



A.S.No.3 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 29.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.3 of 2023

L.Elumalai

S/o Loganathan

No.15/27-2a, Kalki Nagar, 2nd Street,
Arumbakkam, Chennai 106.

..Appellant/Plaintiff

/versus/

G.Thambiraj, Aravind Plot,
F4 First Floor, Kannagai Street,
Choolaimedu, Chennai 94.

.. Respondent/Defendant

Appeal Suit has been filed under Section 96 of C.P.C., to set aside the judgment and decree passed in O.S.No.7905 of 2010, dated 31.01.2012 by the learned Additional District and Sessions Judge, Fast Track Court No.IV, Chennai and allow this appeal.

For Appellant :Mr.R.Ganesh

For Respondent :Mr.D.Jaganathan



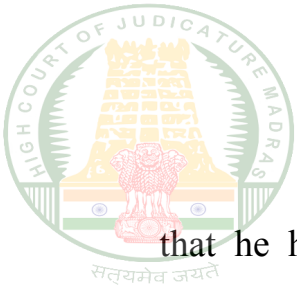
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JUDGMENT

Appeal is filed against the dismissal of the suit filed by Elumalai for recovery of money, based on four pro-notes, which are marked as Ex.A1 to Ex.A4. The Trial Court dismissed the suit on the ground that though the pro-notes are executed by the defendant and the dates and content in the pro-notes are written in different ink and different person, there is no mention with respect to the rate of interest in the pro-notes. Sofar as the Ex.A1 and Ex.A2, the pro-notes are executed in favour of one P.Subramaniam and later, made over to the plaintiff. However, no intimation was given to the defendant regarding made over and there is no acknowledgement by the plaintiff to prove the service of notice intimating made over. Suspecting failure of the plaintiff for not presenting the cheques issued by the defendant for discharging the debt, the trial Court concluded that the plaintiff failed to prove passing of consideration.

2. Being aggrieved, Appeal is filed on the ground that the trial Court had not properly appreciated the evidence and pleadings of the defendant. He had admitted the liability to the plaintiff and claimed in the plaint as well as the proof affidavit



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that he had repaid Rs.2,00,000/- to the plaintiff towards the loan transaction.

However, he has not produced any proof for repayment. Insofar as the other two pro-notes for Rs.2,00,000/- each executed in favour of P.Subramaniam made over to the plaintiff. The fact has been intimated to the defendant through notice marked as ExA5. However, the trial Court has failed to take note of the notice for want of proof of service. Even otherwise, the execution and made over been proved through the endorsement made in Ex.A1 and Ex.A2 as well as the oral evidence of the plaintiff, who was subjected himself to cross examine. The trial Court ought not to have disbelieved the case of the plaintiff. The trial Court erred in appreciating the statutory presumption under Section 118 and Section 20 of the Negotiable Instruments Act, 1881.

3. Per contra, the learned counsel appearing for the respondent submitted that the writings in the four pronotes; the insertion of the name of Subramaniam and contradiction in not mentioning the name of Subramaniam and the blank in the column meant for interest, though pronotes were executed on different dates and the witnesses in all the four pronotes Ex.A1 to Ex.A4 are one and the same and none of them was examined as witness. Therefore, the trial Court has rightly



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dismissed the suit even though signatures found in Ex.A1 to Ex.A4 were that of the defendant.

4. Point for consideration:-

Whether the trial Court erred in not applying the statutory presumption under Section 118 of the Negotiable Instruments Act, 1881, when the signatures found in the pro-notes is held to be genuine?

5. The short point for consideration is the burden of proof regarding passing of consideration. The detail cross examination of PW-1 in respect of the manner in which pro-notes executed would indicate that apart from the money transaction with the plaintiff directly, it appears that there was a chit transaction with one Rajasekar, Policeman and also the premises of the plaintiff been rented to one of the employee under the defendant. Therefore, the plaintiff is not a stranger to the defendant.

6. As far as P.Subramaniam is concerned, to whom Ex.A1 and Ex.A2 is executed the defendant pleads that he does not know the said Subramaniam. When



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there is a specific plea that he does not know Subramaniam and deny the passing of consideration, the fundamental burden to prove existence of one Subramaniam and passing of consideration falls on the plaintiff, who claims that Subramaniam made over the pronotes in his favour. In this case, the plaintiff has failed to establish the fundamental fact regarding Subramaniam and passing of consideration by Subramaniam to the defendant. Therefore, insofar Ex.A1 and Ex.A2, pro-notes are concerned, the finding of the trial Court is to be confirmed.

7. As far as Ex.A3 dated 08.09.2006 and Ex.A4 dated 10.10.2006, these were executed by the defendant in favour of Elumalai for a sum of Rs.1,00,000/- each. Elumalai mounted the witness box and spoken about the passing of consideration. Whereas the defendant both in his written statement as well as proof affidavit claims that he has discharged the debt and repaid Rs.2,00,000/- to the plaintiff. However, there is no details about the date on which he had paid the manner in which he paid that amount, no evidence was let in by the defendant to prove the discharge of the loan amount arising under Ex.A3 and Ex.A4. Therefore, the plaintiff is entitled for a decree in respect of two pronotes which are marked as Ex.A3 and Ex.A4 for a sum of Rs.1,00,000/- each.



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8. As pointed out by the learned counsel appearing for the respondent, the pronotes though contain a promise to repay on demand, the interest column is left blank. Under such circumstances, the plaintiff is not entitled for interest at the rate of 24% p.a., as claimed. Being a money transaction without mentioning rate of interest, this Court has to take note of the Interest Act and fix interest at the rate of 6% p.a., from the date of execution of pronote till the date of realisation.

9. The suit claim in respect of Ex.A3 and Ex.A4 is set aside. In respect of Ex.A1 and Ex.A2 the judgement and decree of the trial Court is confirmed. There shall be a decree for a sum of Rs.1,00,000/- with interest at the rate of 6% p.a., from 08.09.2006 till the date of realisation as against the pronote marked as Ex.A3. There shall be a decree for a sum of Rs.1,00,000/- with interest at the rate of 6% p.a., from 10.10.2006 till the date of realisation as against the pronote marked as Ex.A4.



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10. As a result, this Appeal Suit is partly allowed. No order as to costs.

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Index:yes/no

Internet:yes

Speaking order/non speaking order

Neutral citation:yes/no

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To

1.The Additional District and Sessions Court, Fast Track Court No.IV, Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.



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