



SA(MD)No.404 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.07.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.404 of 2018

and

C.M.P(MD)No.11384 of 2018

K.Senthilkumar

... Appellant / Respondent / Defendant

Vs

Paramesh Gounder (Died)

2.Pappu Alias Pappammal

3.Valli

... Respondents / Respondent / Plaintiff

*(Respondents 2 and 3 are brought
on record as LR's of the deceased
sole respondent vide Court order
dated 19.02.2025)*

Prayer : This Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree passed dated 24.02.2018 made in A.S.No. 5 of 2015 on the file of the Sub Court, Vendasandur, Dindigul District, confirming the judgment and decree passed dated 05.02.2015 made in O.S.No.124 of 2005 on the file of District Munsif Cum Judicial Magistrate Court, Vendasandur, Dindigul District.



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For Appellant : Mr.G.Gomathi Sankar

For R2 and R3 : Mr.R.Gowri Shankar
Legal aid counsel

O R D E R

The defendant is before this Court is on appeal.

2. The Second Appeal is filed challenging the judgment and decree dated 24.02.2018 in A.S.No.5 of 2015 on the file of Subordinate Judge, Vedsanthur, confirming the judgment and decree dated 05.02.2015 in O.S.No.124 of 2005 on the file of the District Munsif cum Judicial Magistrate, Vedsandur. The parties are referred to as per their litigative status before the trial Court.

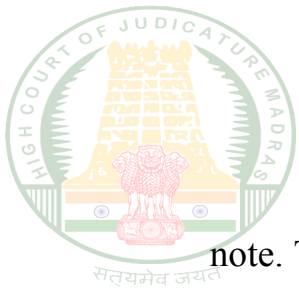
3. It is the case of the plaintiff that the defendant had availed a loan for a sum of Rs.50,000/- from the plaintiff and executed a promissory note in Ex.A1 dated 04.10.1999, agreeing to repay the said amount, with interest at the rate of Re.1/- per month on Rs.100/-. The promissory note



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was executed on 04.10.1999 in Velayuthampalayam. The defendant had paid a sum of Rs.100/- towards interest on 29.06.2022 and made an endorsement in the promissory note in Ex.A2. Since thereafter, the defendant had not repaid the loan amount, the plaintiff had issued a legal notice on 01.03.2005 in Ex.A3 which was served on the defendant in Ex.A4. Since the defendant neither repaid the amount nor replied to the notice, the plaintiff had come up with the suit for recovery of money.

4. The defendant filed a written statement contending that in fact there was a dispute between the defendant and his father and sister, therefore in respect of the property transactions, he had executed certain blank promissory notes and handed over to his father which might have been used for creation of the suit promissory note. It is the contention of the defendant that he is not aware of this transaction and he has not availed any loan from the plaintiff. In respect of the endorsement made in the suit promissory note, the plaintiff however, had made a categorical submission that in order to get rid of the disputes from his father and sister, he had executed endorsements in respect of part payments and one such endorsement made in the promissory note is the suit promissory

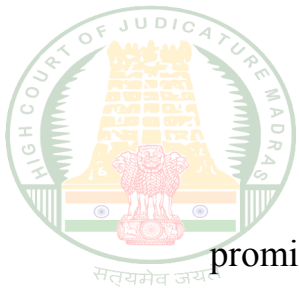


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note. The defendant had further went ahead and explained that there were several transactions between his father and sister in respect of the partition executed between them and also financial transactions. All that the defendant sought to contend is that several loans were availed by the defendant's father, which the defendant had come forward and settled and therefore the defendant is not due and liable to pay any money to the plaintiff in view of the suit promissory note.

5. During trial, the plaintiff examined himself as P.W.1 and also examined the attesor in the promissory note as P.W.2 and marked Ex.A1 to Ex.A4. On the side of defendant, he examined himself as D.W.1 and examined six other witnesses D.W.2 to D.W.7, out of which D.W.7 is his father namely Kalachi. Further, documents in Ex.B1 to Ex.B6 were marked.

