



A.S.No.457 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 24.06.2025

Pronounced on: 03.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.457 of 2022
& C.M.P.No.16493 of 2022

S.Kanchana,
D/o.M.Seenivasan Naidu,
No.20/9, Mettu Street,
Suvalpettai, Arakonam Town,
Arakonam Taluk, Vellore District.

... Appellant

/versus/

R.Rajendran,
S/o. MuniMarkanda Naidu,
No.2281, LIG II, TNHB, Avadi,
Chennai-54.

...Respondent

Appeal Suit has been filed under Section 96 of the Civil Procedure Code, pleaded to set aside the Decree and Judgment passed in O.S.No.9 of 2019 dated 28-04-2022, on the file of the II Additional District Judge, Vellore @ Ranipet and allow the appeal.

For Appellant : Mr.R.Shivakumar,
for M/s.K.M.Vijayan Associates

For Respondent : Mr.N.Manokaran,
for Mr.P.Krishnan



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J U D G M E N T

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The Appeal Suit is directed against the judgement and decree dated 28.04.2022 passed in O.S.No.9 of 2019 on the file of II Additional District Judge, Vellore at Ranipet.

2. The suit for recovery of money is based on two promissory notes for Rs 5,00,000/- each, dated 11.11.2013, with a promise to repay the same with 24% interest on demand. According to the plaintiff, the defendant on 11.07.2016 paid a sum of Rs.2,00,000/- towards interest for each of the loans under the pro-notes and thereafter, failed and neglected to discharge the loan inspite of demand. The further case of the plaintiff is that, on 11.11.2013, the defendant also borrowed Rs.5,00,000/- and executed a registered mortgage deed. However, the plaintiff reserves his right to recover the mortgage loan through separate proceedings.

3. The defendant contested the suit claim. According to the defendant, on 11.11.2013 she borrowed Rs.5,00,000/- only from the plaintiff, for which she mortgaged her immovable property and executed a mortgage deed and got it



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registered. She never borrowed Rs.10,00,000/- by executing two promissory notes on the same day or any other day. She further contended that the pro-notes dated 11.11.2013 and the alleged endorsements on the back of those pro-notes for payment of interest of Rs.2,00,000/- each are fabricated and forged documents. For recovery of the loan advanced against the mortgage, the plaintiff had already instituted suit O.S.No.87 of 2019 and same is pending. The pre-suit notice dated 11.03.2019, for the demand to repay the mortgage loan, does not disclose the present suit pro-notes, though they were allegedly executed on the same day i.e., 11.11.2013, for good and valid consideration. The suit pro-notes and endorsements were fabricated subsequent to the notice dated 11.03.2019. That is the reason why there is no disclosure of the pro-notes in the said notice.

4. To prove this case, the plaintiff had marked the two pro-notes, (Ex.A-1 and Ex A-2), the endorsements for payment of interest on the back of the pro-notes (Ex.A-3 and Ex.A-4) and the reply notice of the defendant marked Ex.A-5. The plaintiff and the witness to the pro-notes were examined as P.W.1 and P.W.2.



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5. On behalf of the defendant, the following documents namely; the notice sent by the plaintiff, plaint copy in O.S.No.87 of 2019, the mortgage deed copy, notice of the defendant to the plaintiff denying the liability and the returned postal cover were marked as Ex.B-1 to Ex.B-5 respectively. The defendant examined as D.W-1.

6. The trial Court, after taking into consideration the documentary and oral evidence, particularly the testimony of P.W-2 (Latha), allowed the suit, holding that the plaintiff is entitled for a money decree of Rs.10,00,000/- with 6% per annum from the date of the suit.

7. The present appeal is filed by the defendant on the ground that the Court below failed to consider the improbability of executing three documents on the same day for the alleged loan transaction. Two promissory notes for Rs.5,00,000/- each and one on mortgage deed for Rs.5,00,000/-. Further, the pro-notes dated 11.11.2013 and the endorsement dated 11.07.2016 is witnessed by the same person, which improbablises the due execution on the dates mentioned in the documents. Further, the plaintiff, in the cross examination had deposed that he



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paid the amount to the defendant in cash consisting of denomination of Rs.2,000/-, Rs.1000/- and Rs.500/-. This falsifies the case of the plaintiff since on 11/11/2013, RBI had not released Rs.2000/- denomination currency. Only on 08/11/2016, Reserve Bank of India released Rs.2000/- currency for circulation. The signatures in the pro-notes and endorsements were forged by the plaintiff and the plaintiff failed to take steps to prove their genuineness inspite of specific denial by the defendant about its genuineness. The plaintiff miserably failed to prove his financial capacity to lend loan to a tune of Rs.15,00,000/- on a single day. No income tax return and bank accounts produced by the plaintiff to prove his financial capacity to lend such a huge amount. The trial Court erred in presuming the passing of consideration under Section 118 of the N.I. Act even without the plaintiff discharging his foundational onus of proving the passing of consideration.

8. Per contra, the Learned Counsel for the respondent submitted that the defendant admit borrowing of loan from the plaintiff for her daughter's higher education. She also admits that the loan from the plaintiff was arranged by Latha. The plaintiff has examined Latha as P.W-2 and her evidence clearly establishes the



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passing of consideration and due execution of the pro-notes and subsequent payment of interest and endorsements. Having proved the execution of pro-notes by the defendant, the onus is on the defendant to prove the contrary. However, the defendant had not adduced evidence to discharge her burden even by preponderance of probability. The exhibits marked by the defendant and her oral evidence had only strengthened and corroborated the case of the plaintiff and not disproved the case of the plaintiff.

