

AS.(MD)No.299 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON: 13.03.2025
JUDGMENT PRONOUNCED ON: 17.04.2025

CORAM

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

AS.(MD)No.299 of 2021

S.Thangapandi ... Appellant/defendant

Vs.

S.Ganesan ... Respondent/Plaintiff

PRAYER : Appeal is filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree, dated 01.04.2021 passed in O.S.No. 206 of 2017 by the I Additional District Court, Madurai.

For Appellant : Mr.R.Shankar Ganesh

For Respondent : Mr.M.R.Pandurangan

JUDGMENT

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

The unsuccessful defendant has preferred an appeal. The suit is filed for recovery of money with subsequent interest.



AS.(MD)No.299 of 2021

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

3. The suit in O.S.No.206 of 2017 is filed by the plaintiff for recovery of money with subsequent interest on the basis of the promissory note executed by the defendant.

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

(i) The defendant borrowed a sum of Rs.17,75,000/- on 04.02.2016 and executed a suit promissory note. In spite of repeated demands, the defendant did not pay any amount and the defendant is maintaining a false case in P.R.C.No.8 of 2017 against the plaintiff only in order to escape from the liability of repaying the loan. Hence, the suit.

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

(i) The defendant was in possession of the first floor of the house belonging to one Latha for Oathi of Rs.3,50,000/-. The defendant is the relative of the said Latha. There was a dispute between the defendant



AS.(MD)No.299 of 2021

and the said Latha. While so, the defendant's sister's son one Kaliyuganathan borrowed a sum of Rs.30,000/- from the said Latha and did not pay the interest. On the vengeance of the same, the plaintiff, the said Latha, her daughters Jegadeeswari, Ramya and Ramya's husband Babu jointly came to the defendant's house on 02.05.2016 and caused damages to the Car of the defendant and set fire to the same. Therefore, a complaint was lodged and P.R.C.No.8 of 2017 is pending against them. The present suit has been filed only in order to escape from the criminal case by forging the suit promissory note. There was no loan transaction between the parties. Therefore, the defendant prays to dismiss the suit with costs.

6. Based on the above pleadings, the trial Court has framed as many as four issues on 25.04.2018 and thereafter, recasted the issue as follows:-

- 1. Whether the suit promissory note has been forged by the plaintiff?*
- 2. Whether the plaintiff is entitled to the suit amount with subsequent interest.*
- 3. What relief the plaintiff is entitled?*



AS.(MD)No.299 of 2021

WEB COPY

7. On the side of the plaintiff, he himself examined as P.W.1, one Latha examined as P.W.2 and one Kasirajan examined as P.W.3 and Ex.A1 to Ex.A3 were marked. On the side of the defendant, the defendant himself examined as D.W.1 and Ex.B1 to Ex.B4 were marked.

8. Findings of the trial Court:-

An initial the burden lies on the plaintiff was discharged. When the defendant had taken a plea of forgery, then, burden is on him to prove the same. The defendant has not taken any steps to obtain the opinion of expert in respect of the signature found in Ex.A1 promissory note. The factum of denying the signature by the defendant alone is not sufficient. The plaintiff has not forged the Ex.A1 promissory note and the plaintiff is proved the case.

9. 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?



AS.(MD)No.299 of 2021

WEB COPY

10. The learned counsel for the appellant/defendant would submit that there was no loan transaction between the appellant and the respondent. The respondent/plaintiff is one of the prime accused in the criminal case lodged by the appellant/defendant and in order to escape from the criminal liability, the plaintiff has created a forged Ex.A1 promissory note. The appellant/defendant had chosen to file an application before the trial Court to obtain an opinion of the expert, but the same was dismissed. There is no legal presumption available under Section 118 of the Negotiable Instruments Act, 1881. When the execution of promissory note itself is disputed by the defendant, it is the bounden duty of the plaintiff to prove the same.

