

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****JUDGMENT RESERVED ON : 02 / 07 / 2025****JUDGMENT PRONOUNCED ON : 09 / 10 / 2025****CORAM:****THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

APPEAL SUIT NO.4 OF 2021
AND CMP NO.106 OF 2021

1.Pavayammal
 2.C.Venkatesh
 3.C.Rajavel
 4.C.Umarani

... Appellants /
 Defendants 1, 3 to 5

Vs.

1.R.Venugopalan

... 1st Respondent /
 Plaintiff

2.C.Vairavel

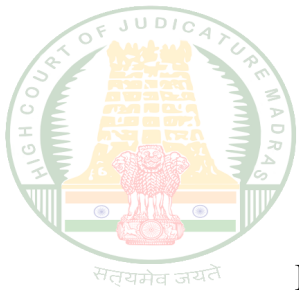
... 2nd Respondent /
 2nd Defendant

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 30, 2020 passed in O.S.No.15 of 2018 by the III Additional District Court, Salem.

For Appellants : Mr.R.Nalliyappan

For Respondent-1 : Mr.T.M.Hariharan

For Respondent-2 : Served – No appearance



A.S.NO.4 OF 2021

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated September 30, 2020 passed in O.S.No.15 of 2018 by the 'III Additional District Court, Salem' ['Trial Court' for brevity], the defendants 1, 3 to 5 therein have 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.

PLAINTIFF'S CASE

3. The defendants are wife, sons and daughter of one T.Chandrasekaran. The said T.Chandrasekaran and plaintiff are close relatives. The said Chandrasekaran borrowed a sum of Rs.10 Lakhs from the plaintiff on January 20, 2015 for his urgent need and on the same day, executed a pro-note for the above said sum in favour of the plaintiff by agreeing to repay the same with interest at the rate of 12% per annum on demand. However, the said Chandrasekaran has not paid any amount or interest to the plaintiff and later, he passed away intestate on May 22, 2015 leaving behind him, the defendants as his legal heirs to succeed his estate.

Page No.2 of 18

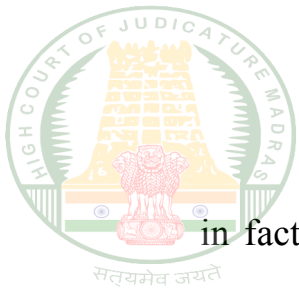


A.S.NO.4 OF 2021

After the demise of Chandrasekaran, the plaintiff demanded the defendants to repay the above said loan amount. However, the defendants have not paid any amount towards principal or interest. Finally, the plaintiff demanded the defendants through mediators to repay the pro-note amount on November 23, 2017. But the defendants did not respond for the same. Thereafter, the plaintiff issued a legal notice on December 23, 2017 to the defendants and it was received by the third defendant on December 26, 2017. Subsequently, the defendants 1, 2, 4 and 5 were given intimation but have not received the notice. Thereafter, the first and third defendants issued a reply notice dated January 2, 2018 with false allegations. Therefore, the plaintiff filed the present Suit for direction to the defendants to pay the Suit claim of Rs.13,55,000/- and future interest for the principal amount of Rs.10 Lakhs with costs out of estate of deceased Chandrasekaran.

DEFENDANTS 1, 3, 4 AND 5 CASE

4. The third defendant filed written statement which was adopted by the defendants 1, 4 and 5, denying the allegations made by the plaintiff in the plaint. It is averred that the Suit is false and unsustainable in law and



A.S.NO.4 OF 2021

in facts. Chandrasekaran never borrowed any amount from the plaintiff.

The petition mentioned property was already mortgaged in Syndicate Bank, Gugai Branch, Salem before ten years. The plaintiff is related to the defendants. There is an enmity between the plaintiff and the defendants. Now after the demise of Chandrasekaran, the plaintiff created the forged pro-note and came forward with the present Suit. The above said Chandrasekaran had heart problem. The plaintiff filed the Suit with malafide intention. The defendants already issued a reply notice to the plaintiff. The first defendant along with the third defendant filed a Suit in O.S.No.736 of 2007 against the plaintiff and one Karunakaran who is a financial partner of the plaintiff, for return of the blank pro-notes and papers signed by the first defendant. The signature contained in the pro-note is not the signature of Chandrasekaran. There is no merit in the Suit and hence, the defendants prayed to dismiss the Suit with costs.

