



SA No.180 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 20/03/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA No.180 of 2004

Sankaran Pillai : Appellant/Respondent/
Defendant

Vs.

Ramalingam Chettiar : Respondent/Appellant/
Plaintiff

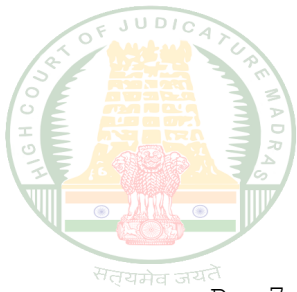
PRAYER:-Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 01/07/1996 made in AS No.159 of 1995 on the file of the Principal District Judge, Pudukottai, in reversing the judgment and decree, dated 28/02/1995 made in OS No.317 of 1994 on the file of the Court of District Munsif, Aranthangi.

For Appellant : Mrs.S.Maheswari
for Mr.P.Srinivas

For Respondent : No appearance

J U D G M E N T

This second appeal is preferred against the judgment and decree, dated 01/07/1996 made in AS No.159 of 1995 by the Principal District Judge, Pudukottai, in reversing the judgment and decree, dated 28/02/1995 made in OS No.317 of 1994 by the District Munsif, Aranthangi.



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2.**The plaint**:-The defendant borrowed a sum of Rs.7,000/- from the plaintiff on 10/02/1990 promising to return the same along with interest @ 24% per annum and executed the promissory note on the same day. In-spite of repeated demand, he did not come forward to repay the loan amount. Hence, the suit.

3.**The statement**:-The promissory note, dated 10/02/1990 is denied stating that it was not executed towards any borrowal. The plaintiff was running a monthly chit. The defendant became a subscriber in one of the Chit Groups for Rs.10,000/- . When the chit transaction was over, the plaintiff demanded to join the Chit Group of Rs.20,000/- . But the defendant did not join and willing. Because of that, the plaintiff got angry with him, misused the signed papers in the custody of the plaintiff, at the time of joining in the Chit Group of Rs.10,000/- .

4.On the basis of the pleadings of both sides, the trial court has formulated the following issues:-

(1)Whether the plaintiff is entitled to get the amount as prayed for in the plaint?



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(2) To what other relief, the
plaintiff is entitled to?.

5. On the side of the plaintiff, 2 witnesses were examined and 3 documents marked. On the side of the defendant, one witness was examined and one document marked.

6. At the conclusion of the trial process, the trial court dismissed the suit without any cost. Against which, appeal was preferred before the Principal District Judge, Pudukkottai in As No.159 of 1995. By judgment and decree, dated 01/07/1996, the appellate court set aside the decree and judgment of the trial court and directed the defendant to pay a sum of Rs.9,520/- to the plaintiff and interest @ 12% for Rs.7,000/- from the date of the suit till the date of judgment and thereafter, at the rate of 6% per annum till the date of realization.

7. Against which, this second appeal is preferred by the defendant as appellant.

8. At the time of admission, the following substantial questions of law were formulated for consideration:-



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(1)Whether in law, a scribe to a promissory note can also act as an attesting witness in the absence of *animo attestandi*?

(2)Whether the Lower Appellate Court was right in concluding that the presumption under section 118 of the Negotiable Instrument Act would arise, when the initial burden to prove execution rests upon the plaintiff?

9.Heard both sides.

10.Perusal of the records shows that the plaintiff filed EP No.86 of 1998 before the District Munsif, Aranthangi to execute the decree. In that, he filed a memo stating that the entire amount was paid by the appellant/defendant. On that basis, EA No.1 of 2000 was disposed, on 04/02/2000. The memo filed before the trial court is available on record, which is sent by the trial court. It appears that the settlement was not intimated to this court at the of hearing. In view of the above said, appeal does not survive.



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11.In the result, this second appeal is **dismissed as settled out of the court.** No costs.

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Index:Yes/No
Internet:Yes/No

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To,

- 1.The Principal Sub Judge,
Pudukottai.
- 2.The District Munsif,
Aranthangi.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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