



A.S.No.820 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 10.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.820 of 2023 & CMP.No.21006 of 2024

Varatharajan

... Appellant

Versus

Santhamani [died]

1. Bhagiyalakshmi
2. Indhirani
3. Shanmugapriya @ Priya
4. Parimalam

... Respondents

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the preliminary decree and judgment dated 27.09.2023 passed in O.S.No.11 of 2013 on the file of the learned IV Additional District And Sessions Judge, Bhavani, Erode District by allowing this appeal.

For Appellants : Mr.J.Senthil Kumar

For Respondents : Mr.Mr.B.M.Subash – R2 & R3

Mr.K.Muthurakkan – R4



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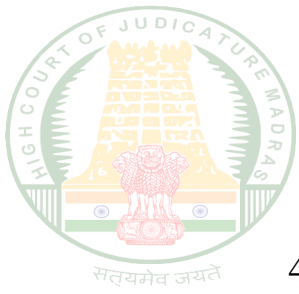
JUDGMENT

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Challenging the decree and judgment of the trial Court dismissing the suit filed for recovery of a sum of 15,79,500/- along with interest at the rate of 12% on the principal amount of Rs.15,00,000/- with costs, the present appeal has been filed by the unsuccessful plaintiff.

2. The parties are arrayed as per their own ranking before the trial Court.

3. The case of the plaintiff is that the plaintiff is none other than the son-law of the first defendant. According to the plaintiff, the first defendant, for her medical expenses, borrowed a sum of Rs.15 lakhs on 23.01.2017 and handed over Ex.A.1 post dated cheque dated 23.03.2017. When the said cheque was presented for encashment, the same was returned as account closed. Therefore, the plaintiff issued a legal notice on 23.06.2017 which has not been replied. As the first defendant died, the defendants 2 to 5 have been impleaded as her legal representatives.

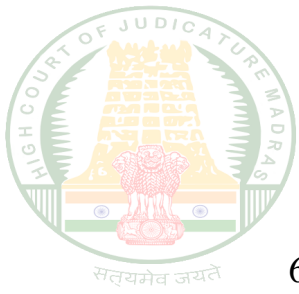


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4. The first defendant has filed a written statement before her death.

According to her, the plaintiff being her son-in-law was helping her to receive the interest amount from the bank. For that purpose, she used to give blank cheques. One such blank cheque has been misused. The first defendant was in the fourth stage of cancer. The plaintiff has retained the property documents and gold ornaments and several blank cheques. When other daughters visited the first defendant and questioned the plaintiff, there arose dispute between them. The plaintiff has also filed a suit in O.S.No.33 of 2017 as if the first defendant has executed an agreement for sale in respect of an immovable property. Hence, disputed the very borrowal.

5. The defendants 2, 3, 4 had also filed a written statement to the effect that when they attended their mother, they came to know that gold ornaments, blank cheques and property documents have been taken away by the plaintiff. When they questioned, the document has been fabricated and the suit has been filed. Their mother has also executed a Will in their favour on 18.09.2017.



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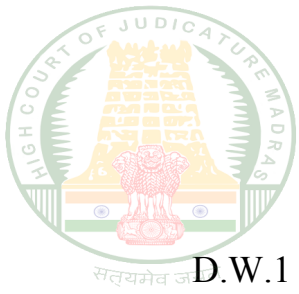
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6. The fifth defendant supported the case of the plaintiff and she is none other than the wife of the plaintiff. Her pleadings indicate that she was not happy with the Will executed by her mother.

7. On the basis of the above pleadings, the following issues have been framed :

1. Whether the plaintiff is entitled to the relief as prayed for in the suit?
2. Whether the suit cheque is true, supported by consideration and legally enforceable?
3. Whether the suit cheque is forged?
4. Whether the defendants are entitled to pay the suit amount to the plaintiff?

8. On the plaintiff, plaintiff examined himself as P.W.1 and Thavittupalayam Branch Manager of Axis Bank has been examined as P.W.2 and Ex.A.1 to Ex.A.6 have been marked. On the side of the defendants,



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D.W.1 to D.W.3 have been examined and Ex.B.1 to Ex.B.62 have been marked.

9. The trial Court appreciating entire oral and documentary evidence, dismissed the suit. Challenging the same, the present appeal has been filed.