SECOND DEFENDANT'S CASE

5. The second defendant filed written statement denying the allegations made by the plaintiff in the plaint. The first defendant is the mother of the second defendant. The defendants 3 and 4 are brothers of the



A.S.NO.4 OF 2021

second defendant. The fifth defendant is the sister of the second defendant.

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The plaintiff is the younger father-in-law of the second defendant. The above said Chandrasekaran was the husband of the first defendant and father of other defendants. Chandrasekaran passed away on May 22, 2015. It is admitted that Chandrasekaran borrowed a sum of Rs.10 Lakhs from the plaintiff and agreed to repay the same with interest. There is an enmity between the second defendant and other defendants. The other defendants joined together and tried to cheat the second defendant by not giving share in the petition mentioned property. Hence, the second defendant filed a Suit in O.S.No.106 of 2018 for partition before the Additional District Court No.1, Salem. Only with that vengeance with the second defendant, the other defendants are denying the facts and filed their written statement with false allegations. The second defendant is ready to pay his share to the plaintiff. Stating so, the second defendant sought to dismiss the Suit.

TRIAL COURT

6. Based on the above pleadings, the Trial Court framed the following issues:

'1. Whether the plaintiff is entitled for the suit claim

Page No.5 of 18



A.S.NO.4 OF 2021

amount of Rs.13,55,000/- with interest as prayed for?

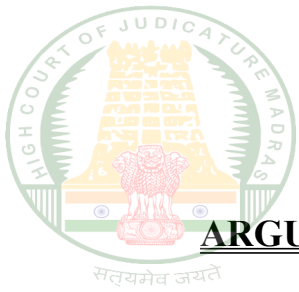
WEB COPY2. *Whether the suit pro-note is true and genuine?*

3. *To what other relief?'*

7. At trial, plaintiff was examined as PW.1 and one Narendiran was examined as P.W.2 and one Murali was examined as P.W.3 and Ex-A.1 to Ex-A.5 were marked on the side of the plaintiff. On the side of the defendants, third and second defendants were examined as D.W.1 and D.W.2 respectively and Ex-B.1 and Ex-B.16 were marked.

8. After full-fledged trial, the Trial Court has concluded that the Suit pronote was genuine and the plaintiff is entitled for payment of the Suit Claim of Rs.13,55,000/- from the defendants along with subsequent interest for the principal amount of Rs.10 Lakhs at the rate of 9% per annum with cost, out of the estate of deceased Chandrasekaran and accordingly, decreed the Suit.

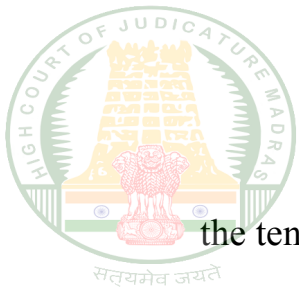
9. Feeling aggrieved, the defendants 1, 3 to 5 have preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.



A.S.NO.4 OF 2021

ARGUMENTS:

WEB COPY 10. Mr.R.Nalliyappan, learned Counsel for the appellants / defendants 1, 3 to 5 would invite the attention of this Court to Ex-B.2 - Copy of Plaint in O.S. No.736 of 2007 and Ex-B.3 - Order passed by High Court in Crl.O.P. No.15398 of 2007 and argue that in 2007 itself, the defendants 1 and 2 filed a Suit against the plaintiff herein and one Karunakaran seeking mandatory injunction to return blank signed pronote, original Sale Deed dated May 7, 1990, and also signed blank green paper of the first defendant herein who is the plaintiff in that Suit. In these circumstances, it is highly improbable that the plaintiff advanced a loan of Rs.10,00,000/- to first defendant's husband - T.Chandrasekaran who is also the father of defendants 2 and 5. Further, in the year 2015, T.Chandrasekaran was not engaged in any business and was ill due to old age. At the time of alleged borrowal, the property of T.Chandrasekaran and first defendant was mortgaged with Syndicate Bank. No ordinary prudent person would lend a huge amount of Rs.10,00,000/- in these circumstances. The plaintiff is none other than the second defendant's wife's paternal uncle. Due to some family dispute, the second defendant filed the Suit in O.S.No.106 of 2018 against the defendants 1, 3 to 5 and



