



S.A.No.1069 of 2019 and C.M.P. No.22971 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.08.2025
Pronounced on	02.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.1069 of 2019 and

C.M.P. No.22971 of 2019

Velchandiran

...Appellant

Vs.

Rajavanniyan

...Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 16.11.2018 passed in A.S. No.45 of 2017, on the file of the III Additional District and Sessions Court, Cuddalore, Virudhachalam, reversing the Judgment and decree dated 04.10.2016 passed in O.S. No.64 of 2014, on the file of the Subordinate Court, Neyveli.

For Appellant : Mr.P. Mani

For Respondent : Mrs. V.Srimathi



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JUDGMENT

In this Second Appeal, challenge is made to the judgment and decree dated 16.11.2018 passed in A.S. No.45 of 2017, on the file of the III Additional District and Sessions Court, Cuddalore, Virudhachalam, reversing the Judgment and decree dated 04.10.2016 passed in O.S. No.64 of 2014, on the file of the Subordinate Court, Neyveli.

2. The appellant is the defendant in O.S. No.64 of 2014. The respondent, as a plaintiff, filed the said suit for recovery of money due under Promissory note dated 15.08.2011.

3. For the sake of convenience the parties are referred to as per their ranking in the trial court.

4. The case of the plaintiff is that the defendant borrowed a sum of Rs.2,00,000/- from the plaintiff for his family expenses on 15.08.2011 and agreed to repay the same along with interest at the rate of 12% per



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annum and executed a suit promissory note (Ex.A1) on twenty rupees stamp paper. The defendant failed to repay the said amount despite several demands made by the plaintiff. Hence the plaintiff issued a legal notice (Ex.A2) on 11.03.2013 for which the defendant sent a reply notice with false averments. Hence, he was constrained to file the above suit.

4.1. The claim of the plaintiff was resisted by the defendant by stating that he never borrowed money from the plaintiff on 15.08.2011 for his family expenses and agreed to repay the same with interest as alleged in the plaint and that the defendant signed two blank stamp papers of the value Rs.20/- and Rs.10/- and gave the same to his elder brother K. Ramalingam and younger brother K.Arul for the purpose of getting loan by mortgaging the joint family properties and his elder brother K. Ramalingam utilised the said stamp paper and fabricated the suit promissory note. It is further stated that the defendant's brother K.Ramalingam filed a suit in O.S. No.209 of 2006 before the District Munsif Court, Virudhachalam, against the defendant and two others and the same is pending and that the said Ramalingam, due to enmity against



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the defendant as he having failed to get the property as per the unregistered partition deed, fabricated the suit promissory note dated 15.08.2011 in the name of the plaintiff with ulterior motive. The defendant is working in Neyveli Lignite Corporation and there was no necessity for him to borrow the amount as alleged. Hence, he prayed for dismissal of the above suit.

4.2. The trial court, based on the materials on record, dismissed the suit vide its order dated 04.10.2016 against which the plaintiff preferred an appeal suit in A.S.No.45/2017 before the III Additional District and Sessions Court, Cuddalore at Virudhachalam. The first appellate court reversed the judgment and decree of the trial court and decreed the suit in favour of the plaintiff. Aggrieved by this, this Second Appeal has been preferred by the defendant.

5. The Second Appeal has been admitted on the following Substantial questions of law.



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"(1) Whether the lower appellate court was right in decreeing the suit based on Ex.A1, particularly, when the same is not admissible in evidence, in view of Rule 6(2) of the Indian Stamp Rules and Section 35 of the Indian Stamp Act?

(2) Whether the lower appellate court was right in reversing the findings of the trial court which are based on the demeanour of the witnesses?"

6. The learned counsel for the appellant/defendant would submit that the suit promissory note is not a genuine document and the same has been fabricated; that the stamp paper was purchased on 22.10.2003 in the name of one K. Ramalingam, who is not the father of the plaintiff and that the suit promissory note is dated 15.08.2011, which would go to show that the same is a fabricated document. His further contention is that the name found in the suit promissory note is the name of the defendant's brother and that the plaintiff's father's name is R.Ramalingam, S/o. Rathinam. The trial court has rightly dismissed the

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suit by observing that the suit promissory note marked as Ex.A1 is a fabricated document as the same was purchased on 22.10.2003 in the name of the defendant's brother K. Ramalingam and that the suit promissory note was written on the said stamp paper on 15.08.2011 and further the stamp paper was not purchased either in the name of the plaintiff or the defendant. The trial court further held that Ex.B1 blank stamp paper was also purchased on 22.10.2003 in the name of the defendant's younger brother K. Arul and signed by the defendant, which proves the case of the defendant that he signed the blank stamp papers purchased in the name of his elder brother K.Ramalingam and younger brother K. Arul for the purpose of getting loan by mortgaging the joint family property and his elder brother fabricated the suit promissory note in the name of the plaintiff. The trial court further held that the evidence of P.W.2, one of the witnesses in the promissory note, cannot be believed for the reason that he was residing 7 km away from the suit village and is not related to the defendant in any manner and as such there was no necessity for the defendant to take P.W.2 to his village and borrow the amount from the plaintiff. Hence, the trial court rightly disbelieved the



