



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 28.10.2025

Order pronounced on : 05.12.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

A.S.No.18 of 2023

G.Durai

... Appellant

Vs.

M.K.Chennaiyan

... Respondent

Prayer: Appeal Suit filed under Section 96 of CPC, to set aside the judgment and decree dated 27.10.2022 passed in O.S.No.250 of 2019 on the file of the Additional District Judge, Krishnagiri.

For Appellant : Mr.D.Selvam
for Mr.S.Praveennath

For Respondent : Mr.T.Sundaravadanam

JUDGMENT

The unsuccessful plaintiff in a suit for recovery of money is the appellant in the present Appeal Suit.



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2.Pleadings:

The plaint in brief:

(a) The plaintiff and the defendant are known to each other for two decades. The plaintiff is a civil contractor doing Government and private works, earning Rs.5 lakhs per annum, besides owning landed properties, from which additional income of Rs.3 lakhs per annum accrues. The defendant is doing business in coconut, mango and tamarind and also possesses lorries and a tractor, through which he does transport business in the same village. The plaintiff was approached by the defendant on 15-07-2019, for a hand loan of Rs.23 lakhs, for improving his business and also to discharge family debts. In view of the close acquaintance, the plaintiff lent a sum of Rs.23 lakhs by cash on 30-07-2019. The defendant agreed to repay the same within 30 days and had issued a post-dated cheque, bearing No.003306 dated 30-08-2019. After the expiry of 30 days, the plaintiff approached the defendant and requested for repayment and since the defendant requested the plaintiff to present the cheque after 2 weeks for collection, the plaintiff waited for 2 weeks and presented the cheque. However, the cheque was returned with an endorsement 'funds insufficient'



on 17-09-2019, on being presented on 16-09-2019.

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(b) The plaintiff issued a lawyer's notice on 21-09-2019. The defendant on receipt of the said notice, sent a reply on 27-09-2019, denying the claims of the plaintiff and also contending that the plaintiff's uncle, one Ramakrishnan and the defendant had been doing joint business, by taking lease of mango grove from third parties and they had invested a sum of Rs. 75 lakhs, by sharing the same equally, that is Rs.37,50,000/- each. The defendant further contended that the plaintiff's uncle, Ramakrishnan paid his share of Rs.37,50,000/- in the bank account of the owners of the mango grove and the defendant paid his share of Rs.37,50,000/- in cash.

(c) It was further contended that the business suffered losses and taking advantage of the defendant being illiterate, the plaintiff's uncle, who was maintaining the defendant's account also stole the cheques of the defendant, without his knowledge and threatened the defendant through henchmen. The defendant had also lodged a police complaint, however the defendant was directed to seek a relief through Court. Though a panchayat was convened and both the plaintiff's uncle, Ramakrishnan and the



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defendant were directed to compensate the loss in business equally and the said Ramakrishnan was also advised to return the cheques stolen from the defendant, the said Ramakrishnan without handing over the cheques to the defendant has mischievously filled the same in the name of the plaintiff and has made the claim for recovery of money. In view of the false stand taken by the defendant, the plaintiff has been constrained to institute the suit for recovery of money. The plaintiff also claimed that the defendant has borrowed heavily from several creditors and with an intention to defraud all creditors, including the plaintiff, the defendant is attempting to sell the properties belonging to him. The plaintiff filed the suit for recovery of Rs. 23,62,866/- together with interest of 12% per annum on Rs.23 lakhs and for costs.

3.The written statement in brief:

(a) The defendant denies that the plaintiff and the defendant are friends for two decades. The defendant denies self-serving claims of the plaintiff doing contract work for the Government as well as privately and that he earns an income of Rs.8 lakhs per annum. The defendant denies that the plaintiff owns four lorries and a tractor. The defendant also denies that



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he approached the plaintiff for a hand loan of Rs.23 lakhs for developing his business and discharging family debts. The plaintiff never paid Rs.23 lakhs to the defendant on 30.07.2019, as claimed in the plaint and the defendant also did not issue any cheque dated 30.08.2019. Being a post dated cheque, agreeing to repay the alleged borrowing of Rs.23 lakhs within 30 days.

(b) The further allegation is that when the plaintiff contacted the defendant, the defendant requested the plaintiff to present the cheque are all imaginary and false. The contents of the reply notice, which have been elaborated while summarizing the plaint herein above have been set out by the defendant in the written statement as well. The defendant has denied that he is attempting to cheat the creditors and according to the defendant, the entire cause of action alleged in the suit is a concocted story.

