



S.A.No.627 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 01 / 07 / 2025

JUDGMENT PRONOUNCED ON : 08 / 07 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.627 OF 2014

AND

M.P.NO.1 OF 2014

Chinnappa Gounder (Died)

2.Rasammal

3.Karuppusamy

4.Rajeswari

(Appellant Nos.2 to 4 are brought on record as legal heirs of the deceased sole appellant - Chinnappa Gounder vide this Court's Order dated March 15, 2022 made in CMP No. 2830 of 2022 in S.A.No.627 of 2014)

... Appellant / Appellant /
Defendant

Vs.

G.Kandhasamy (Died)

2.Madheswari

3.Nithya

(Respondent Nos.2 and 3 are brought on record as legal heirs of the deceased sole respondent - G.Kandhasamy vide this Court's Order dated March 30, 2022 made in CMP Nos.5637 & 5638 of 2022 in S.A.No.627 of 2014)

...Respondent / Respondent /
Plaintiff



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WEB COPY PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated December 16, 2013 made in A.S.No.77 of 2013 on the file of the Principal District Judge, Erode, confirming the Judgment and Decree dated June 29, 2012 made in O.S.No.126 of 2010 on the file of the Sub Court, Gobichettipalayam.

For Appellant : Mr.V.Anandhamurthy
For Respondent-1 : Died. Steps taken
For Respondents 2&3: Mr.A.K.Kumarasamy
Senior Counsel
for M/s.S.Kaithamalai Kumaran

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated December 16, 2013 passed in A.S.No.77 of 2013 by the 'Principal District Court, Erode' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated June 29, 2012 passed in O.S.No.126 of 2010 by the 'Sub Court, Gobichettipalayam' ['Trial Court' for brevity] was confirmed.

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



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PLAINTIFF'S CASE

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3. Case of the plaintiff is that the defendant borrowed a sum of Rs.2,50,000/- from the plaintiff for his cultivation expenses, on January 28, 2008 and executed a Promissory Note in favour of the plaintiff agreeing to repay the same with interest at the rate of Re.1/- per Rs.100/- per month. Despite repeated demands made by the plaintiff, the defendant neither paid interest nor the principal amount. Hence, the plaintiff issued a legal notice on August 11, 2010 and the same was received by the defendant on August 12, 2010. The defendant sent a reply on August 17, 2010 with false averments. Hence, the plaintiff filed the Suit seeking money decree.

DEFENDANT'S CASE

4. The defendant filed a written statement denying the execution of Promissory Note and borrowing money from the plaintiff. According to the defendant, the Suit Promissory Note is entirely false and fabricated in collusion with the plaintiff's brother - G.Natesan. It is further averred that the plaintiff's brother - G.Natesan filed a Suit in O.S.No.20 of 2006 on the file of Trial Court on the basis of a Sale Agreement allegedly executed by the defendant. The defendant contested the said Suit by

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taking a plea of forgery. After full-fledged trial, the defendant's contention was upheld and the Suit was dismissed with costs. Aggrieved, the plaintiff's brother - G.Natesan preferred A.S.No.75 of 2009 before the District Court, Gobichettipalayam and the same was dismissed after hearing both sides. Hence, the plaintiff's brother - G.Natesan and the plaintiff colluded together and created the Suit Promissory Note. The defendant reiterates that the signature found in the Suit Promissory Note is forged one and he never borrowed money from the plaintiff. The defendant's further case is that the plaintiff being a daily wage labourer earning only a sum of Rs.200/- per day, has no sufficient income or wherewithal to lend a sum of Rs.2,50,000/- to the defendant. Hence, the defendant prayed to dismiss the Suit.