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6.1. However, the first appellate court has erroneously held that since the defendant admitted his signature in Ex.A1 promissory note and on the basis of the said admission coupled with the evidence of P.W.1 to P.W.3, it is presumed that the defendant executed the suit promissory note. The first appellate court also erred in rendering a finding that the defendant did not assign any reason for fabricating Ex.A1 promissory note by his brother K.Ramalingam; that there is no enmity between the defendant and the witnesses and as such their evidence has to be accepted and that the defendant did not examine his brother K.Ramalingam to prove his case that he signed the said stamp paper and gave it to him for availing loan for the purpose of getting loan by mortgaging the joint family properties, when the defendant resisted the suit by stating that the suit promissory note itself was fabricated by his brother due to enmity arising out of the partition of the joint family properties. The learned counsel further submits that the first appellate court failed to consider the fact that Ex.A1 promissory note was



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purchased on 22.10.2003 and the date of execution is mentioned as 15.08.2011 and no acceptable reason was assigned by the plaintiff for writing the promissory note purchased 8 years ago. He would further submit that the suit promissory note was neither in the name of the plaintiff nor in the name of the defendant. While so, the plaintiff cannot utilise the said stamp paper for executing the suit promissory note as per Rule 6(2) of the Indian Stamp Rules and therefore the same should not have been received in evidence in view of the specific bar under Section 35 of the Indian Stamp Act, read with Rule 6(2) of the Indian Stamp Rules. His further submission is that the evidence of P.W.2. and P.W.3 is not cogent and convincing and hence, the first appellate court ought to have rejected their evidence. He would further submit that the presumption could be drawn under Section 118 of the Negotiable Instruments Act since the defendant admitted his signature in the Ex.A1 promissory note. The said presumption has been rebutted by the defendant by stating that the said stamp paper was signed and given to his brother K.Ramalingam 8 years ago and was utilised for fabricating the suit promissory note. The learned counsel further submitted that the



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first appellate court also erred in stating that the defendant has not taken any steps to get back the stamp paper from his brother and also did not examine any of the members of his deceased brother K.Arul to prove that he has handed over signed blank stamp paper (Ex.B1) to his brother K.Arul for the purpose of getting loan by mortgaging the joint family properties. Therefore, the learned counsel would submit that the first appellate court failed to consider that the suit promissory note is nothing but a fabricated document and ought not to have accepted the case projected by the plaintiff on the basis of the said promissory note. Furthermore, the plaintiff failed to prove passing of consideration by sufficient evidence and therefore the judgment and decree passed by the first appellate court is liable to be set aside.

7. On the other hand, the learned counsel for the respondent/plaintiff submits that the trial court has erroneously dismissed the suit which was reversed by the first appellate court by observing that since the signature in the suit promissory note is admitted by the



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defendant, it was for the defendant to establish that the document was forged. Therefore, the judgement and decree of the first appellate court warrants no interference by this Court.

8. Heard on both sides. Records perused.

9. It is the specific case of the plaintiff that the defendant borrowed a sum of Rs.2,00,000/- from the plaintiff for his family expenses on 15.08.2011 and agreed to repay the same with interest at the rate of 12% per annum and executed the suit promissory note. Admittedly it is engrossed on twenty rupees stamp paper. The date of purchase of the said stamp paper was on 22.10.2003 and the suit promissory note is dated 15.08.2011. However, the defendant has not denied his signature in Ex.A1 promissory note. But his contention is that he executed two stamp papers of the value Rs.20/- and Rs.10/- and gave the same to his elder brother K. Ramalingam and younger brother K.Arul for the purpose of getting loan by mortgaging the joint family properties. Due to enmity between the defendant and his elder brother K.Ramalingam, the suit



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promissory note was fabricated by his elder brother in the name of the plaintiff. The defendant's elder brother K.Ramalingam also filed a suit in O.S. No.209/2006 against the defendant and two others before the District Munsif Court and the same is pending. Section 118 of the Negotiable Instruments Act, 1881, contemplates that once the signature in the promissory note is admitted, presumption would go to support execution of the pronote. Therefore, once the defendant admitted the execution of the Promissory note but pleaded that it was not supported by consideration, the burden is on the defendant to show that the promissory note was not supported by consideration and it is a fabricated document.

9.1. In this case, the defendant failed to establish that the suit promissory note was fabricated by his brother. No witness was examined on the side of the defendant to prove that his elder brother has developed enmity against him and the proposed obtainment of loan for the family expenses. None of the close relatives of the defendant were examined to speak about the above facts. On the other hand, the plaintiff has established his case by examining the scribe and witness to the



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document. The fact that the witnesses P.W.2 and P.W.3 are living away from the suit village will not disprove the case of the plaintiff. Since the plaintiff has discharged his initial burden of proof that the suit promissory note is a genuine one, the onus is on the defendant to establish that the said document is a fabricated one.