6. The trial Court after analyzing the evidences, came to the conclusion that when the suit promissory note in Ex.A1 has been proved, then it was for the defendant to rebut the presumption, which he has miserably failed. But even as per the admission of the defendant, the suit



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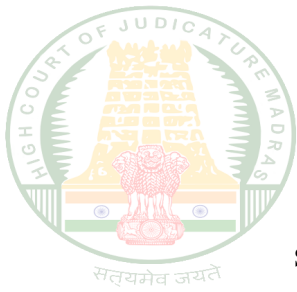
promissory note and also the endorsement in Ex.A1 and Ex.A2, stood proved. On the promissory note, being proved, and no rebuttal evidence let in by the defendants, the trial Court decreed the suit. On appeal, the lower appellate Court also by relying on the admission of the defendant in the written statement and also by relying on the evidence of P.W.1 and P.W.2, concluded that the suit promissory note stood proved and the defendant had not rebutted the presumption under Section 118 of the Negotiable Instruments Act, thereby dismissed the appeal confirming the judgment and decree of the trial Court.

7. Assailing the concurrent finding of fact, the defendant has preferred the Second Appeal.

8. The Second Appeal has been admitted for the following substantial question of law.

i) Whether the Court below is correct in decreeing the suit, when Ex.A1 is barred by limitation ?

ii) Whether the Court below is correct in decreeing the



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suit based on Ex.A2, when Ex.A2 was not proved by way of examining the attesor and other evidence?

iii) Whether the Court below is correct in shifting the burden of proof on the defendant, when the plaintiff did not prove Ex.A1 and Ex.A2?

9. The first respondent in the appeal, died pending Second Appeal and the legal heirs were impleaded as respondents 2 and 3. Eventhough notice has been served and their names are printed in the cause list, in the earlier occasion, no one has entered appearance and as such, this Court had appointed Mr.Gowri Shankar, learned counsel as the legal aid counsel to represent the respondents 2 and 3.

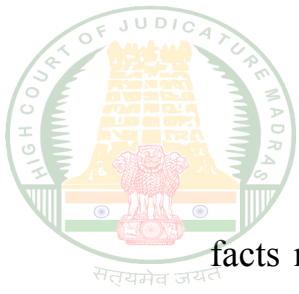
10. The learned counsel appearing for the appellant contended that eventhough the suit promissory note is sought to be proved by the plaintiff by examining himself as P.W.1 and also the attesor as P.W.2, the endorsement made by receiving Rs.100/- as interest in the year 2002, is not proved, as the witnesses therein has not been examined. It is his vehement contention that the suit is barred by limitation as the same has



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not been filed within a period of three years from the date of promissory note and the present suit which is filed only relying on the endorsement in Ex.A2 is not sustainable, since the same is not proved. It is also the further contention of the learned counsel that the defendant had filed document in Ex.B1 which is a partition deed which will go to show that the defendant had settled all the money transactions and loans availed by the defendant's father and therefore the defendant is not bound to make any payment that is covered under the suit promissory note. He further contended that the Courts below have not appreciated the documents in a proper perspective and also had merely decreed the suit by placing reliance on an averment in the written statement as an admission which are perverse and sought for interference of this Court.

11. Mr.G.Gomathi Sankar, learned counsel for the respondent submitted that the plaintiff by examining himself and also the attesor had proved the suit promissory note as Ex.A1. Further, the learned counsel contended that in respect of the endorsement made in Ex.A2, the defendant himself has categorically admitted the endorsement and when an admission is made, the plaintiff need not prove the same, as admitted



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facts need not be proved. Learned counsel further submitted that when Ex.A1 and Ex.A2 stood proved, it was for the defendant to rebut the presumption which the defendant did not choose to do so and a mere attempt is made by the defendant by placing reliance on Ex.B1 partition deed. It is only a self serving document created by him along with his father, which will not enure to his benefit as against the claim made by the plaintiff. Further the learned counsel has submitted that in fact the defendant had also examined his father as P.W.7 who did not support the case of the defendant and in fact he disowned this document. As such the Courts below has rightly appraised the document in a proper perspective and decreed the suit which needs no interference and sought for dismissal of the appeal.

