

S.A.(MD)Nos.106 and 107 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.07.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)Nos.106 and 107 of 2018

and

C.M.P.(MD)Nos.2582 and 2583 of 2018

S.A.(MD)No.106 of 2018:-

Adheenamilagi

... Appellant

vs

Ramadurai (Died)

1.Kasthuriengan

2.Santha

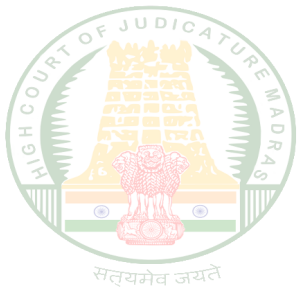
Rajeena (Died)

3.Kamala

4.Vimala

...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.10 of 2010, dated 26.09.2013 on the file of the Additional Subordinate Court, Kumbakonam confirming the judgment and decree passed in O.S.No.366 of 2009, dated 12.11.2009 on the file of the I Additional District Munsif Court, Kumbakonam.



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For Appellant : Mr.R.Sundar Srinivasan
For R1 to R3 : Mr.S.Madhavan
R4 : Batta due

S.A.(MD)No.107 of 2018:-

Adheenamilagi

... Appellant

VS

Kamala

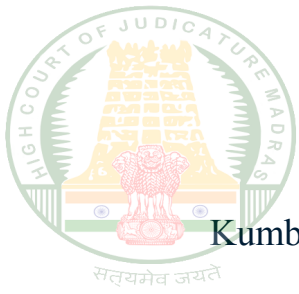
...Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.12 of 2010, dated 26.09.2013 on the file of the Additional Subordinate Court, Kumbakonam confirming the judgment and decree passed in O.S.No.367 of 2009, dated 12.11.2009 on the file of the I Additional District Munsif Court, Kumbakonam.

For Appellant : Mr.R.Sundar Srinivasan
For Respondent : Mr.S.Madhavan

COMMON JUDGMENT

The defendant is before this Court on appeals. The Second Appeals are filed as against the common judgment and decree, dated 26.09.2013, in A.S.Nos.10 and 12 of 2010 on the file of the Principal Subordinate Court,

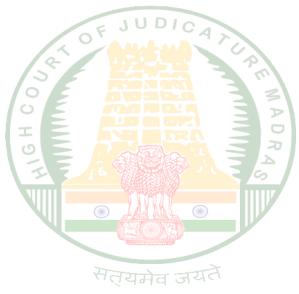


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Kumbakonam, confirming the judgment and decree, dated 12.11.2009, in O.S.Nos.366 and 367 of 2009 on the file of the I Additional District Munsif Court, Kumbakonam.

2.For the sake of convenience, the parties are referred to, as per their ranking before the trial Court. Since both the appeals arise out of the common judgment and decree, both these appeals are heard together and disposed of by way of this common judgment.

3.It is the case of the plaintiff that the defendant had borrowed a sum of Rs.50,000/- on 30.05.1997 and had executed a promissory note in Ex-A1 agreeing to repay the same with interest at the rate of 24% per annum. It is the further case of the plaintiff that the defendant is a businessman doing finance business in the name of Karpaga Vinayaga Finance in Kumbakonam and he has availed the loan for the purpose of his business transactions. Since the defendant did not repay the loan amount, even after the demand, the plaintiff had issued a legal notice on 21.09.1998 in Ex-A2 and since the defendant had neither replied nor repaid the loan amount, the plaintiff had come up with the suit for recovery of money.



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4.It is the further case of the plaintiff that the defendant had further availed another loan of Rs.50,000/- from the plaintiff and had executed a promissory note in Ex-A3 for which also, since the amount was not paid, a legal notice in Ex-A4 came to be issued and the same was also not having been replied, the plaintiff had filed one another suit.

5.The defendant resisted the suits by filing a written statement disputing the transactions in Ex-A1 and Ex-A3. It is the case of the defendant that he had no transactions with the plaintiff and, in fact, he had only availed loan from one Pitchai Konar and for the said purpose, he had executed Ex-A1 and Ex-A3 and the loan amount had also been settled to Pitchai Konar. Therefore, the suit promissory notes are not supported by consideration and therefore, denied the claim of the plaintiff and sought for dismissal of the suits.