9.2. The contention of the appellant/defendant is that Ex.A1 promissory note was neither purchased in the name of the plaintiff nor in the name of the defendant and as such the plaintiff cannot utilise the said stamp paper for executing the suit promissory note and that in view of Rule 6(2) of the Indian Stamp Rules, it should be construed that Ex.A1 promissory note has not been affixed with necessary stamp duty and the same should not have been received in evidence in view of the specific bar under Section 35 of the Indian Stamp Act. On verification of Ex.A1 promissory note, it is seen that the stamp paper was purchased on 22.10.2003 and the date of execution of promissory note was on 15.08.2011. As rightly pointed out by the learned counsel for respondent, relying on the judgment of the Hon'ble Supreme court in the



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AIR 2008 Supreme Court 1541, the Indian Stamp Act, 1899 nowhere prescribes any expiry date for use of a stamp paper. Section 54 merely provides that a persons possessing a stamp paper for which he has no immediate use (which is not spoiled or rendered unfit or useless), can seek refund of the value thereof by surrendering such stamp paper to the Collector, provided, it was purchased within the period of six months next preceding the date on which it was so surrendered. The stipulation of the period of six months prescribed in Section 54 is only for the purpose of seeking refund of the value of the unused stamp paper, and not for use of the stamp paper. Section 54 does not require the person who has purchased a stamp paper, to use it within six months. Therefore, there is no impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for a document.

9.3. Now it has to be seen whether the first appellate court was right in decreeing the suit based on Ex.A1, particularly, when the same is



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not admissible in evidence, in view of Rule 6(2) of the Indian Stamp Rules, and Section 35 of the Stamp Act.

Section 6(2) in the Indian Stamp Rules, 1925, runs as follows:

“(2) A stamped paper, on which the stamp has been engraved or embossed purchased by or for the use of a person shall be used only, by that person or his legal representatives or duly authorised agent of that person.”

At the time of exhibiting the document, Ex.A1, there was no whisper as to its admissibility. In such a case, it is too late in the day on the part of the defendant to veer round having volte face and impugn and challenge the legality and admissibility of Ex.A1. No doubt, as per Rule 6(2) of Indian Stamp Rules, 1925, as amended by G.O.Ms. No. 340, Revenue, dated 15-4-1967 a stamp paper purchased by or for the use of a person, can be used by that person or his legal representatives or his duly authorised agent only. It impliedly means others cannot make use of that stamp paper purchased for the use of a person. But neither the said rule, or the Stamp Rules nor the Stamp Act, lay down the consequences for breach of that rule. Therefore, I am not able to agree with his contention



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that for breach of the aforesaid Rule 6(2), Ex. A1 becomes unenforceable. If contrary to Rule 6(2) of the Stamp Rules, a deed is engrossed on a stamp paper not purchased by or for the benefit of any of the parties to that deed, such deed would become an improperly or insufficiently stamped deed, and the consequences contemplated by Section 35 of the Stamp Act would follow. Therefore, if such a deed is produced before any public officer, it has to be impounded and cannot be acted upon or registered or received in evidence. If stamp duty and penalty payable thereon are paid, such deed would attain the status of a duly stamped document and can be acted upon by public officers and registered and received in evidence. In this case since Ex. A1 was admitted in evidence, in view of Section 36 of Stamp Act, it cannot now be contended that it is an improperly stamped document. Since the object of the Stamp Act is to raise revenue for the State, but not to arm the litigant with a weapon of technicality to meet the claim of opponent, as held in ***Hindustan Steel Limited v. Dalit Construction Company, (1969) 1 SCC 597 : AIR 1969 SC 1238***, it cannot now be said that Ex. A1 is invalid, since it was executed on a stamp paper purchased for the use of

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another person who is not a party to the document. In this regard, the

Hon'ble Supreme Court in ***Javer Chand Vs. Pukhraj Surana reported in***

AIR 1961 Supreme Court 1655 has held as follows:

“Once a document is marked despite contrary to Rule 6(2) and Section 35 of the of the Indian Stamp Act, then as per Section 36 of the Indian Stamp Act, its admissibility cannot be challenged, except as provided in Section 61 of the said Act. Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial court itself or to a court of appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same court or a court of superior jurisdiction.”

9.4. The first appellate court has rightly concluded that the suit promissory note is a genuine document and that the defendant is liable to



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pay the suit amount with interest. There is no infirmity or perversity found in the judgment and decree passed by the first appellate court, which warrants interference by this court in this Second Appeal. Moreover, there was no question of law, let alone any substantial question of law, involved in the Second Appeal.

10. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 16.11.2018 passed in A.S. No.45 of 2017, on the file of the III Additional District and Sessions Court, Cuddalore, Virudhachalam, is upheld.

02.09.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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1. The III Additional District and Sessions Court, Cuddalore,
Virudhachalam,
2. The Subordinate Judge, Neyveli.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
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