

AS.(MD)No.67 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON: 10.02.2025
JUDGMENT PRONOUNCED ON: 28.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

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1.Tmt.Veerammal

2.Tmt.Pushpa

3.K.Rajkumar

4.Tmt.Renukadevi

... Appellants/Defendants

Vs.

Tmt.M.Murugalakshmi

... Respondent/Plaintiff

PRAYER : Appeal is filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree, dated 11.12.2020 passed in O.S.No.39 of 2012 by the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur.



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For Appellants : Mr.J.Gunaseelan Muthaiah
For Respondent : Mr.M.Michael Bharathi
Senior Counsel
for Mr.V.Sasikumar

JUDGMENT

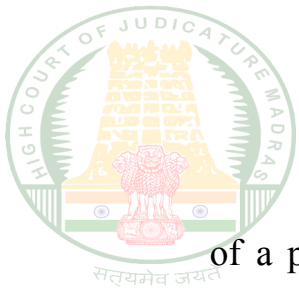
(Judgment of this Court was delivered by **M.JOTHIRAMAN, J.**)

Appeal Suit has been filed to set aside the judgment and decree passed in O.S.No.39 of 2012, on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur, dated 11.12.2020.

2. The unsuccessful defendants are the appellants herein.

3. For the sake of convenience, hereinafter, the parties are referred as per their original rank in the suit.

4. The suit in O.S.No.39 of 2012 is filed by the plaintiff for recovery of a sum of Rs.23,72,667/- with subsequent interest on the foot



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of a promissory note executed by the first defendant and her husband, namely, Kanagaraj in favour of the plaintiff.

5. Case of the plaintiff in brief as follows:-

(i) The first defendant is the wife of the deceased Thiru.Kanagaraj. The defendants 2 & 4 are the daughters of the first defendant and the third defendant is the son of the first defendant. The first defendant and her deceased husband Thiru.Kanagaraj had been running an Industry to manufacture wooden inner boxes. As they were not interested to run the said industry, both the first defendant and her husband Kanagaraj leased out the same to the plaintiff for three years from 07.07.2007 to 06.07.2010. The plaintiff paid a sum of Rs.4,00,000/- towards an advance and paid monthly rent of Rs.2,000/-. The said lease agreement was reduced into writing in non-judicial stamp paper. After completion of the said lease period, the plaintiff handed over the said industry to the first defendant and her husband and got back the advance amount of Rs.4,00,000/-.



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(ii) On 10.10.2010 the first defendant and her husband

jointly borrowed a sum of Rs.20,00,000/- from the plaintiff at her residence for their urgent family expenses and for business development on a promise to repay the same on demand and executed a demand promissory note jointly. The plaintiff demanded repayment together with agreed interest in the month of January 2012 and they were agreed to repay the same in the month of March 2012. In the meantime, the husband of the first defendant died on 18.02.2012 and hence, the plaintiff did not insist for repayment in the month of March and demanded the repayment in the month of April 2012, but the first defendant evasively answered. Therefore, the plaintiff issued a legal notice dated 11.04.2012. The first and third defendants acknowledged the receipt of the notice on 12.04.2012. The defendants neither repaid the amount nor replied the notice. Hence, the suit is laid.

6. Case of the defendants in brief as follows:-

(i) The third defendant filed a written statement. The written statement filed by the third defendant is adopted by the defendants 1,2 & 4.



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(ii) The defendants denied the execution of the promissory note.

The defendants admitted the fact that the plaintiff paid a sum of Rs.4,00,000/- towards an advance and paid a monthly rent of Rs.2,000/- as per the lease agreement entered between them. In order to grab the industry of manufacturing wooden inner boxes and the properties, the alleged promissory dated 10.10.2010 has been created by the plaintiff. The plaintiff has no capacity to give such huge amount and no necessity arises for the first defendant and her husband to borrow such a huge amount from the plaintiff. Without knowing the correct date of death of the first defendant's husband, in the alleged pronote, the date of death has been corrected by the plaintiff. Therefore, the defendants prays to dismiss the suit with costs.

7. Based on the above pleadings, the trial Court has framed the following issues:-

1. Whether the plaintiff is entitled to get the suit amount with interest as prayed for?

2. To what relief and costs, the plaintiff is entitled?



8. On the side of the plaintiff, plaintiff was examined as P.W.1 and

her husband was examined as P.W.2 and Ex.A1 to Ex.A11 were marked.

On the side of the defendants, the first defendant was examined as D.W.1, second defendant was examined as D.W.2, third defendant was examined as D.W.4 and one Kalidoss was examined as D.W.3 and Ex.B1 to Ex.B4 were marked.