6.Both the suits were tried together and during trial, the plaintiff examined himself as PW-1 and marked Ex-A1 to Ex-A9. On the side of the defendant, the defendant examined himself as DW-1 and examined further

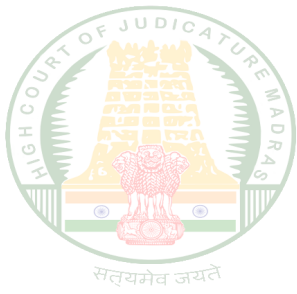


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witnesses as DW-2 to DW-4 and marked Ex-B1 to Ex-B7. Further, the 'B' register copy in respect of Petition No.460 of 2003, was also marked through witness as Ex-X1.

7.The trial Court, after analysing the oral and documentary evidences, came to the conclusion that the the plaintiff had proved the promissory notes through evidences and also when the execution of the promissory notes in Ex-A1 and Ex-A3 stood admitted, the defendant had not rebutted the presumption and therefore, came to the conclusion that the promissory notes are supported by consideration and decreed the suits. On appeal, the lower appellate Court by a common judgment and decree, dated 26.09.2013, had concurred with the findings of the trial Court and dismissed the appeals. Assailing the concurrent finding of fact, the defendant had preferred the above two Second Appeals.

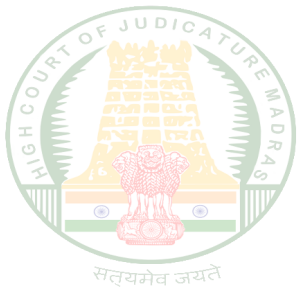
8.The Second Appeals have not been admitted and this Court, vide order, dated 12.04.2018, had only issued notice of admission to the respondent.



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9.Mr.R.Sundar Srinivasan, learned Counsel for the appellant argued that though the defendant had executed the promissory notes in Ex-A1 and Ex-A3, the same have been given only to Pitchai Konar in respect of the money availed from him and the due also having been settled, the defendant had let in evidence through DW-2 to DW-4 and also marked the documents in Ex-X1 and therefore, the defendant had rebutted the presumption and as such, the consideration has not been passed in Ex-A1 and Ex-A3. It is the further contention of the learned Counsel for the appellant that DW-2 had clearly given evidence to the effect that the defendant had repaid the loan amount to the said Pitchai Konar and therefore, the defence raised by the defendant had been proved through oral witnesses. The learned Counsel further submitted that when the suit promissory notes have not been issued to the plaintiff, the consideration has not been passed on through the promissory notes and therefore, the plaintiff is not entitled to make the claim, since the promissory notes are not supported by consideration. It is further submitted that both the Courts below have decreed the suit without analysing these documents in proper perspective and therefore, the findings are perverse and sought for interference of this Court.

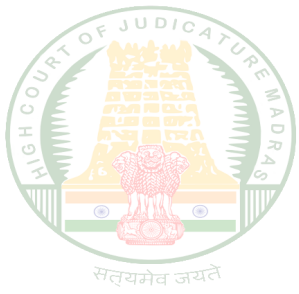


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10.*Per contra*, Mr.S.Madhavan learned Counsel for the respondents 1 to 3 submitted that when the promissory notes in Ex-A1 and Ex-A3 have been admitted by the defendant himself, the execution of the suit promissory notes stand proved. When once the execution of the promissory notes are proved, it is for the defendant to rebut the presumption, as per Section 118 of the Negotiable Instruments Act, 1881. Unless the defendant rebuts the presumption, the onus does not shift on the plaintiff. In the instant case, when the defendant having admitted the promissory notes, have not discharged his burden by rebutting the presumption. He further submitted that the Courts below have rightly concluded that the promissory notes in Ex-A1 and Ex-A3 stand proved and consideration has passed on and thereby, had decreed the suits, which needs no interference and sought for dismissal of the appeals.

