



S.A.(MD)No.356 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2025

CORAM

THE HON'BLE **DR. JUSTICE A.D. MARIA CLETE**

S.A.(MD)No.356 of 2025

Vellaichamy,
S/o.Late.Karuppana Gounder,
Dhevachinnampatty,
Kethaiurmpu Village,
Oddanchatram Taluk,
Dindigul District.

... Appellant

Vs.

Chellamuthu,
S/o.Late.Muthappa Goundar,
Ellaipatty,
Veriyappur Village,
Oddanchatram Taluk,
Dindigul District.

... Respondent

PRAYER: Second Appeal filed under Section 100 Cr.P.C., to set aside the Judgment and Decree passed in A.S. No. 18 of 2024 on the file of the Additional District Judge, (Fast Track), Palani, dated 20.11.2024, revering the Judgment and Decree passed in O.S.No. 1159 of 2022 on the file of Sub Court, Oddanchatram, dated 19.12.2023 and thus render justice.



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For Appellant : Mr.P.Sonu, Advocate
for Charles Kamalesh M.Appaji, Advocate

JUDGMENT

Heard.

2. This Second Appeal is filed against the judgment and decree dated 20.01.2023 passed by the First Appellate Court/Additional District Judge, Palani, in A.S. No. 18 of 2024, reversing the judgment and decree dated 19.12.2023 passed by the Trial Court/Subordinate Judge, Odanchatram, in O.S. No. 1159 of 2022.

3. The appellant/plaintiff filed the suit on the basis of a promissory note to recover money from the legal heirs of the deceased executant. The case of the plaintiff is that one Muthappa Gounder (since deceased), the father of the first defendants borrowed a sum of Rs.2,50,000/- and executed a promissory note on 10.02.2019. The defendants denied the execution of the said promissory note by the deceased.



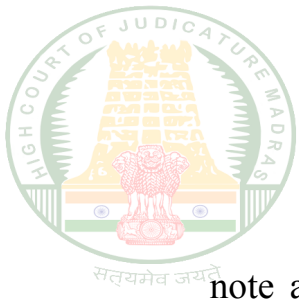
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4. When the execution of a promissory note is denied, the initial burden lies upon the plaintiff to prove such execution, only upon which the presumption under Section 118 of the Negotiable Instruments Act, 1881, would arise. In this case, the plaintiff examined himself as P.W.1 and also examined P.W.2, an alleged scribe cum attestor to the promissory note. The first appellate court observed that P.W.2 supported the case of plaintiff.

5. In a suit for recovery of money based on a promissory note, the burden is on the plaintiff to prove execution; the defendant is not required to disprove it. The plaintiff attempted to prove his case by examining himself as P.W.1 and examining the scribe cum one of the witness of the promissory note. The first appellate court observed that P.W.2 supported the case of plaintiff, thus the plaintiff discharges his onus of proof.

6. On the defendants' side, the second defendant examined himself as D.W.1 and also examined another attesting witness to the promissory



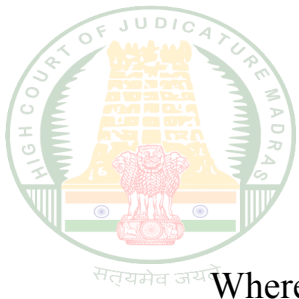
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note as D.W.2. The testimony of D.W.2 was in direct contradiction to that of P.W.2, the other attesting witness. Though D.W.2 admitted that the signature on Ex.A1 was his own, he stated that he had signed the promissory note at the instance of the plaintiff and further claimed that he had not seen the deceased affixing his signature on the document.

7. Thus, there exists a clear conflict between the evidence of P.W. 2 and D.W.2. The trial court observed that the burden lay upon the defendant to establish that the signature on the promissory note was not that of his father, for instance by subjecting Ex.A1 to examination by a handwriting expert. While the plaintiff had initially discharged the burden of proof, once the defendant, through the testimony of another attesting witness, cast doubt on the plaintiff's case, the burden shifted back to the plaintiff, who was then required to substantiate the claim with cogent proof.

8. The trial court accepted the plaintiff's case relying on the evidence of P.W.2, the scribe-cum-attesting witness, whereas the first appellate court preferred the testimony of D.W.2 and dismissed the suit.



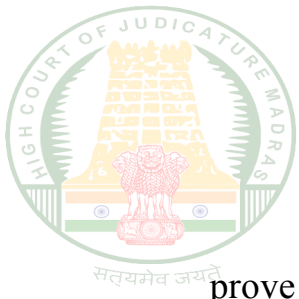
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Where the evidence of two attesting witnesses is inconsistent and contradictory, it is for the court to weigh their testimonies and decide the issues accordingly.

9. In the present case, the Trial Court erred in shifting the burden onto the defendants to prove the negative fact that the deceased had not executed the promissory note. It is well settled that a negative fact cannot ordinarily be established by positive evidence. The First Appellate Court, on the other hand, correctly held that the burden rested with the plaintiff, and while noting that P.W.2 supported the plaintiff's case, explained why the testimony of D.W.2 carried greater evidentiary value than that of P.W.2. Once the plaintiff had discharged the initial burden and it shifted to the defendant, the defendant, by examining D.W.2, cast sufficient doubt on the plaintiff's case, thereby causing the burden to revert to the plaintiff. The decisive issue, therefore, was whether the plaintiff ultimately succeeded in proving the case.

10. The first appellate court found that it was for the plaintiff to establish the execution of the promissory note by the deceased and to



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prove that the signature and thumb impression on Ex.A1 were those of the deceased Muthappa Gounder, for instance by subjecting the document to expert comparison with his admitted writings. This was particularly so when such a suggestion was put to D.W.1 and was accepted by him. Of course, recourse to expert opinion is not mandatory in every case.

11. The first appellate court, in paragraph 16 of its judgment, analysed the depositions of both attesting witnesses and, in the exercise of its discretion, preferred the version of D.W.2 over that of P.W.2. On the basis of the materials available, the appellate court thus exercised its discretion in appreciating the evidence of both P.W.2 and D.W.2 and rendered its finding. Such a finding is one of fact, resting on appreciation of evidence, and does not give rise to any substantial question of law. The questions suggested in the grounds of appeal are purely factual in nature and cannot be treated as substantial questions of law within the meaning of Section 100 CPC.



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12. In the result, the Second Appeal stands dismissed. There shall be no order as to costs.

NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

1.The Additional District Judge, (Fast Track),
Palani.

2.The Sub Court,
Oddanchatram.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.A.D. MARIA CLETE,J.

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