Notes or within three yearas from the last acknowledgment of debt. The



burden of proof lies upon the person who pleads 'acknowledgment'. As already stated supra, in this case, the plaintiff miserably failed to prove Ex-A.6, Ex-A.7 and Ex-A.10 and they were made within the period of limitation. There is no evidence to relate it to the Suit. Hence, Ex-A.10 goes and relief under Ex-A.2 to Ex-A.5 are automatically barred under under Article 35 of the Limiation Act, 1963.

24. Further, if really there was any money due to the plaintiff by the defendants, the plaintiff would have adjusted the same upon obtaining Sale Deed on June 15, 1992. Furthermore, when the Suit is based on four Promissory Notes, the plaintiff must show acknowledgements of each debt distinctly.

25. It is to be noted that the Suit is not filed based on original cause of action, but based on Suit Promissory Notes. As discussed above, the plaintiff failed to prove that the defendants acknowledged the debt vide the documents under Ex-A.6 to Ex-A.8, Ex-A.10 and Ex-A.11. Hence, the reliefs sought for by the plaintiff is clearly barred by Article 35 of the Limitation Act, 1963. **Point No.(iv) is answered accordingly.**

26. In the plaint short cause title, it has been stated that the plaintiff



A.S.NO.216 OF 2014

Mr.Suresh Bafna, as 'Proprietor, M/s.Madras Mercantile Agency'. But, in the long cause title, it he has been described as 'Mr.Suresh Bafna, Proprietor as well as Partner of M/s.Madras Mercantile Agency'. Mr.Suresh Bafna has verified the plaint as its Partner / Manager. Hence, there is a cloud whether M/s.Madras Mercantile Agency is a 'Proprietorship Firm' or 'Partnership Firm'. It is the duty of the plaintiff to clear the cloud. But, the plaintiff did not remove the cloud surrounding in it. In the Memorandum of Appeal Suit filed before this Court also, the plaintiff / Mr.Suresh Bafna, has been described as 'Proprietor as well as Partner of M/s.Madras Mercantile Agency'. Hence, the plaint is not duly verified as per the Code of Civil Procedure, 1908. The Trial Court after considering the evidence available on record, rightly dismissed the Suit. No dispute with the case laws relied on either side. This Court finds no reason to interfere with the findings of the Trial Court. Hence, the Appeal Suit must fail.

CONCLUSION:

27. Resultantly, the Appeal Suit stands dismissed. The Judgment and Decree of the Trial Court is confirmed. It is learnt that the defendants as per the Order of this Court passed in Civil Miscellaneous Petition No. 4237 of 2005 in A.S.No.276 of 2005, deposited a sum of Rs.5,89,135/-



A.S.NO.216 OF 2014

before the Trial Court. The defendants are entitled to get back the amount along with accrued interest if any thereon, if not already withdrawn.

Keeping in mind the facts and circumstances of the case, there shall be no order as to costs.

03 / 11 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
PAM/TK

Note: Typographical errors have been rectified. Registry is directed to re-upload this judgment.

R. SAKTHIVEL, J.

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To

The XVIII Additional City Civil Judge
Chennai.

PRE-DELIVERY JUDGMENT MADE IN

Page No.25 of 26



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A.S.NO.216 OF 2014

APPEAL SUIT NO.216 OF 2014

03 / 11 / 2025