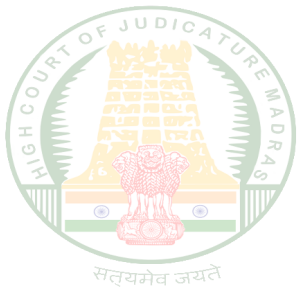
11.Heard the rival submissions and perused the materials available on record.



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12. Admittedly, the plaintiff had come up with the suit claim based on the two promissory notes in Ex-A1 and Ex-A3 each for a sum of Rs.50,000/-. As per the two promissory notes in Ex-A1 and Ex-A3, the defendant had availed a sum of Rs.50,000/- each. As the loan amounts were not repaid, the plaintiff had issued two legal notices to the defendant in Ex-A2 and Ex-A4. Having received the legal notices and the acknowledgement having been filed in Ex-A8 and Ex-A9, the defendant did not choose to reply to the legal notices.

13. When the plaintiff had come up with the suit claim based on Ex-A1 and Ex-A3 and the defendant having not replied to the legal notices, it is the stand of the defendant that he has issued the two promissory notes in favour of one Pitchai Konar and he had also subsequently settled the loan amount to the said Pitchai Konar. In view of the stand taken by the defendant, the execution of the promissory notes in Ex-A1 and Ex-A3 stands proved, as the defendant has not disputed the signature in the promissory notes in Ex-A1 and Ex-A3.



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14.As per Section 118 of the Negotiable Instruments Act, 1881, initially, the onus is on the plaintiff to prove the execution of the promissory notes. When once the execution of the promissory notes stands proved, then the onus shifts on to the defendant and it is for the defendant to rebut the presumption. Of course, the defendant is not required to prove the case beyond doubt and the defendant can let in evidence and create a doubt and the presumption could be rebutted based on the preponderance of probabilities, held by the Hon'ble Supreme Court in ***Bharat Barrel & Drum Mfg Co. -vs- Amin Chand Payrelal*** reported in ***(1999) 3 SCC 35***.

15.In the instant case, the defendant having admitted the signatures in the two promissory notes in Ex-A1 and Ex-A3, the execution of promissory notes stands proved. Then, the onus shifts on to the defendant to rebut the presumption. The defendant had examined three witnesses in DW-2 to DW-4 and marked one document through witness in Ex-X1. The evidences let in by DW-1 to DW-4 would also go to show that the transactions, which they rely in their oral evidence and also the document in Ex-X1, does not pertain to promissory notes covered under Ex-A1 and Ex-A3. The defendant, who had examined himself as DW-1, had categorically admitted



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that he has executed two promissory notes in Ex-A1 and Ex-A3. In fact, he further admits that he had executed these two promissory notes in favour of the plaintiff based on the instructions given by one Pitchai Konar. When it is the case of the defendant that he had issued two promissory notes to the plaintiff based on the instructions of the said Pitchai Konar, the defendant has not chosen to examine the said Pitchai Konar to lead evidence in this regard.

16.The steps taken by the defendant by examining DW-2 to DW-4 does not in any way support the case of the defendant and it cannot be taken as a probable material for having created a doubt to rebut the presumption. When once the defendant failed to rebut the presumption and the fact remains that the suit promissory notes in Ex-A1 and Ex-A3 has been proved, then the plaintiff is entitled for the claim of recovery of money based on the two promissory notes in Ex-A1 and Ex-A3, as they are supported by consideration.

17.The Courts below have rightly appraised the evidences and considered the legal propositions and arrived at the concurrent finding of



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fact, which are based on the materials available on record. This Court does not find any illegality or perversity in the findings arrived at by the Courts below. No question of law, much less a substantial question of law arises for consideration in these appeals.

18. Accordingly, these appeals stand dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

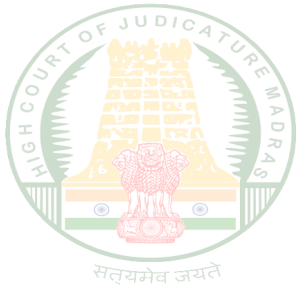
03.07.2025

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

cmr

To

- 1.The Additional Subordinate Judge, Kumbakonam.
- 2.The I Additional District Munsif, Kumbakonam.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Common judgment made in
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