TRIAL COURT

5. Based on the above pleadings, the parties went to Trial and the Trial Court framed the following issues:

- “(i) *Whether the Suit pro-note (Sic) is forged one?*
- (ii) *Whether the plaintiff is entitled for Suit amount as claimed?*



(iii) *To what other reliefs?”*

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6. At trial, plaintiff - G.Kandasamy was examined as P.W.1, and one Ramasamy, who is a witness to Suit Promissory Note along with one Velusamy, who is a Scribe thereto was examined as P.W.2 and P.W.3 respectively, and Ex-A.1 to Ex-A.4 were marked on the side of the plaintiff. On the side of the defendant, defendant / Chinnappa Gounder was examined as D.W.1 and one Saravanakumar – Village Administrative Officer was examined as D.W.2 and Ex-B.1 to Ex-B.6 were marked.

7. After full-fledged trial, the Trial Court concluded that the plaintiff discharged his burden by way of examining P.W.2 and P.W.3, and the evidence of P.W.1 to P.W.3 *prima facie* prove the execution of the Suit Promissory Note. Since, the plaintiff discharged his initial burden, the Suit Promissory Note attracts the presumption under Section 118 of the Negotiable Instruments Act, 1881. Further, the plaintiff proved that he had income and wherewithal to lend money. While so, the defendant did not take steps to send the Suit Promissory Note for expert opinion, nor did he prove his case. Upon these findings, it decreed the Suit as prayed for.



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FIRST APPELLATE COURT

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8. Feeling aggrieved, the defendant preferred an appeal before the First Appellate Court, which, after hearing both sides, concurred with the findings of the Trial Court and dismissed the appeal.

SECOND APPEAL

9. Feeling aggrieved, the defendant has preferred the present Second Appeal under Section 100 of the Code of Civil Procedure, 1908.

9.1. During the pendency of this Second Appeal, the appellant / defendant passed away and his legal heirs / legal representatives were brought on record as Appellant Nos.2 to 4 vide Order of this Court dated March 15, 2022 made in CMP No. 2830 of 2022 in this Second Appeal.

9.2. Likewise, respondent / plaintiff also passed away and his legal heirs / legal representatives were brought on record as respondent Nos.2 and 3 vide Order of this Court dated March 30, 2022 made in CMP Nos.5637 & 5638 of 2022 in this Second Appeal.

9.3. The Second Appeal was admitted on July 26, 2016 on the following substantial question of law:



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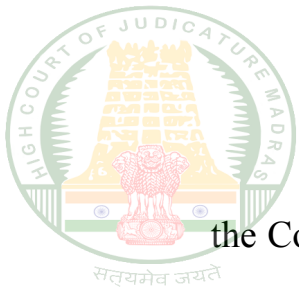


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“Whether in law, the courts below are right in overlooking that when the respondent had not discharged the initial burden of proving the transaction, the onus could not be shifted to the appellant under Section 118 of Negotiable Instrument Act?”

ARGUMENTS

10. Mr.V.Anandhamurthy, learned Counsel for the appellant / defendant would argue that the Trial Court as well as the First Appellate Court miserably failed to consider the fact that the plaintiff's brother - G.Natesan filed a Suit for specific performance based on a forged Sale Agreement and the same was dismissed. The appeal filed by the plaintiff's brother - G.Natesan in A.S.No.75 of 2009 was also dismissed. Hence, the plaintiff's brother developed grudge against the defendant, colluded with the plaintiff, created a forged document, forged the signature of the defendant in it and filed the Suit. Trial Court as well as the First Appellate Court failed to consider that the initial burden was not discharged by the plaintiff. Further, both the Courts failed to consider that the plaintiff failed to send the Promissory Note in question to expert opinion. He stressed on the point that since the defendant specifically took a stand that the Suit Promissory Note is a forged one, the burden is upon the plaintiff to send the Suit Promissory Note for expert opinion. In these circumstances, both



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the Courts erred in their finding that the Suit Promissory Note attracts the presumption stated under Section 118 of the Negotiable Instrument Act, 1881. Hence, the Judgment and Decree of the Trial Court as well as the First Appellate Court are liable to be interfered with. Accordingly, he prayed to allow the Second Appeal.

