



Appeal (CAD) No.49 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.11.2025

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

Appeal (CAD) No.49 of 2024

M/s.Sree Gokulam Investments
Proprietor Mr.A.M.Gopalan
No.66, Arcot Road, Kodambakkam
Chennai – 600 024
rep. By his power agent K.Satheesh Kumar
S/oK.Krishnan

.... Appellant

V.

1. G.Vijayakumar
Son of Govindan Nair
No.25, Vijayaraghavan Street,
Mahalingapuram (Post),
Pollachi, Coimbatore.
2. A.Babu Rajkumar
Son of Avinashilingam
No.2/11A, Vinayagar Koil Street,
Kalampalayam (Post)
Coimbatore – 10.

.... Respondents



Appeal (CAD) No.49 of 2024

Prayer: Appeal filed under Section 96 of the Code of Civil Procedure 1908 against judgment and decree dated 07.08.2024 made in C.O.S.No.660 of 2022 on the file of the Principal Commercial Court, Egmore, Chennai.

For Appellant : Mr.S.Rajasekar

For Respondents : Mr.G.Vijayakumar (Party-in-person) – R1
Mr.A.Babu Rajkumar (Party-in-person) – R2

J U D G M E N T

Dr.G.Jayachandran, J.

Appeal by the plaintiff who lost the suit for recovery of money before the Trial Court. The facts leading to the appeal is as under:

2. The defendants borrowed a sum of Rs.30,50,000/- on 21.04.2003 and executed two promissory notes in favour of the plaintiff promising to pay the said amount on demand together with 24% interest per annum. In spite of reasonable demand, they failed and neglected to pay the amount borrowed with interest as promised. Hence, demand notice dated 17.05.2003 has been issued to the defendants calling upon them to pay the said amount. Thereafter, the suit for recovery of Rs.31,02,866 with 24% interest per annum has been filed.



3. The first defendant in his written statement denied the averments of the plaintiff and has made a specific allegation that the plaintiff has not come to the Court with clean hands. The first defendant had several chit transaction with Sree Gokulam Chit and Finance Co. (P) Ltd. between 1998 and 2002. In this, the first defendant subscribed more than 100 chits, later found that there were several irregularities and excess collection of commissions etc. to the tune of Rs.10.00 lakhs.

4. The first defendant caused notice to the Sree Gokulam Chit and Finance Co. (P) Ltd., Pollachi branch on 24.01.2003. However, there was no proper reconciliation of the accounts. In the said circumstances, the blank signed cheques and stamp papers been misused to institute the present Suit. Several other allegations have also been made in the written statement but it is not necessary for the point for determination in this appeal. Hence, this Court is not adverting to those averments.

5. An identical written statement has also been filed by the second defendant.

6. To prove the suit claim, the plaintiff has marked 5 documents as Ex.A1 to A5 and examined one Satheesh Kumar as P.W.1. On the side of



the defendants, the first defendant G.Vijayakumar was examined as D.W.1 and marked 26 documents as Exs.B1 to B26.

7. The Trial Court has framed the following 7 issues and in light of the evidence adduced by the parties, dismissed the suit without costs.

'1. Whether the pronotes dated 21.04.2003 are true, valid and supported by consideration?

2. Whether the suit is barred by law in view of the order in CRP NPD No.4682 of 2015 dated 28.09.2016?

3. Whether the suit claim is barred by limitation?

4. Whether the pronotes are invalid in the absence of the particulars as to the person who typed it and signed it as witness?

5. Whether the plaintiff is entitled to the suit claim as prayed for?

6. Whether the defendants are jointly and severally liable to repay the suit claim?

7. Whether the letter dated 17.04.2003 (Ex.A5) typed in NJS paper for Rs.20/- is forged one for the purpose of this suit?'

8. Being aggrieved, the present appeal has been filed on the ground that the Trial Court ought not to have dismissed the suit when the plaintiff has proved the liability of the defendants through promissory notes executed by them on 21.04.2003 pursuant to the undertaking letter dated 17.04.2003 executed under Ex.A.5. The signatures in the promissory notes admitted by the defendants and the plea of the first defendant that it was executed in a



blank paper and misused by the plaintiff is not substantiated by adequate evidence.