12. Heard the rival submission and perused the materials available on record.

13. The plaintiff had filed the suit for recovery of money based on the promissory note executed in Ex.A1. Perusal of the promissory note reveals that the same has been executed on 04.10.1999 by the defendant



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by availing a sum of Rs.50,000/-. Eventhough, the time to file the suit for recovery of money based on the promissory note, is three years and the time would expire on 03.10.2002, the defendant has paid interest and had made an endorsement in the suit promissory note in Ex.A1 on 29.06.2002 which is marked as Ex.A2. Since in view of the endorsement and acknowledgement made by the defendants on 29.06.2002 in Ex.A2, the time to file the suit stands extended and admittedly, the present suit has been filed in the year 2002 which is still within the period of limitation.

14. The plaintiff had examined himself as P.W.1 and had also examined the attesor as P.W.2. The evidence of P.W.1 and P.W.2, prove the transactions in Ex.A1 wherein the defendant had availed loan of a sum of Rs.50,000/-. It is the vehement contention of the learned counsel for the respondent that though the promissory note in Ex.A1 has been proved by the plaintiff by examining P.W.1 and P.W.2, however, the endorsement made in Ex.A2 dated 29.06.2002 has not been proved, as no witnesses has been examined in that regard. The submissions made by the learned counsel in that aspect cannot be accepted for the simple



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reason, that the defendant even in the written statement had categorically admitted the endorsement made by him on 29.06.2002 in Ex.A2. The relevant portion in the written statement reads that,

இப்பிரதிவாதியின் தந்தை மற்றும் சகோதரி
ஆகியவர்களிடம் தொல்லையில் இருந்து விடுபடவே
மேற்படியார்கள் கூறிய சில புரோனோட்டுகளில்
வரவு வைத்து கொடுத்திருந்தார். அதில் இந்த
தாவா புரோனோட்டும் ஒன்றாகும்.

15. The above averments in the written statement of the defendant makes it explicitly clear, wherein he admits that in order to get rid of the problems from the defendant's father and sister, he had made payments in respect of certain promissory notes and had made endorsement and one such endorsement is in the suit promissory note. The above categorical admission of the defendant, goes to show that he has made endorsement in Ex.A2, therefore the present submission to the effect that Ex.A2 has not been proved, cannot be accepted. It is relevant to refer Section 58 of the Indian Evidence Act, where the admitted fact need not be proved. As such when the transaction in Ex.A1 and Ex.A2 stands proved, the plaintiff has discharged the onus and proved the execution of the promissory note as per Section 118 of the Negotiable Instruments Act.



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16. When the plaintiff has discharged the onus, then the burden shifts on to the defendant to rebut the presumption. Of course, to rebut the presumption, the defendant need not prove beyond doubt but on preponderance of probabilities. It is sufficient for the defendant to bring in some probable materials to create a doubt that the consideration has not been passed on through the promissory note. However, in the instant case, when the plaintiff has successfully proved the execution of promissory note in Ex.A1, the defendant had not filed any materials to rebut the presumption cast upon him to disprove the case of the plaintiff.

17. All that the defendant contends is that in view of the partition deed, executed in Ex.B1, he has passed on all his liabilities to the defendant's father and therefore he cannot be made liable to pay the suit promissory note. In this context, it is to be noted that Ex.B1 partition deed is a self serving document and with such document, the defendant cannot plead or defeat the claim of the plaintiff. In fact, the father of the defendant has been examined as D.W.7 who had categorically rejected this documents and had also denied the claim of the defendant.



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18. When the plaintiff has proved the transaction in Ex.A1 and the defendant had failed to rebut the presumption, the Courts below have rightly arrived at a finding that the plaintiff is entitled for a decree for recovery of money. This Court does not find any illegality or perversity in the findings rendered, in view of the evidence let in by the plaintiff and also the categorical admission made by the defendant. In view of the above, the substantial questions of law are answered as against the appellant and in favour of the respondents.

19. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

02.07.2025

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

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To

1. The Subordinate Judge, Vendasandur, Dindigul District.
2. The District Munsif Cum Judicial Magistrate, Vendasandur,
Dindigul District.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ARUL MURUGAN, J.

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