4. Issues framed by the trial Court:

Based on the pleadings, the trial Court has framed the following issues:

“1. Whether it is true that the defendant has given the suit cheques for the loan transaction as stated by the



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plaintiff?

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

3. To what reliefs the plaintiff is entitled to?"

5. Trial:

On the side of the plaintiff, the plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A5. On the side of the defendant, the defendant examined himself as D.W.1 and one Shanmugasundaram was examined as D.W.2 and marked Ex.B1 to Ex.B7.

6. Decision of the trial Court:

The trial Court rendered a finding that the plaintiff is not entitled to recover the money claimed and proceeded to dismiss the suit. Challenging the dismissal of the suit, the plaintiff has preferred the present first appeal.

7. I have heard Mr.D.Selvam learned counsel for the appellant and Mr.T.Sundaravadanam, learned counsel for the respondent.

8. Arguments of the learned counsel for the appellant:



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(a) Mr.D.Selvam, learned counsel for the appellant would submit that when the defendant has admitted the signature in the cheque, the initial presumption is raised that the negotiable instrument was for consideration, it was thereupon incumbent for the defendant to lead rebuttal evidence to rebut the said presumption and thereupon alone, the burden would shift back to the plaintiff, to establish that the negotiable instrument was for consideration. In this regard, Mr.D.Selvam, learned counsel for the appellant would submit that the defendant has blown hot and cold with regard to the custody of the cheque in the first place and the appellant has been able to demonstrate that the defendant has not come to Court with a consistent defence and the defence taken in the written statement has also been falsified, during trial of the suit.

(b) The learned counsel for the appellant inviting my attention to the cross-examination of D.W.1, where the defendant even denies his signature in Ex.A1 cheque. D.W.1 further contends that the said cheque was given to Ramakrishnan even in the year 2017, when Ramakrishnan and the defendant were doing business together. D.W.1 categorically states that he gave only



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unsigned cheques to Ramakrishnan. Even when he has been confronted with regard to the contradictions in his evidence in cross-examination and the averments in his proof affidavit, D.W.1 asserted that he handed only unsigned cheques to Ramakrishnan. Mr.D.Selvam, further states that the defendant has not taken any steps to prove that the signature in the cheque is not his signature. He would therefore state that having admitted the signature in the cheque covered by the cheque in respect of the suit claim, it was not open to the defendant to go back and contradict his own pleading and adduce evidence to the contra. In such circumstances, Mr.D.Selvam, would contend that the evidence of D.W.1 is far from truth and could not have been the basis for the trial Court to have held that the defendant has rebutted the presumption regarding passing of consideration.

(c) As regards the non-furnishing of income tax returns, Mr.D.Selvam, would submit that the trial Court ought not to have drawn adverse inference against the plaintiff for not having produced the income tax returns, which would have established the factum of the loan being advanced to the defendant in the first place. In this regard, Mr.D.Selvam places reliance on the decision of the Division Bench judgment of this Court



in *R.Singaravadivelan Vs. Durai Senthil* in A.S.(MD).No.126 of 2024 dated 08.11.2024. He would therefore state that the trial Court has erred in holding that the defendant has rebutted the presumption regarding passing of consideration and shifting the burden on the plaintiff to establish passing of consideration. In this regard, Mr.D.Selvam would also invite my attention to the admission of D.W.1 in the pleadings, as well as in the evidence that according to the defendant, he contributed his share of Rs.37,50,000/- only by way of cash. He would therefore state that it is only the amount that has been borrowed by the defendant from the plaintiff which has been utilized to pay the defendant's share of Rs.37,50,000/-. He would therefore state that the trial Court has not appreciated the oral and documentary evidence in a proper perspective and the appeal deserves to be allowed.