9. While so, the presumption under the Negotiable Instruments Act in the promissory notes ought to have been drawn by the Trial Court which the Trial Court has miserably failed. It is also contended that the self-serving documents marked by the defendants as Exs.B4 and B5 been given undue weightage to reject the lawful claim of the plaintiff.

10. The Trial Court erred in misapplication of Exs.B9 series, Ex.B.15 to Ex.B.26 which are unconnected to the promissory notes transaction and chit transaction which occurred long before the execution of Exs.A2, A3 and A5.

11. The first defendant, who is the first respondent in this appeal, appeared as party-in-person with a letter of authorisation from the second respondent to represent him and adopt the counter filed by the first respondent.

12. The point for determination is whether there is any error in appreciating Ex.A5, vis-a-vis, Exs.A2 and A3.

13. The matter for examination is narrowed whether the conclusion



of the Trial Court that Ex.A5 is a document created by the plaintiff misusing the blank signature put by the first defendant is based on proper reasoning and appreciation.

14. The case of the defendants is that Ex.A.5 has been created and prepared by the plaintiff themselves to satisfy their case. In this regard, the Trial Court has observed that Ex.A5 is typed and the signature of the first defendant found at the bottom of the page, whereas, there is enough gap between the content and the signature indicating that it was not signed after the content typed.

15. Yet another reason for disbelieving this document is that the date of stamp paper is shown as 08.02.2002 and the date of Ex.A5 is 17.04.2003. There is no sufficient explanation for the huge difference between the date of purchase of stamp paper and execution of the document.

16. We, on perusing the content of the document, also find that this letter of undertaking which was marked as Ex.A5 and has been held as fabricated document by the Trial Court, has no effect, since in this letter, the first defendant perpetrated to have confirmed his liability to Sree Gokulam Chit and Finance Co. (P) Ltd. and he has given an undertaking that he will



execute necessary documents to and in favour of Sree Gokulam Investments.

17. If really the first defendant had executed this document after the content typed, then there must be some document to and in favour of Sree Gokulam Investments to substantiate that he had any liability towards Sree Gokulam Chit and Finance Co. (P) Ltd. which he has agreed to pay to Sree Gokulam Investments, which according to the learned counsel for the appellant, a sister concern of the former firm.

18. From the exhibits relied upon by the plaintiffs, there is no such document executed by the first defendant in consonance with the alleged undertaking found in the so called undertaking letter, marked as Ex.A.5.

19. Learned counsel for the appellant referring to Exs.A2 and A3 promissory notes states that these are the two documents executed by the first defendant as per his undertaking Ex.A.5. On examining these two promissory notes, one for Rs.15,50,000/- and another for Rs.15,00,000/-, both dated 21.04.2003, we find that these promissory notes were executed by both the first and second defendants promising to pay Sree Gokulam Investments jointly and severally the amount mentioned with 24% interest.



20. While Ex.A.5 is executed only by the first defendant, these two promissory notes were executed by first and second defendants. When we refer to the pleadings, we find in the plaint that the specific case of the plaintiff is that the first defendant is the borrower and the second defendant is the guarantor for the borrowing under these two promissory notes, marked as Exs.A2 and A3.

21. While the document speaks something else, the pleading is entirely different. To prove the two promissory notes, upon which suit for recovery of money filed, the plaintiff necessarily bound to adduce evidence to show the passing of consideration. We find such evidence conspicuously absent. When the promissory notes were executed by two persons jointly and severally, even if we take Ex.A.5 is not a fabricated document, that has no relevance to the two promissory notes, marked as Exs.A2 and A3, which are executed jointly and severally by defendants 1 and 2.

22. Yet another fact which needs for appreciation is that these promissory notes alleged to have been executed in the presence of one witness by name E.Govindan has not been examined by the plaintiff.

23. For all these reasons, this Court finds that the plaintiff has



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miserably failed to prove the due execution of Exs.A2 and A3 and passing of consideration for these two promissory notes. In such circumstances, the findings of the Trial Court dismissing the suit has to be upheld and accordingly the same is upheld.

24. This Appeal is dismissed with costs.

(Dr.G.J.J.) & (M.S.K.J.)
18.11.2025

Index:yes/no
Internet:yes
Speaking order/non speaking order
Neutral citation:yes/no
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To

The Principal Commercial Court, Egmore, Chennai.



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