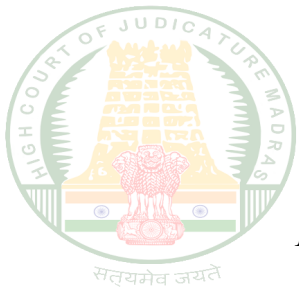
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the tenants seeking partition. The second defendant and the plaintiff with a view to bend the defendants 1, 3 to 5, collusively filed this Suit.

T.Chandrasekaran did not borrow money from the plaintiff and executed Suit promissory note as alleged. The Suit promissory note was fabricated and forged in collusion with plaintiff and second defendant. Further, there are material contradictions in the evidence of P.W.2 and P.W.3, which would establish that T.Chandrasekaran did not borrow money and execute Suit promissory note. The Trial Court misplaced the burden of proof on the side of the defendants 1, 3 to 5 and erred in decreeing the Suit. Accordingly, he would pray to allow the Appeal Suit and dismiss the Original Suit.

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

- (i) ***Ashok Kumar's Case*** - Judgment of this Court in ***Ashok Kumar -vs- Latha***, reported in **2018 (2) CTC 225**;
- (ii) ***A.S.Sakthivel's Case*** - Judgment of Madurai Bench of this Court in ***A.S.Sakthivel -vs- M.Perumal***, reported in **2023 (3) CTC 127**;
- (iii) ***Robinson's Case*** - Judgment of Madurai Bench of this Court in



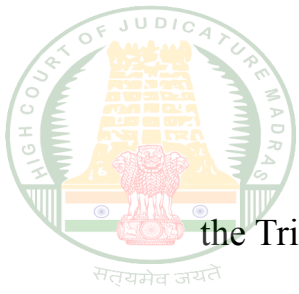
A.S.NO.4 OF 2021

Robinson -vs- Ramachandran, reported in **2014 (6) CTC 195**;

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11. On the other hand, Mr.T.M.Hariharan, learned Counsel for the respondent / plaintiff would argue that the plaintiff proved the execution of Ex-A.1 - Promissory Note by examining P.W.2 and P.W.3, namely the witness and scribe of Ex-A.1 - Suit Promissory Note. Their evidence is natural and there is no reason to reject the same. The plaintiff was not aware of the Suit in O.S. No.736 of 2007 (Ex-B.2). Even while assuming that Ex-B.2 is true, the Suit transaction therein held in 2007 and the present Suit transaction is in 2015. There is no nexus between the two. The defendants 1, 3 to 5 did not send Ex-A.1 - Suit Promissory Note for expert opinion. In these circumstances, the plaintiff prima facie established his case and discharged his initial burden by proving the execution of Ex-A.1. The defendants 1, 3 to 5 failed to discharge their onus. Hence, Ex-A.1 - Suit Promissory Note attracts the presumption under Section 118 of the Negotiable Instruments Act, 1881. The Trial Court after considering the evidence and documents, rightly decreed the Suit. There is no warrant to interfere with the same. Accordingly, he would pray to dismiss the Appeal Suit and confirm the Judgment and Decree of

Page No.9 of 18



the Trial Court.