9.Arguments of the learned counsel for the respondent:

(a) Per contra, Mr.T.Sundaravadanam, learned counsel appearing for the defendant would submit that the plaintiff has not established his means to give the loan in the first place and there is not even a promissory note or any written acknowledgement regarding the loan and the undertaking of the defendant to repay the same within 30 days. He would further state that the



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very same advocate who has issue notice for the appellant/plaintiff, has also issued notice for the appellant's uncle, Ramakrishnan, with whom the defendant was doing business. Thus, the learned counsel for the respondent would contend that it is a clear case of collusion between the plaintiff and the plaintiff's uncle and as rightly contended by the defendant in the written statement, taking advantage of his illiteracy, the plaintiff's uncle has stolen the signed cheques of the defendant and has filled up the same, one in the name of the plaintiff and one in the name of the said Ramakrishnan himself. In respect of the cheque in favour of Ramakrishnan, Section 138 proceedings have been initiated and insofar as the plaintiff, he has filed the suit for recovery of money. The learned counsel for the defendant would therefore state that in such circumstances, the trial Court has rightly come to the conclusion that the plaintiff has failed to establish passing of consideration, consequent to the defendant successfully rebutting initial presumption in favour of the plaintiff. He would therefore pray for dismissal of the appeal.

10.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the oral and

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documentary evidence, as well as the judgment of the trial Court.

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11. Point for consideration:

Upon considering the arguments advanced on either side, the following points for consideration arise in the present appeal:

1. Whether the defendant has successfully rebutted the initial presumption in favour of the plaintiff, regarding the passing of consideration under the cheque?

2. Whether the plaintiff is entitled to recover the suit claim, together with interest?

12. Points 1 and 2:

The suit has been filed for recovery of money based on the cheque that has been allegedly issued in the name of the plaintiff for a sum of Rs.23 lakhs. Ex.A1 is the said cheque. The cheque issued by the defendant was presented for payment on 16.09.2019 and since the same was returned with the endorsement 'funds in sufficient' on 17.09.2019, the plaintiff issued a pre-suit notice on 21.09.2019, claiming recovery of the said sum of Rs.23 lakhs, which was the amount covered by the dishonored cheque. The



defendant, on receipt of the notice on 23.09.2019, issued a reply notice on 27.09.2019. In the said reply notice, the defendant has stated that the plaintiff's uncle, Ramakrishnan and the defendant had taken lease of a mango grove from certain individuals belonging to the village for a total consideration of Rs.75 lakhs and that the half share of the defendant was paid by the defendant by way of cash.

13.The defendant also claims in the said reply notice that the business suffered huge losses and taking advantage of the defendant being illiterate and the accounts being maintained by Ramakrishnan, Ramakrishnan has stolen the cheques of the defendant and though the panchayat was convened and Ramakrishnan was directed to return the cheques of the defendant, without adhering to the decision of the panchayatars, the said Ramakrishnan has proceeded to misuse the cheques and one of the cheques has been filled up in the name of the plaintiff and the notice has been issued with false allegations, claiming a sum of Rs.23 lakhs which was never paid by the plaintiff to the defendant in the first place. Having taken such a specific stand in the reply notice, prior to the institution of the suit, in the written statement, after being served with summons, the defendant has reiterated



that the cheques were stolen by the plaintiff's uncle, Ramakrishnan and that the said cheques have been however signed by the defendant and the said signed cheques have been misused by Ramakrishnan and the plaintiff.

14. There is no quarrel with regard to the initial presumption regarding passing of consideration in respect of the negotiable instrument, namely the cheque in the present case. In the pre-suit reply notice, as well as in the written statement, the defendant admits that the signed cheques available with the plaintiff's uncle, Ramakrishnan has been misused to be filled up in the name of the plaintiff and the suit claim has been fabricated. Therefore, the initial presumption, that can be safely taken is that the said cheque is for consideration. Thereafter, it is for the defendant to rebut the initial presumption and to make out a probable case in defence that the said cheque could not have been issued for any consideration. In his attempt to rebut the presumption, the defendant in his chief examination, has reiterated the defence taken in the written statement and in paragraph No.4 of the proof of affidavit, he clearly admits that signed cheques issued by the defendant have been fraudulently stolen by the plaintiff's uncle, Ramakrishnan and that one of that said cheques has been filled up in the name of the plaintiff. However,



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in cross-examination, the defendant gives up his case in pleading and sets up a new defence that he had not even sign the cheques and the signature in Ex.A1 is not the signature of the defendant and that it has been forged. No steps have been taken by the defendant to have the signature in Ex.A1 cheque to be compared with his admitted signature. In any event, having pleaded that the defendant had signed the cheques in the first instance, not only when issuing a reply to the pre-suit notice, but also in the written statement and confirmed in the proof affidavit, the new story invented by the defendant cannot be believed that he did not sign the cheques and the signature in the Ex.A1 cheque has been forged.

