



A.S.No.442 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 11.07.2025

Pronounced on: 23.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.442 of 2022
& C.M.P.No.16022 of 2022

T. Kumaresan, (Aged about 47 years)

Son of Thiayagarajan,

Ramanadhapuram Pudhur Post,

Sendhamangalam Via,

Namakkal Taluk & District.

... Appellant/Defendant

/versus/

P. Manikandan,

Son of Palanimuthu,

Sivan Kovil Street,

Neikuppai Post,

Veppanthattai Taluk,

Perambalur District.

...Plaintiff/Respondents

Prayer:- Appeal Suit has been filed under Section 96 read with Order XLI Rule 1 & 2 of the Civil Procedure Code, to set aside the judgment and decree dated 29.04.2022 made in O.S.No.71 of 2015 on the file of the Additional District Court, Namakkal.

For Appellant : Mr.T.L.Thirumalaisamy

For Respondent : Mr.D.R.Arun Kumar.



A.S.No.442 of 2022

J U D G M E N T

WEB COPY

The suit in O.S.No.71 of 2015 filed for recovery of Rs.10,40,400/- with interest, is based on a promissory note dated 25.01.2014 for a sum of Rs.8,50,000/-. The suit was decreed by the Court below on 29.04.2022. The appeal is directed against the said judgment and decree.

2. The parties are referred as per their status in the plaint.

3. Gist of the plaint:-

The plaintiff and the defendant are known to each other and carrying on dairy business. On 25.01.2014 in order to expand the dairy business and to meet the family expenses, the defendant with a promise to repay it on demand with interest at the rate of 18% per annum borrowed a sum of Rs.8,50,000/- from the plaintiff. In spite of repeated demand to repay the debt, the defendant failed to repay the amount. On 14.04.2015, the plaintiff went in person and demanded the defendant the repayment of the loan. However, the defendant vehemently refused to repay. Hence, the suit.



A.S.No.442 of 2022

4. Gist of the written statement:-

WEB COPY

The plaintiff is not a businessman. The averment that the defendant borrowed money from the plaintiff is denied. The plaintiff is not sound enough to lend money to others. The suit pro-note is nothing but a forged document. The thumb impression and the signature on the pro-note are not of the defendant. The averment that the plaintiff demanded for repayment on several occasion and also came in person on 14.04.2015 are all denied.

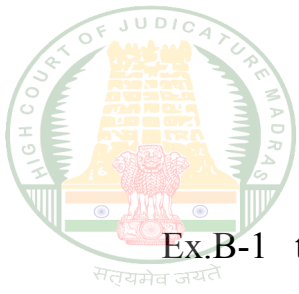
5. In fact, the defendant borrowed a sum of Rs.2,25,000/- on 10.11.2007 from one Durai @ Manickam, who is the husband of Parimala, the sister of the plaintiff. At the date of borrowing, the defendant gave three unfilled promissory notes: One pro-note signed and impressed with his thumb impression; another was signed and impressed with the thumb impression by his wife Kavitha and the third one signed by both the defendant and his wife Kavitha jointly. That apart, a registered sale agreement dated 12.11.2007 was obtained from the defendant and his children in respect of the agricultural land situated at Vazhanvanthi Kombai village. All these documents were obtained from the defendant for a single loan of Rs.2,25,000/-.



A.S.No.442 of 2022

6. Till February 2014, the defendant was paying Rs.67,050/- every month towards interest at the rate of 36% per annum. He indeed endorsed the extension of time for the performance of sale agreement. After repaying the loan amount to Durai@Manickam, the sale agreement was cancelled. In the cancellation deed, another brother of Parimala signed as witness. However, the pro-notes were not returned by Durai@ Manickam. Since, he being a distant relative, the defendant did not suspect Durai @ Manickam and waited for him to return the unfilled, signed pro-notes. The defendant suspects that one of the pro-notes, signed by him, been misused by the plaintiff, who is the brother-in-law of Durai@ Manickam.

7. Based on the pleadings, six issues were framed and the parties proceeded for trial. During the trial, on the side of the plaintiff, two witnesses and one document namely, the suit promissory note was marked. On the side of the defendant, one witness examined. During the cross examination of Manickam (PW-2), the sale agreement dated 12.11.2007 between the defendant and Manickam, the extension of period for performance from 10.11.2010 and the cancellation deed of the said sale agreement dated 17.03.2014 were marked as



A.S.No.442 of 2022

Ex.B-1 to Ex.B-3 respectively. The expert opinion regarding the thumb impression was obtained through the Court and the same marked as Ex.C-1.