10.1. In support of his argument, the learned Counsel for the appellant / defendant would rely on the following judgments:

- (i) Judgment of the Hon'ble Supreme Court in ***Thiruvengadam Pillai Vs. Navaneethammal***, reported in ***(2008) 4 SCC 530***;
- (ii) Judgment of this Court in ***K.R.Chinnasamy Vs. K.R.Chinnasamy***, reported in ***2011 (2) MWN (Civil) 637***; and
- (iii) Judgment of this Court in ***S.K.P.Kanniappan Vs. P.Mariappan***, reported in ***2024 SCC OnLine Mad 5977***.

11. In response to the above arguments, Mr.A.K.Kumarasamy, learned Senior Counsel for the respondents 2 and 3 would contend that the Trial Court as well as the First Appellate court concurrently held that the defendant borrowed a sum of Rs.2,50,000/- and



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executed the Suit Promissory Note in favour of the plaintiff. Further, the

plaintiff examined P.W.2 who is one of the attesting witnesses to Suit

Promissory Note and P.W.3, who is a Scribe thereto. The evidence of

P.W.1 to P.W.3 clearly proves the execution of the Suit Promissory Note.

Hence, the plaintiff discharged his initial burden and the onus shifted to

the defendant. Therefore, the Suit Promissory Note attracts the

presumption under Section 118 of the Negotiable Instruments Act, 1881.

The burden is upon the defendant to dislodge the presumption by way of

letting evidence. The defendant failed to satisfactorily prove or establish

his defence and failed to discharge the onus casted upon him. Further, Ex-

B.1 to Ex-B.6 – revenue records (Patta and Adangal extracts for the Fasli

year 1414, 1416, 1418 & 1420) prove that the plaintiff has sufficient

wherewithal to lend money. Hence, the concurrent findings of the Trial

Court and the First Appellate Court need not be disturbed and there is no

warrant to interfere with them. There is no Substantial Questions of Law

involved in this appeal and the Substantial Question of Law as framed is

incorrect. Accordingly, he prayed to dismiss the Second Appeal.



DISCUSSION AND DECISION

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12. This Court has considered the submissions made on either side and perused the evidence available on record.

13. The Suit is based on Ex-A.1-Promissory Note. It is settled law that initial burden is always with the plaintiff to prove his case. In this case, the plaintiff examined himself as P.W.1 and stated that the defendant borrowed a sum of Rs.2,50,000/- and in turn, executed Ex-A.1 Promissory Note in favour of the plaintiff. Further, he examined the Scribe to the Suit Promissory Note namely Velusamy as P.W.3 and one attesting witness thereto namely Ramasamy as P.W.2. P.W.2 in his evidence has clearly deposed that the defendant borrowed a sum of Rs.2,50,000/- from the plaintiff and executed a Promissory Note; that the defendant signed in his presence and that the Suit Promissory Note was written by Velusamy (P.W.3). P.W.3 has deposed along the lines of P.W.2 supporting the plaintiff's case. The evidence of P.W.2 and P.W.3 remain unshaken by the defendant. There is no animosity between the defendant and the witnesses viz., P.W.2 and P.W.3. The plaintiff *prima facie* proved the execution of Ex-A.1 in view of the evidence of P.W.2 and P.W.3. Hence, the Suit Promissory Note attracts the legal presumption contemplated under



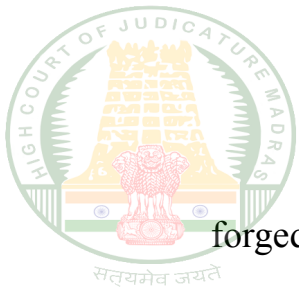
Section 118 of the Negotiable Instrument Act, 1881.

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14. Now, the onus of proof shifts to the defendant to dislodge the legal presumption under Section 118 of the Negotiable Instrument Act, 1881. The specific case of the defendant is that his signature allegedly found in the Promissory Note is a forged one. As already stated *supra*, the plaintiff discharged his initial burden. Now, the onus is upon the defendant and hence, he ought to have taken steps to send the Suit Promissory Note for expert opinion. But the defendant failed to do so.