15.Despite being repeatedly confronted with the stand taken in the written statement as well as the proof affidavit, the defendant has disowned his pleading and proof affidavit and reiterated that he did not sign Ex.A1 cheque. Further, admittedly, when the defendant pleads that even the initial contribution of Rs.37,50,000/- was paid by the defendant only by way of cash, it is probable that the defendant had taken financial assistance from the plaintiff in this regard. Though D.W.2 has been examined on the side of the defendant, in cross-examination, he goes on to depose that it was the



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plaintiff and the defendant who are doing business jointly and in respect of losses suffered in the business, the plaintiff has filed the claim for recovery of money from the defendant. The evidence of D.W.2 is not in any way aiding the case of the defendant.

16.Though the defendant has categorically raised the defence right before the institution of the suit as well as the written statement that a panchayat was held and in the panchayat, the plaintiff's uncle, Ramakrishnan was directed to return all the cheques to the defendant, the defendant has not taken any steps to examine any of the panchayatdars, to establish his contentions.

17.As regards income tax returns, it is not as if the plaintiff admitted that the said sum of Rs.23 lakhs is reflected in the income tax returns and has not chosen to file the income tax returns. In fact, in his cross-examination, he states that the said amount of Rs.23 lakhs advanced to the defendant has not been shown in the income tax returns. Therefore, there is no useful purpose in drawing adverse inference against the plaintiff for non-production of income tax records. In fact, the Division Bench of this Court



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in *R.Singaravadivelan's case*, stated supra, has held in a similar case where the loan was not reflected in the income tax returns, such omission cannot amount to tainting the money as illegal money and not recoverable through Court of Law and has held that the money transaction not reflected in the income tax returns can be permitted to be enforced by instituting proceedings in the competent Court and the plaintiff would be answerable for violation, namely omission to reflect the amounts and if the authorities concerned initiate proceeding, it is for the plaintiff to face the same and the defendant cannot take advantage of such violation and contend that because the loan amount is not reflected in the income tax returns, the suit is not maintainable. The said ratio laid down by the Division Bench of this Court would squarely apply to the facts of the present case.

18.The trial Court has erroneously held that by Ex.B1, Ex.B5 and Ex.B6, the defendant has established the relationship between the plaintiff's uncle, Ramakrishnan and the plaintiff and therefore, the defendant has discharged the initial presumption and the plaintiff has not discharged the burden regarding the cheque being for consideration, namely Rs.23 lakhs. In this regard, I must also mention that are Ex.B1, Ex.B5 and Ex.B6, namely



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Ex.B1 – notice issued by Ramakrishnan to the defendant, Ex.B5- the summons issued in the proceedings under Section 138 of Negotiable Instruments Act initiated by Ramakrishnan against the defendant and Ex.B6 – complaint filed under Sections 138 and 142 of Negotiable Instruments Act by Ramakrishnan against the defendant. I am unable to understand how through these exhibits which have absolutely no connection with the plaintiff, the trial Court has rendered a finding that the defendant has successfully rebutted the initial presumption. The trial Court has clearly fell in error in finding that the defendant has successfully discharged the burden cast upon him and thereafter the burden shifted to the plaintiff, which the plaintiff has not discharged.

19.Liability regarding interest:

Regarding the amount which the defendant is liable to pay, there is no agreement between the plaintiff and the defendant. However, in and by a lawyer's notice, the plaintiff, while seeking recovery of the said sum of Rs. 23 lakhs, has also not claimed any interest and in such circumstances, I am unable to sustain the claim for interest at 12% per annum. The points are answered in favour of the appellant. For all the above reasons, I am inclined



to set aside the judgment and decree of the trial Court.

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20.Result:

In fine, the Appeal Suit is partly allowed and the judgment decree dated 27.10.2022 passed in O.S.No.250 of 2019 on the file of the Additional District Judge, Krishnagiri, is set aside and consequently, the appellant is entitled to a money decree from the defendant for a sum of Rs.23,62,866/-, together with interest at the rate of 9% per annum from the date of cheque, till the date of decree and at the rate of 6% per annum, from the date of decree, till the date of realization. The plaintiff is entitled to proportionate costs in the suit as well as the appeal.

05.12.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The Additional District Judge, Krishnagiri.



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P.B. BALAJI,J.

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Pre-delivery order made in
A.S.No.18 of 2023



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05.12.2025