8. The Trial Court, upon consideration of the evidence and materials on record, allowed the suit as prayed for.

9. The appeal is filed on the ground that, the trial Court failed to properly appreciate Ex.B-1 to Ex.B-3 which is in respect of an earlier loan transaction between P.W-2 and the defendant. The plaintiff had admitted that P.W-2 is his sister's husband. In such circumstances, the probability of misusing the blank pro-notes, which were given at the time of availing loan from P.W-2, is high.

10. P.W-1 had admitted that the transaction took place at his residence, in the presence of P.W-2 and the loan was given only on the advice of P.W-2. On the date of pro-note, P.W.2 admits that the earlier loan of Rs.2,25,000/- availed from him was not discharged by the defendant. No prudent creditor will recommend to his own brother-in-law to extend loan of Rs.8,50,000/-



A.S.No.442 of 2022

to an undischarged debtor. Such conduct is against prudence. The trial Court erred in not considering the improbability of executing the suit pro-note marked as Ex.A1 in the manner pleaded by the plaintiff. No evidence placed before the Court to prove that a demand was made on 14.04.2015 or issuance of pre-suit notice. While, the passing of consideration is a presumption which could be rebutted by a preponderance of probabilities. In the present case, the defendant having rebutted the presumption, the trial Court ought to have dismissed the suit.

11. Per contra, the learned counsel for the respondent submitted that the defendant had took contradictory and self-destructive defences. First, he denied the very execution of the suit pro-note. Secondly, he pleaded that he assume that the blank pro-note executed by him in favour of one Durai @ Manickam, when he borrowed money from him in the year 2008 might have been misused by the plaintiff, who is the brother-in-law of the said Durai @ Manickam.

12. Through the expert opinion marked as Ex.C-1, the thumb impression in the suit pro-note Ex A-1 is confirmed to be that of the thumb impression of the defendant. The oral evidence of DW-1 and the documents



A.S.No.442 of 2022

marked as Ex.B-1 to Ex.B-3. Except for the relationship between the PW-1 (the plaintiff) and PW-2 does not even remotely establish any link to Ex.A1. The sale agreement dated 12/11/2007 which later came to be cancelled on 17/03/2014 and the suit pro-note dated 25/01/2014 for borrowing loan of Rs.8,50,000/- on the said date are independent to each other. The presence of PW-2 at the time of loan transaction only strengthens the case of the plaintiff, that the parties were known to each other and not strangers.

13.Point for determination:-

Whether the evidence adduced by the defendant is sufficient to discharge the onus of reverse burden?

14. Ex.C-1 proves that the thumb impression in the suit note, Ex.A-1, is that of the defendant.

15. PW-1 and PW-2 had deposed that the suit pro-note was executed by the defendant in their presence on 25/01/2014, after passing of consideration. The learned counsel for the appellant wants to draw an adverse inference and improbability of lending loan to an undischarged debtor. However, the said plea



A.S.No.442 of 2022

does not carry merit since, the earlier loan with PW-2 been discharged and the sale agreement was formally cancelled on 17/03/2014, just few weeks after the suit transaction. It is admitted by the appellant that the parties are his distant relatives and that he trusted them. The same explanation and logic applies to the plaintiff as well. The evidence adduced by the appellant does not, even remotely could cause doubt about the suit transaction. During the cross examination of PW-1 and PW-2, the defendant not able to impeach their credibility. Minor contradictions in their testimony are not be sufficient to disbelieve the case of the plaintiff, in view of Ex.C-1 and the statutory presumption under section 118 of Negotiable Instruments Act.

16. As a result, the *Appeal Suit stands dismissed*. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

23.07.2025

Index :Yes/No.

Neutral citation :Yes/No.

bsm

To,

1. The Additional District Court, Namakkal.

2.The Section Officer, V.R.Section, High Court, Madras.

Page No.8/9



WEB COPY



A.S.No.442 of 2022

Dr.G.JAYACHANDRAN,J.

bsm

Pre-delivery judgment made in
Appeal Suit No.442 of 2022

23.07.2025

Page No.9/9