9. Findings of the trial Court:-

The trial Court finding that:-

(i) There is no corrections or alteration in Ex.A2 promissory note.

(ii) Through the evidence of P.W.1 and P.W.2, they have established the fact that the manner in which Ex.A2 executed.

(iii) D.W.1 has denied her signature found in the postal acknowledgment card and in the vakalat and not denied her signature found in the promissory note, however, the evidence of D.W.1 is inconsistent and not trustworthy.

(iv) When the suit property has been attached by the trial Court, the first defendant was tried to sell the same without obeying the order of the trial Court.



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(v) The defendant did not take any steps to send the alleged promissory note to the forensic lab along with admitted signature of her husband for comparison of signature.

(vi) Initial burden of proof was discharged by the plaintiff, with regard to execution of pronote. There is a presumption under Section 118 of Negotiable Instruments Act, in favour of the plaintiff. The trial Court decreed the suit and directing the defendants to pay a sum of Rs. 23,72,667/- and 9% interest from the date of filing of the suit i.e., on 30.04.2012 for the principal amount of Rs.20,00,000/- and thereafter 6% till the date of realisation of the amount.

10. Points for consideration arise in this appeal is that (i) whether the initial burden of proving execution of a statutory instrument/pronote has been discharged by the plaintiff or not and (ii) whether the plaintiff is entitled to get the suit amount with interest as prayed for in the suit?

11. The learned counsel appearing on behalf of the appellants/defendants would submit that the respondent/plaintiff has no capacity to pay a sum of Rs.20,00,000/-, when the defendants have taken

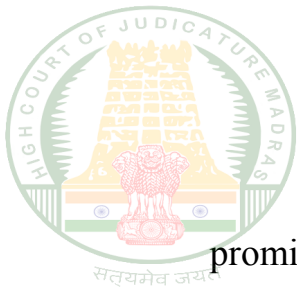


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a plea that the alleged promissory note was fabricated then, the burden on the side of the plaintiff has to prove the same. There is no presumption under Section 118 of the Negotiable Instruments Act in favour of the plaintiff. To strengthen his contentions, he relied on the judgment of this Court in the case of ***S.P.A.Baskaran vs. N.Sureshkumar in A.S(MD)No.9 of 2013, dated 29.09.2023***, to show that when the defendants specifically denies their execution of the suit promissory note and contends that the signature has been forged in the suit promissory note, the initial burden is upon the plaintiff to establish the execution of the suit promissory note. He would further submit that only if the execution is admitted by the defendants, then the statutory presumption contemplated under Section 118 of the Negotiable Instruments Act would arise. D.W.3, who is son in law of the first defendant categorically deposed that Thiru.Kanagaraj (Late) was staying in his house at Theni and continuously taking treatment in a hospital at Theni at the time of alleged execution of Ex.A2 pronote.

12. Per contra, Mr.M.Michael Bharathi, learned Senior Counsel appearing on behalf of the respondent/plaintiff would submit that the suit



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promissory note, dated 10.10.2010 remains unaltered without any corrections and strikes. Moreover, the scribe as well as witness of the promissory note, P.W.2 has categorically deposed the factum of execution of Ex.A2 and the amount was paid to D.W.1 as her husband. The trial Court rightly found that the defendants did not take any steps to send the documents for comparison of signature with other documents or filed a petition to send the document for expert opinion for the differentiation of the signature. Although, P.W.1 in her evidence has stated that she has no objection to send the promissory note for expert opinion, in spite of that, the defendants did not take any steps to proceed further.

13. We have considered the submissions made on either side and perused the records carefully.

14. It is seen from the records that the trial Court ordered attachment before judgment before the trial stage of the suit. The first appellant/first defendant right from the commencement of the trial, did not contest her signature in her pleadings and failed to take measures to



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send the document for comparison or filed any petition for authentication of her signature. Contrary to her initial stand, the first appellant/first defendant is now disputing her signature before this Court. It is pertinent to mention that not only the first appellant/first defendant signature present in the Ex.A2-promissory note, but her deceased husband signature has also found in the promissory note.

15. It is seen from the records that on 25.09.2019 the suit was posted for arguments, during which, the appellants were filed a change of vakalat with a reopen petition. The trial Court returned the petition and the defendants failed to represent the same. On 06.02.2020, the defendants filed an another petition to reopen with another change of vakalat, which was subsequently ordered and D.W.1 to D.W.4 were examined and Ex.B1 to Ex.B4 were marked. It is also seen from the records that the defendants' side evidence was closed and the suit was posted for arguments on various dates and the defendants were filed two petitions under Order 18 Rule 17 of Civil Procedure Code and the same were rejected by the Trial Court on 02.07.2020.