15. Further, Ex-B.1 to Ex-B.6 - Patta and Adangal extracts coupled with the evidence of D.W.2 would prove that the plaintiff had agricultural land and had some income therefrom. Further, the evidence of P.W.1 would show that apart from agriculture, he lend money to third parties for interest. Hence, the plaintiff has proved that he had sufficient income and wherewithal to lend the Suit money to the defendant.

16. It is apposite to mention here that, even as per his own evidence, the defendant got to peruse the Suit Promissory Note for the first time only at the time of trial. But he has taken a stand in his reply notice as well as written statement that the Suit Promissory Note is a



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forged one, that is to say, without even perusing the Suit Promissory Note, he had taken a stand that the Suit Promissory Note is forged one.

17. The Judgment relied on by the learned Counsel for the appellant / defendant in ***Thiruvengadam Pillai Vs. Navaneethammal*** (cited *supra*), is not applicable to the present case. In the said decision, the plaintiff therein filed a Suit for specific performance based on an Agreement dated January 5, 1980. The defendant therein filed a written statement that the Suit Agreement was a forged one. The said Agreement was written on two stamp papers, one purchased on August 25, 1973 and another was purchased on August 7, 1978, both in the name of the plaintiff therein. The attester therein were close relative of the plaintiff therein; they were none other than the brother and uncle of the plaintiff therein and one of them was not examined. The Scribe therein was their caste man and his evidence was found to be not satisfactory. Further, though the Suit Agreement therein recited that possession was handed over to the plaintiff, the possession actually remained with first defendant therein who later delivered it to the subsequent purchaser. The plaintiff therein was not in possession of the title deeds. Considering the aforesaid facts and circumstances of the case therein, Hon'ble Supreme Court



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concluded that the plaintiff therein failed to satisfactorily discharge the burden upon him. Whereas, in the present case, the evidence of plaintiff / P.W.1, P.W.2 and P.W.3 is trustworthy and proves the execution of the Promissory Note and there are no circumstances creating doubts around the execution or dislodging the evidence of P.W.1 to P.W.3. There is no reason to reject their evidence. Hence, the said decision is distinguishable on facts and not applicable to the present case on hand.

18. While there may not be any quarrel with the other judgments relied on by the learned Counsel for the appellant / defendant, they are not applicable to the facts and circumstances of the case on hand.

19. As stated *supra*, the plaintiff discharged his initial burden in view of the evidence of P.W.1 to P.W.3 as well as Ex-A.1 to Ex-A.4 and the onus shifts upon the defendant to discredit the evidence of the plaintiff and prove the defence. But the defendant miserably failed to do so. The Trial Court as well as the First Appellate Court, concurrently held that the Suit Promissory Note was executed for consideration and the plaintiff had sufficient wherewithal to lend money at the time of execution of the Promissory Note. The aforesaid factual finding was recorded based on the



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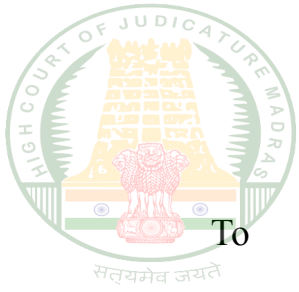
evidence. There is no need to interfere with the same. Hence, the Second Appeal must fail. Accordingly, the Substantial Question of Law is answered against the appellant/defendant and in favour of the respondent/plaintiff. The Judgment and Decree of the Trial Court as well as First Appellate Court are sustained.

RESULT

20. Resultantly, the Second Appeal stands dismissed. The Judgment and Decree of the First Appellate Court is hereby confirmed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

08 / 07 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

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- 1.The Principal District Judge
Principal District Court,
Erode.
- 2.The Sub Judge
Sub Court,
Gobichettipalayam.
- 3.The Section Officer
V.R. Section
Madras High Court.



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R. SAKTHIVEL, J.

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