11. The learned counsel further would submit that the suit was decreed on the main ground that the appellant/defendant failed to take steps to prove and to give an explanation to the factum that the signatures in the alleged promissory note is forged one. The fact remains that the appellant/defendant filed an interlocutory application in I.A.No.403 of 2019 to obtain an opinion of the expert regarding the signature found in the alleged promissory note with vakalat and the written statement and



AS.(MD)No.299 of 2021

the same was dismissed by the trial Court. Aggrieved over the same, the appellant/defendant preferred a Civil Revision Petition in C.R.P(MD)No. 970 of 2020 before this Court and the same was dismissed as infructuous because the trial Court already concluded the suit proceedings. He would submit that P.W.1 has not deposed clearly about the existence of Ex.A1-promissory note and in the absence of proof of existence of Ex.A1 and consideration in support of Ex.A1 is doubtful. To strengthen his contentions, he has relied upon the judgment of the Hon'ble Supreme Court reported in **1996(8) SCC 586 in case of Bharat Barrel and Drum Manufacturing Company vs. Amin Chand Payrelal 23**. The Hon'ble Supreme Court held that though the evidential burden is initially placed on the defendant by virtue of Section 118 of the Negotiable Instruments Act, it can be rebutted by the defendant by showing preponderance of probabilities that such consideration as stated in the pronote, or in the suit notice or in the plaint does not exist and once the presumption is so rebutted, the said presumption 'disappears'.

12. Per contra, the learned counsel for the respondent/plaintiff would submit that the execution of Ex.A1 promissory note was duly



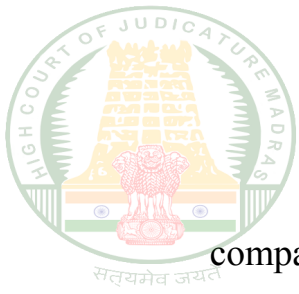
AS.(MD)No.299 of 2021

proved by the plaintiff by examining the witnesses P.W.2 and P.W.3.

The trial Court finding that the appellant/defendant failed to discharge the burden lies on him by sending the Ex.A1 promissory note for expert opinion. Therefore, the trial Court rightly drew the adverse inference against the appellant/defendant under Section 114 of the Indian Evidence Act. The presumption available under Section 118 of the Negotiable Instruments Act not rebutted with adducing an evidence by the defendant.

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

14. It is not in dispute that the appellant/defendant had filed an application under Order 26 Rule 10(A) r/w Section 45 of the Indian Evidence Act and Section 151 C.P.C., to obtain an opinion of the expert in respect of the signature found in Ex.A1 promissory note after comparing the same in the vakalat and the written statement filed by the appellant/defendant. The Court below vide order dated 04.03.2020 dismissed the petition on the ground that the petition has been filed to



AS.(MD)No.299 of 2021

compare the signature in Ex.A1 with the signature of the appellant/defendant in his vakalat and written statement and those documents have been signed by the defendant only after filing the suit. Further, held that as per Section 47 of the Indian Evidence Act when the Court is able to form an opinion as the signature in the Ex.A1, the evidence of the P.W.2 and P.W.3 is sufficient to form such opinion and there is no necessity to send Ex.A1 for obtaining the opinion of the expert.

15. It is relevant to extract Section 118 of the Negotiable Instruments Act, 1881: -

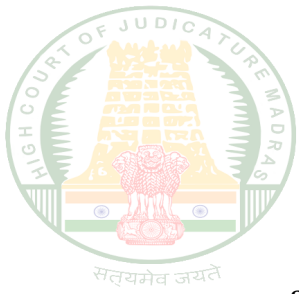
"118. Presumptions as to negotiable instruments.- Until the contrary is proved, the following presumptions shall be made:-

(a) of consideration - that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date - that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance - that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer - that every transfer of a negotiable instrument was made before its maturity;



WEB COPY



AS.(MD)No.299 of 2021

(e)as to order of indorsements - that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f)as to stamps - that a lost promissory note, bill of exchange or cheque was duly stamped;

(g)that holder is a holder in due course - that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

16. It is pertinent to mention that in a case based on pronote, the initial burden lies on the plaintiff to prove execution and on such burden being discharged, the Court shall raise presumption in favour of the plaintiff that the pronote is for consideration, it will than be for the defendant to rebut that presumption. The defendant can rebut the presumption by providing evidence that, the promissory note was not executed for a valid reason, the debt or liability mentioned in the pronote is not valid or subsisting and the plaintiff has not provided consideration for the promissory note. The defendant must give sufficient evidence to disprove the presumption.