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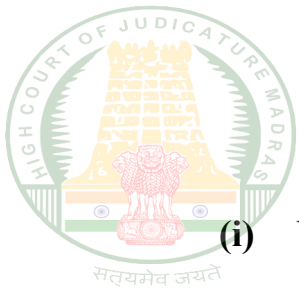
11.1. He would rely on the following decisions in support of his contentions:

- (i) ***Govindarajan's Case*** - Judgment of this Court in **Govindarajan -vs- Ponnusamy Gounder**, reported in **2019 SCC OnLine Mad 20287**;
- (ii) ***Veeran's Case*** - Judgment of this Court in **Veeran -vs- Kaliyamurthy**, reported in **2019 SCC OnLine Mad 28080**;
- (iii) ***Ponnambalam's Case*** - Judgment of this Court in **Ponnambalam -vs- Dhanalakshmi**, reported in **2020 (3) MWN (Civil) 638** ;
- (iv) ***K.Chinnasamy's Case*** - Judgment of this Court in **K.Chinnasamy -vs- Sivagamiammal**, reported in **2007 (4) CTC 122**.

DISCUSSION:

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

The following points arise for consideration in this Appeal Suit:



A.S.NO.4 OF 2021

(i) Whether T.Chandrasekaran borrowed a sum of Rs.10,00,000/- and
WEB COPY executed Suit Promissory Note ?

(ii) Whether the Judgment and Decree of the Trial Court is liable to be
interfered with ?

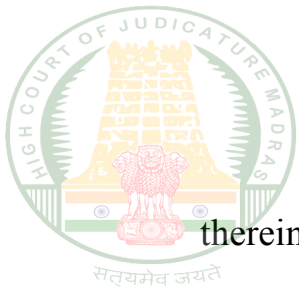
Point Nos.(i) and (ii)

13. The plaintiff examined himself as P.W.1 and marked the Suit Promissory Note as Ex-A.1. Ex-A.1 has been duly stamped. The Suit has been filed after the demise of T.Chandrasekaran and after exchange of notices [Ex-A.2 and Ex-A.5]. The defendants 1, 3 to 5 filed written statement contending that T.Chandrasekaran did not borrow money from the plaintiff and that his alleged signature found in Ex-A.1 is a forged one. The initial burden of proof always lies with the plaintiff. The plaintiff examined one Narendran and one Murali as P.W.2 and P.W.3. Indeed the evidence of P.W.2 and P.W.3 suffer from some minor contradictions. But the same is not of that degree to be fatal to the case of the plaintiff. While P.W.1 deposed that P.W.2 and P.W.3 are his long time acquaintances. But P.W.2 deposed that he is not acquainted with the plaintiff but with T.Chandrasekaran only and that he met the plaintiff for the first time only



at the time of his deposition. P.W.3 deposed that only at the time of execution of Ex-A.1, he met the plaintiff. Except for this aspect of the evidence of P.W.2 and P.W.3, their evidence otherwise inspires the confidence of this Court and proves the execution of Ex-A.1 by T.Chandrasekaran. That one aspect alone is not sufficient to shake their evidence which is otherwise strong. Hence, the plaintiff has discharged his initial burden of proof and now the onus shifts onto the defendants 1, 3 to 5 to prove their defence. As the prima facie case has been established, Ex-A.1 attracts the presumption under Section 118 of the Negotiable Instruments Act, 1881.

14. The defendants 1, 3 to 5, whose defence is that Ex-A.1 is forged and fabricated, did not take steps to send Ex-A.1 for expert opinion. Further, as regards the Suit transaction in the Suit in O.S.No.736 of 2007 (Ex-B.2), first defendant herein who is the plaintiff therein, did not plead and adduce evidence regarding the final outcome of the Suit. Even while assuming that the averments made by first defendant in the said Suit to be true, that Suit has been filed seeking mandatory injunction to return the blank pro-notes and papers signed by the first defendant herein. To be noted, those were not signed by T.Chandrasekaran. Further, the transaction



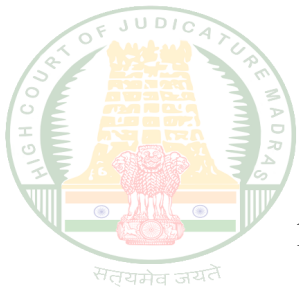
A.S.NO.4 OF 2021

therein is said to have happened in 2007 whereas the Suit transaction herein is in 2015. Hence, there is no proximity or nexus between the two.