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16. It is an admitted fact that between 07.07.2007 and 06.07.2010, the first defendant and her husband Late.Kanagaraj had executed an unregistered lease/rental agreement in favour of plaintiff, in connection with their match stick factory and its equipments for a monthly rent of Rs.2,000/- and received an advance amount of Rs.4,00,000/- from the plaintiff under Ex.A1 dated 07.07.2007. From the above admitted facts would reveals about the jural relationship between the parties.

17. P.W.1, the holder of the promissory note Ex.A2, in her evidence has categorically spoken about the consideration passed to the first defendant on her husband and about Ex.A2, pronote came to be executed by the first defendant and her husband. Similarly, P.W.2, who is the daughter of P.W.1, who is also scribe of Ex.A2, has categorically spoken about the manner in which she wrote the Ex.A2. It is settled law that when the defendants specifically denies their execution of the suit promissory note and contends that suit promissory note has been fabricated (or) forged, the initial burden is upon the plaintiff to establish the execution of the suit promissory note.



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18. On perusal of entire evidence of P.W.1 and P.W.2, no circumstances, whatsoever, brought in their evidence to show that any of the circumstances, which lead to rebut the legal presumption attached to Ex.A2. The purpose of examining the scribe is to identify the persons, who have put their signature in Ex.A2, in her presence. It is pertinent to mention that as per Section 101 of Indian Evidence Act with regard to burden of proof, when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. In the instant case, the plaintiff has proves the execution of the promissory note, the burden shifts to the defendants to prove that the note is invalid. Section 118 of Negotiable Instruments Act creates a Presumption that every negotiable instrument, including promissory note was made an execution at the time and place created on the instrument. This presumption can only be rebutted by evidence to the contrary.

19. A perusal of the entire evidence of both side reveals that except denying their signature in Ex.A2, the defendants have not brought any circumstances to rebut the legal presumption. The plaintiff has proved the execution of the promissory note, then the burden shifts on to the



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defendants to bring necessary evidence to show that the signatures found in Ex.A2 are not that of the first defendant and her husband.

20. It is the case of the defendants that from 06.10.2010 to till 28.02.2012 Thiru.Kanagaraj has taken treatment in Apollo Hospital, Madurai and stayed in Theni, and hence, there is no chance of the first defendant and her husband being present on 10.10.2010 to execute the promissory note at the plaintiff's residence. To prove the above said facts, D.W.2 and D.W.3 were examined and marked Ex.B1 doctor's prescription dated 08.10.2010 issued by the Chandrasekar's Hospital. A perusal of Ex.B1 reveals that it has not been stated anywhere that the said Thiru.Kanagaraj was under continuous treatment. It is pertinent to mention that, although P.W.1 in her evidence deposed that she has no objection to send the promissory note Ex.A2 for expert opinion, the appellants/defendants did not take any steps to proceed further to get the expert aid in this regard. Therefore, by mere denial of her signature and her husband's signature one cannot succeed in rebutting the legal presumption. But the pleadings of the defendants is nothing but evasive in nature.



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21. A perusal of evidence of D.W.1 shows that she raised an objections to her signature on both the first vakalat filed in the suit and the second vakalat i.e., change of vakalat filed on 03.02.2020. She has also contested her signature in the acknowledgment card in Ex.A4 of the legal notices in Ex.A3, which was received by her. The entire evidence of D.W.1 would go to show that she did not dispute her signature on Ex.A2 promissory note. The inconsistency in her evidence, specifically objecting to her signature on the two vakalats and acknowledgement card of legal notice would led the trial Court to conclude that D.W.1 evidence lacked credibility.

22. This Court is of the opinion that the burden lies on the plaintiff that Ex.A2 is valid, enforceable and has not been discharged has been established. Further, though the evidence of P.W.1 and P.W.2 proved the following aspects (i) Ex.A2 was signed and executed by D.W.1 and her husband (ii) Ex.A2 contains unconditional promise to pay (iii) Ex.A2 specifies the amount, interest rate on payment terms and (iv) it has been not altered or forged. The defendants have failed to establish the fact



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that Ex.A2 is invalid, unenforceable or has been discharged.

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23. We are of the view that on consideration of the entire evidence, we do not find any reasons to interfere with the judgment and decree of the learned trial Court and there is no merit in this appeal and the same is liable to be dismissed. The points are answered accordingly.

24. In the result, the Appeal Suit is dismissed and the judgment and decree, dated 11.12.2020 in O.S.No.39 of 2012, on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur is hereby confirmed. No costs.

(G.R.S., J.) & (M.J.R., J.)
28.02.2025

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The Principal District and Sessions Court,
Virudhunagar District at Srivilliputhur.



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G.R.SWAMINATHAN, J.
AND
M.JOTHIRAMAN, J.

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