10. The main contention of the appellant is that the signature in the cheque has not been disputed by the first defendant. It is contention of the defendants that the cheque was given only for the purpose of withdrawal of the interest amount from the bank. Further, the reply notice said to have been given by the first defendant has not been received and no acknowledgment has been filed. Therefore, Ex.B.56 cannot be relied upon. Hence, it is his contention that once a cheque has been issued, there is legal presumption attached to it, which has not not been dislodged by the defendants.

11. Whereas, the learned counsel appearing for the respondents would submit that there is absolutely no evidence as to why such a huge



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consideration of Rs.15 lakhs has been given to their mother, who is suffering from cancer. Further on the date of alleged payment of Rs.15 lakhs, yet another agreement allegedly came to be executed in respect of which the suit in O.S.No.70 of 2020 on the file of the Principal District Judge, Namakkal was filed. It is highly improbable that the mother-in-law has executed an agreement for sale of the immovable property and received a sum of Rs.15 lakhs as loan. Whereas in the plaint, there is no mention about the so called sale agreement dated 23.01.2017, which has been suppressed in the very plaint itself. Further, absolutely there is no evidence to show that the consideration has been given. When the mother-in-law was suffering from fourth stage of cancer, paying such a huge amount by way of post dated cheque and she executing an agreement to purchase the property is highly improbable. The trial Court has clearly analysed entire materials and dismissed the suit. Hence, opposed the appeal.

12. In the light of the above submission, the following points arise for consideration :



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1. Whether the suit cheque is supported by consideration?

2 Whether the defendants have dislodged the statutory presumption to place burden on the plaintiff to prove passing of consideration?

13. Points 1 & 2 :

I have perused entire materials. The case of the plaintiff is that he has advanced a sum of Rs.15 lakhs to his mother-in-law for medical necessity. It is relevant to note that the first defendant was suffering from fourth stage of cancer and cancer was detected, as per the admission of P.W.1, only in the month of March 2017. Hence, the contention of the plaintiff that he has paid Rs.15 lakhs on 23.01.2017 is highly improbable.

14. Whereas, it is the specific stand of the defendants that the other legal heirs are residing out of India. The plaintiff and the fifth respondent, who are residing in the same locality, are helping the first defendant and in



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that process, the first defendant used to give blank cheque to the plaintiff only for the purpose of withdrawal of interest from the deposit she made in the bank. According to defendants, one such cheque has been misused. It is their further contention that when the other daughters questioned the plaintiff about the accounts of all these days, the dispute arose. The defence appears to be more probable for the following reasons.

15. Admittedly, the first defendant was detected cancer only in the month of March 2017. Therefore, the plaintiff advancing huge amount for medical expenses on 23.01.2017 create serious doubt. That apart, copy of the plaint filed in O.S.No.33 of 2017 has also been filed as Ex.B.5. These facts have never been disclosed in the suit. Therefore, whether the first defendant was in a position to execute such sale agreement dated 23.01.2017 is highly improbable. It is also highly improbable to contend that the plaintiff has advanced such a huge amount without any documents on the particular day. According to the plaintiff, the said cheque was issued on 23.01.2017. Further facts placed on record clearly indicate that there are serious property dispute



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among them. The plaintiff's wife has been excluded from the Will executed by the first defendant.

16. It is relevant to note that a police complaint has also been given against the plaintiff to return the blank cheques and gold ornaments, etc. The evidence of P.W.1 itself show that a complaint has been given for return of blank cheques and gold ornaments. He has also admitted in his cross examination about the police complaint given against him. Ex,B.1 series have also filed in this regard. The very factum of the complaint has been admitted by the plaintiff and he has also admitted that the first defendant has given him 44 sovereigns jewels and bank deposit amount and signed blank cheques. However, the plaintiff has not handed over those documents back. All these facts clearly probabalize the defence theory.

17. The very evidence of P.W.1 clearly indicate that he had a sum of Rs.20 lakhs cash in hand. Though he claims in his evidence that the amount has been sent by his son, there is no evidence to show that he has withdrawn



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the amount from the bank and paid the said amount as loan to the first defendant. Therefore, in the absence of any evidence in this regard, it is highly improbable to believe the alleged payment of Rs.15 lakhs as per Ex.A.1. When there were serious family dispute and all other children of the first defendant are residing outside the country, the plaintiff alone is residing in the same locality and the first defendant was suffering from fourth stage of cancer, it is highly improbable that she has executed such a document receiving the amount. Once, defendants have brought out the probabilities to dislodge the legal presumption, it is for the plaintiff to prove passing of consideration.

18. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court in the case of *Bir Singh vs. Mukesh Kumar* reported in (2019) 4 SCC 197, which reads as follows:

34. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

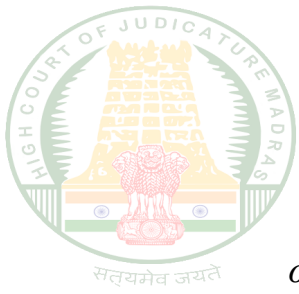


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36. *Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.*

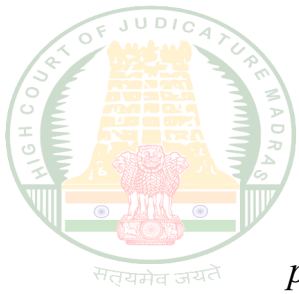
19. It is also relevant to note that the Hon'ble Supreme Court in the case of *Kundan Lal Rallaram vs. The Custodian, Evacuee Property Bombay* reported in *AIR 1961 SC 1316* has dealt with as to how the burden has to be discharged by the parties based on the Negotiable Instruments Act. The relevant paragraph reads as follows:

5. *This section lays down a special rule of evidence applicable to negotiable instruments. The presumption is one of law and thereunder a court shall presume, inter alia, that the negotiable instrument or the endorsement was made or endorsed for consideration. In effect it throws the burden of proof of failure of consideration on the maker of the note or the endorser, as the case may be. The question is, how the burden can be discharged? The rules of evidence pertaining to burden of proof are embodied in Chapter 7 of the Evidence Act. The phrase “burden of proof” has two meanings — one the burden of proof as a matter of law and pleading and the other the burden of establishing a case; the former is fixed as a question of law on the basis of the pleadings and is unchanged during the entire trial, whereas the latter is not constant but shifts as soon as a party adduces sufficient evidence to raise a presumption in his favour. The evidence required to shift the burden need not necessarily be direct evidence i.e., oral or documentary evidence*



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or admissions made by opposite party; it may comprise circumstantial evidence or presumptions of law or fact. To illustrate how this doctrine works in practice, we may take a suit on a promissory note. Under Section 101 of the Evidence Act, “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist”. Therefore, the burden initially rests on the plaintiff who has to prove that the promissory note was executed by the defendant. As soon as the execution of the promissory note is proved, the rule of presumption laid down in Section 118 of the Negotiable Instruments Act helps him to shift the burden to the other side. The burden of proof as a question of law rests, therefore, on the plaintiff; but as soon as the execution is proved, Section 118 of the Negotiable Instruments Act imposes a duty on the court to raise a presumption in his favour that the said instrument was made for consideration. This presumption shifts the burden of proof in the second sense, that is, the burden of establishing a case shifts to the defendant. The defendant may adduce direct evidence to prove that the promissory note was not supported by consideration, and, if he adduced acceptable evidence, the burden again shifts to the plaintiff, and so on. The defendant may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling, the burden may likewise shift again to the plaintiff. He may also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act. Under Section 114 of the Evidence Act, “The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case”. Illustration (g) to that section shows that the court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. A



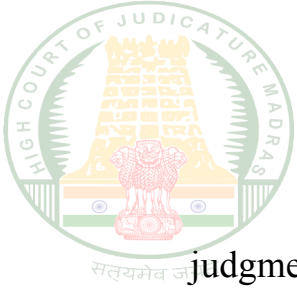
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plaintiff, who says that he had sold certain goods to the defendant and that a promissory note was executed as consideration for the goods and that he is in possession of the relevant account books to show that he was in possession of the goods sold and that the sale was effected for a particular consideration, should produce the said account books, for he is in possession of the same and the defendant certainly cannot be expected to produce his documents. In those circumstances, if such a relevant evidence is withheld by the plaintiff, Section 114 enables the court to draw a presumption to the effect that, if produced, the said accounts would be unfavourable to the plaintiff. This presumption, if raised by a court, can under certain circumstances rebut the presumption of law raised under Section 118 of the Negotiable Instruments Act. Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or presumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law.

Admittedly, in this case, a perusal of entire evidence proves that the burden shifted on the plaintiff has not been discharged and the passing of consideration has not been proved by him. Hence, I do not find any merits in this appeal. The points are answered accordingly.

20. Accordingly, this Appeal Suit is dismissed and the decree and



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judgment of the trial Court in O.S.No.11 of 2023 dated 27.09.2023 is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

10.03.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

1. The IV Additional District and Sessions Judge,
Bhavani, Erode District.
2. V.R. Section, High Court.



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N. SATHISH KUMAR, J.

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