Hence, the evidence submitted in respect of that Suit is not sufficient to rebut the presumption in respect of Ex-A.1 under Section 118 of the Negotiable Instruments Act, 1881.

14.1. The borrower T.Chandrasekaran passed away, and the suit has been filed to realise the money covered under Ex-A.1 - suit promissory note, from the estate left by borrower T.Chandrasekaran. To maintain the suit, the plaintiff should prove that borrower T.Chandrasekaran left any movable or immovable properties and the same were inherited by the defendants; in other words, the properties left by the borrower are in the hands of the defendants.

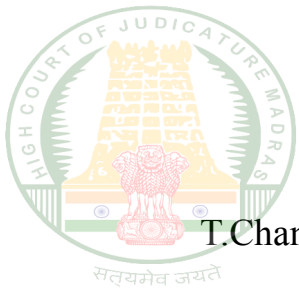
14.2. Ex-B.11 - plaint copy of O.S.No.106 of 2018, shows that T.Chandrasekaran passed away intestate leaving behind Item No.1 of the property described therein as his ancestral entitlement. The defendants inherited his interest in Item No.1 of the property more fully described in Ex-B.11. Hence, plaintiff has proved that the suit is maintainable against the defendants.



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14.3. This Court has perused Ex-B.11, the plaint copy, the second defendant herein has filed a suit in O.S.No.106 of 2018, wherein he claims that Suit Item No.1 more fully described therein, is an ancestral property in which the defendants 1 to 5 herein are entitled to equal right / interest over it. He further pleaded that Item Nos.2 and 3 described therein were purchased by T.Chandrasekaran in the name of C.Pavayammal (1st defendant). According to the defendants 1, 3 to 5, the second defendant herein has set up the plaintiff, who is a close relative of second defendant, and has filed this suit with a view to bend the defendants 1, 3 to 5 in the said suit. This Court is of the view that Ex-B.11 is not sufficient to dislodge the presumption attracted to Ex-A.1 under Section 118 of the Negotiable Instruments Act, 1882.

15. Further, it is an admitted fact that the plaintiff is the second defendant's wife's paternal uncle, and that the second defendant filed a Suit in O.S.No.106 of 2018 (Ex-B.11) seeking partition against the defendants 1, 3 to 5 (herein) and others. In this case, the second defendant was examined as D.W.2 and he has deposed that his father -



A.S.NO.4 OF 2021

T.Chandrasekaran borrowed money from plaintiff and executed Ex-A.1 -

Suit Promissory Note. Merely because D.W.2 supports the case of the plaintiff, no adverse inference can be drawn against the case of the plaintiff. That is not a valid ground to doubt the case of the plaintiff.

16. Considering the cumulative evidence in light of the facts and circumstances of the case, this Court is of the view that Ex-A.1 - Suit Promissory Note is proved by way of preponderance of probabilities by the plaintiff. As regards the Judgments relied on either side, there is no quarrel with the same. The Trial Court after considering the evidence in the right perspective, rightly decreed the Suit. This Court finds no illegality or irregularity with the Judgment and Decree of the Trial Court. Therefore, the Appeal Suit must fail as devoid of merits. **Point Nos.(i) and (ii) are answered accordingly in favour of plaintiff and against the defendants 1, 3 to 5.**



A.S.NO.4 OF 2021

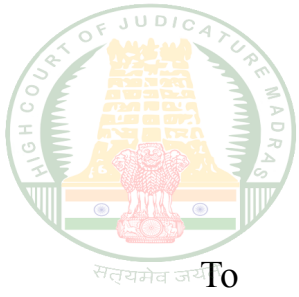
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CONCLUSION:

17. Resultantly, the Appeal Suit stands dismissed. The Judgment and Decree of the Trial Court is hereby confirmed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs.

09 / 10/ 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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A.S.NO.4 OF 2021

To
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The III Additional District Court,
Salem.



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A.S.NO.4 OF 2021

R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
APPEAL SUIT NO.4 OF 2021

09 / 10 / 2025

Page No.18 of 18