AS.(MD)No.299 of 2021

WEB COPY

17. It is settled proposition that when the defendant claiming to the extent that suit promissory note was forged and he had not borrowed any money from plaintiff, the defendant denied his signature on pronote, prima facie case warrants analysis of purported signatures by handwriting expert.

18. P.W.1 Ganesan in his cross-examination held that P.W.2 Latha has scribe the Ex.A1 promissory note on the instructions given by the defendant. He has no objection for sending Ex.A1 for expert opinion. P.W.2 Latha in her cross-examination held that herself and P.W.3 were signed in the Ex.A1 promissory note and the defendant has not given any other documents to the plaintiff at the time of borrowing the money. She herself filled the promissory note which has been brought by the defendant. P.W.3 deposed the evidence in consonance with the evidence of P.W.2. It is pertinent to mention that the defendant in his cross-examination, has denied the signature found in the written statement and admitted the signature found in the vakalat.



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19. From the evidence of P.W.1 to P.W.3 shows that the P.W.1, who is holder of promissory note Ex.A1, in her evidence has categorically spoken about the consideration passed to the defendant and pronote came to be executed by the first defendant in the presence of P.W.2 and P.W.3. P.W.2, who is the scribe Ex.A1, has categorically spoken about the manner in which he wrote the Ex.A1. Similarly, P.W.3, who is also relative of the defendant, has categorically spoken about the manner of execution of Ex.A1. On perusal of entire evidence of P.Ws.1 to 3 no circumstances whatsoever brought in their evidence to show that any of the circumstances which lead to rebut the legal presumption attached to Ex.A1. It is pertinent to mention that as per Section 101 to 103 of the Indian Evidence Act with regard to the burden of proof, when a person is a bound to prove the existence of promissory note and it is stated that the burden of proof lies on that person.

20. In the instant case, the plaintiff has proves the execution of the promissory note. It is relevant to cite the judgment of this Court reported in **2002(4) Civil LJ, 232 (Mad), K.Sethurathinam vs. Subramanian**, wherein, it has been held that "the burden lies on plaintiff to prove



AS.(MD)No.299 of 2021

execution of promissory note by the defendant, where the plaintiff failed to prove execution presumption under Section 118 of the Negotiable Instruments Act, is not available"". The burden shifts to the defendant to prove that the promissory note is invalid. The defendant has not brought any circumstances to rebut the legal presumption. It is pertinent to mention that although P.W.1 in his evidence deposed that he has no objection to send a promissory note Ex.A1 for expert opinion, the appellant/defendant did not take steps to proceed further to get expert aid in this regard with admitted signature during the relevant point of time. However, he has chosen to file an application before the trial Court to compare the signature found in the written statement and the vakalat, therefore, by mere denial of the signature, he had not succeeded in rebutting the legal presumption.

21. The defendant denied his signature found in the written statement and the inconsistency of objecting the signature in the written statement lacked its credibility. This Court is of the opinion that the burden lies on the plaintiff that Ex.A1 is valid, enforceable and has not been discharged has been established. Further, through the evidence of



AS.(MD)No.299 of 2021

P.W.1 to 3 proved the following aspects (i) Ex.A1 was signed and executed by D.W.1 (ii) Ex.A1 contains unconditional promise to pay (iii) Ex.A1 specifies the amount, interest rate on payment terms and (iv) it has been not altered or forged. The defendant has failed to establish the fact that Ex.A1 is invalid, unenforceable or has been discharged.

22. We are of the view that on consideration of the entire evidence, we do not find any reasons to interference with the judgment and decree of the Court below and there is no merit in the appeal and it is liable to be dismissed. The question of law is answered accordingly.

23. In the result, the Appeal Suit is dismissed and the judgment and decree dated 01.04.2021 in O.S.No.206 of 2017, on the file of the I Additional District Court, Madurai is hereby confirmed. No costs.

(G.R.S., J.) & (M.J.R., J.)
17.04.2025

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AS.(MD)No.299 of 2021

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The I Additional District Court,
Madurai.



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AS.(MD)No.299 of 2021

G.R.SWAMINATHAN, J.
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A.S.(MD)No.299 of 2021

17.04.2025