Point for determination:-

- (i) Whether the pro-notes marked as Ex.A-1 and Ex.A-2 is supported by good and valid consideration?
- (ii) Whether the endorsements marked as Ex.A-3 and Ex.A-4 on the pro-notes are genuine and save the limitation?

9. Ex.A.1, Ex.A.2 and Ex.B.3 are three documents executed on the same i.e., 11.11.2023. While Ex.A.1 & Ex.A.2 are the pro-notes which are subject matter of the suit. Ex.B.3 is the mortgage deed which is the subject matter of separate suit in O.S.No.87 of 2019, pending between the parties.



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10. The specific case of the plaintiffs is that all three documents were executed on the same day and consideration was duly passed to the defendant as found in the document. The defendant admits execution of the mortgage deed and receipt of Rs.5,00,000/- as loan as found in the mortgage deed, but she had denies the execution of Ex.A.1 & Ex.A.2. She disowns her signatures found in Ex.A.1 & Ex.A.2. However, P.W.2, who is the witness to the documents had mounted the witness box and deposed that, on 14.11.2013, the plaintiff R.Rajendran gave Rs.15,00,000/- to the defendant in her presence. For Rs.5,00,000/- mortgage was created and another for Rs.10,00,000/-, two pro-notes were executed. Through, P.W.2 and by marking of Ex.A.1 & Ex.A.3, the plaintiff has discharged his foundational burden of proving the passing of consideration.

11. In such circumstances, the statutory presumption under Section 118 of N.I.Act., can be drawn based on these evidence. However, the presumption under Section 118 of N.I Act., being a rebuttable presumption, the defendant can discharge the reverse burden of preponderance of probability.



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12. In this case, the defendants heavily rely upon the admission of P.W.1 in the cross examination that he paid Rs.15,00,000/- in cash of mixed denominations of Rs.2000/-, Rs.1000/- and Rs.500/-. No doubt, on the date of execution of the pro-notes, there was no Rs.2000/- currency in circulation. However, this vague answer to the question in the cross examination will not be sufficient to disbelieve the case of the plaintiff particularly, when the defendant herself had admitted, she has received Rs.5,00,000/-, on 11.11.2023.

13. According to the plaintiff and P.W.2, the total consideration Rs.15,00,000/- was paid to the defendant. Whereas, the defendant admits only receipt of Rs.5,00,000/- and not Rs.10,00,000/- alleged to have been received by her under the pro-notes Ex.A.1 & Ex.A.2.

14. In such circumstances, the signatures found in three documents which are executed on the same day, namely Ex.A.1, Ex.A.2 & Ex.B.3 needs scrutiny. The admitted signature of the defendant is in Ex.B.3. The disputed signature of the defendant are found in Ex.A.1 & Ex.A.2. The plaintiff having proved the due execution of the deeds by producing the document and as well as



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examining the witness to the document, the defendant ought to have taken steps to prove the contrary by subjecting the disputed signature for comparison with admitted signatures. In this case, the defendant has miserably failed to take necessary steps for comparison.

15. The trial Court had compared the signatures and found that they are all identical. Having failed to discharge the reverse burden, the defendant cannot sustain the plea of non-receipt of consideration more particularly, when statutory presumption is against her.

16. The next point for consideration is whether the endorsements in Ex.A.3 & Ex.A.4, dated 11.07.2016 witnessed by the same person, are genuine and sufficient to save the limitation for filing the suit for recovery of money. The only suspicion thrown against these endorsements marked as Ex.A.3 and Ex.A.4, are the improbability of P.W.2 been present as witness.

17. On perusing the testimony of P.W.2, it is seen that she categorically stated that the plaintiff is her Uncle and she arranged the loan for the



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defendant, on her request and she is the common conduit for the defendant and the plaintiff.

18. D.W.1, in her evidence, also admits that she approached P.W.2 Latha for a loan of Rs.5,00,000/- to meet her daughter's educational expenses and for that purpose, P.W.2 arranged the loan from the plaintiff. Though, she denies the passing of consideration and the execution of Ex.A.1 to Ex.A.4, she had not substantiated her denial through plausible explanation or supporting evidence.

19. In the pre-suit notice dated 11.03.2019 in respect of the mortgage loan, if there is no reference about the loan advanced under the suit pro-notes that omission may render the transactions under the pro-notes Ex.A.1 & Ex.A.2 doubtful. Whereas, admittedly, the transactions under the pro-notes and the transaction under mortgage deed are on the same date. In the reply notice given by the defendant which is marked as Ex.A.5 in response to the demand of repayment of Rs.5,00,000/- under the mortgage and loan of Rs.10,00,000/- under two pro-notes. The defendants admits mortgage but denies execution of pro-notes and the receipt of Rs.10,00,000/-. Therefore, it is incorrect to plea that the



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plaintiff has not disclosed about the pro-notes when he caused the pre-suit notice to the defendant, if the plaintiff has not mentioned about the suit pro-notes, there is no necessity for the defendant to deny it in her reply notice.

20. For the above said reasons, this Court finds that the ground raised by the appellant/defendant challenging the trial Court judgment does not stand the scrutiny of law and evidence and therefore, liable to be dismissed as devoid of merits.

21. Accordingly, the Appeal Suit stands dismissed. The judgment and decree passed in O.S.No.9 of 2019 dated 28-04-2022, on the file of the II Additional District Judge, Vellore @ Ranipet is confirmed. There shall be no orders as to costs. Consequently, connected Miscellaneous Petition is closed.

03.07.2025

Index : Yes.
Speaking order/non speaking order
Neutral citation : Yes/No.
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Dr.G.JAYACHANDRAN,J.

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To,

- 1.The II Additional District Judge, Vellore @ Ranipet.
- 2.The Section Officer, V.R.Section, High Court, Madras.

Pre-delivery judgment made in
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