



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 12.02.2026	Judgment pronounced on : 13.03.2026
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CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S. No.65 of 2024

A.Krishnamoorthy

..Appellant

Vs.

L.Murugesan

..Respondent

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree passed by the II Additional District Judge, Salem in O.S. No.153 of 2018 dated 20.10.2023.

For Appellant : Ms.Gopika Nambiar
for Mr.K.Sharath Chandran

For Respondent : Mr.P.Jagadeesan

JUDGMENT

The plaintiff, aggrieved by dismissal of O.S.No.153 of 2018 is the appellant herein.



II. PLEADINGS:

2 (1). Complaint in brief:

The defendant borrowed a sum of Rs.10,00,000/- on 15.06.2015, in order to meet his business requirements. The borrowing was in the presence of witnesses at Periyagoundapuram Village. The defendant executed an on demand promissory note, in the presence of witnesses, agreeing to repay the amount with interest at Rs.2/- per hundred per month. The defendant paid interest upto November, 2015 alone and thereafter, despite demands made repeatedly by the plaintiff, he has not paid any amount. Hence, the suit.

2(2). Written Statement filed by the defendant in brief:

The defendant had no necessity to borrow any money, much less from the plaintiff. The defendant denies the execution of promissory note on 15.06.2015. The defendant specifically contends that the signature and thumb impression available in the promissory note are not that of the defendant. One S.Marimuthu, was introduced to the plaintiff by the defendant. Marimuthu was indebted to the plaintiff and there is a dispute between the plaintiff and the said Marimuthu and only in order to coerce this defendant to settle the dispute with Marimuthu, the promissory note has been forged and the suit claim is being made.



2(3) Issues:

Based on the pleadings the Trial Court has framed the following issues:-

- i. Whether the Defendant had received a sum of Rs.10,00,000/- from the Plaintiff and executed a suit Promissory note in favour of the Plaintiff?*
- ii. Whether the suit pro-note is forged?*
- iii. Whether the Plaintiff is entitled to get decree for the suit claim amount?*
- iv. To what relief?*

2(4). Trial:

On the side of the plaintiff, the plaintiff himself examined as P.W.1 and one of the witnesses to the promissory note viz., Mr.Vaithi, examined as P.W.2 and Exhibit A1, promissory note was marked and on the side of the defendant, defendant himself examined as D.W.1 and Ex.B1 marked.

2(5). Decision of the Trial Court:-

The Trial Court after considering the pleadings, oral and documentary evidence before it, held that the plaintiff is not entitled to the suit claim as he has failed to prove due execution and passing of consideration.



3. The present APPEAL:-

I have heard Ms.Gopika Nambiar for Mr.K.Sharath Chandran, learned counsel for the appellant and Mr.P.Jagadeesan, learned counsel for the respondent.

4. Ms.Gopika Nambiar, learned counsel for the appellant would state that apart from the signature, the defendant has also affixed his left thumb impression and P.W.2 has been examined to prove the borrowing by the defendant and unfortunately, the Trial Court, without considering the evidence of P.W.2, has held that the plaintiff has not proved passing of consideration and also the factum of due execution of the promissory note. The learned counsel would further state that it was not the case of the defendant that the plaintiff did not have money to lend Rs.10,00,000/- to the plaintiff and in such circumstances, the Trial Court ought not to have even delved into the said issue.

5. Ms.Gopika Nambiar, learned counsel for the appellant pointing out to an Interlocutory Application, that was filed for comparison by an expert would state that in I.A. No.1 of 2019, the defendant himself had filed the said application, seeking comparison of admitted signature with the disputed signature in the promissory note and though the Trial Court has allowed the Application, the expert was not in a position to give a report citing technical



reasons and therefore, the application was closed. It is therefore, the submission of Ms.Gopika Nambiar, learned counsel for the appellant that when the suit promissory note, not only contained disputed signature but also left thumb impression of the defendant, then this Court can atleast order a comparison by an expert to ascertain the truth as to whether the left thumb impression is that of the defendant or not.

6. The learned counsel would also point out that the Trial Court has erred in comparing the suit promissory note with the signature in the vakalat, written statement and deposition, which has been deprecated by this Court in very many decisions. The learned counsel would therefore state that the appeal may atleast be remitted to the Trial Court for enabling the appellant to have the left thumb impression in the promissory note compared with an admitted left thumb impression of the defendant.

7. The learned counsel for the appellant has relied on the following decision in support of her contentions:

(i) *Jashoda Chowdhury Vs. Tarak Chowdhury and Ors*, reported in (2016) SCC Online Cal 149;



(ii) *Lachhmi Narain Singh (dead) through legal representatives and others Vs. Sarjug Singh (dead) through legal representatives and others*, reported in (2022) 13 SCC 746; and

(iii) *Dinesh Kumar Gurjar Vs. Union of India and Another*, reported in (2024) SCC Online Del 8057.

8. Per contra, Mr.P.Jagadeesan, learned counsel appearing for the respondent would state that the evidence of P.W2 was of no avail, since he was the own brother of the plaintiff and the Scribe was also the son-in-law of the plaintiff. Moreover, according to the learned counsel, when even in the written statement, the signature as well as the left thumb impression had been specifically denied, the burden was upon the plaintiff to prove the same and also establishing passing of consideration. In such circumstances, the learned counsel for the respondent would state that the Trial Court has rightly dismissed the suit and the same does not warrant interference in appeal. He would also rely on the following decisions in support of his contentions:-

(i) *Murari Lal Vs. State of Madhya Pradesh*, reported in (1980) 1 SCC 704; and

(ii) *Ajit Savant Majagvai Vs. State of Karnataka*, reported in (1997) 7 SCC 110.



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9. On carefully considering and analysing the arguments advanced on either side, I frame the following point for consideration:-

(i) Whether the plaintiff has proved due execution of Ex.A1, promissory note?

10. As already extracted from the pleadings, it is seen that the appellant sought for recovery of a sum of Rs.10,00,000/- from the defendant. The only document on which the appellant relied on is the suit promissory note. According to the appellant, the suit promissory note is not only signed by the respondent/defendant, but also contains his left thumb impressions. Ms.Gopika Nambiar, learned counsel has relied on the affidavit filed by the respondent in I.A. No.1 of 2019, where the respondent/defendant has stated that the promissory note is a rank forgery and the promissory note has to be sent to the Government Handwriting & Finger Print Experts for comparison of the admitted signature as well as the thumb impression, as it would lend clarity. The said application was in fact, entertained by the Trial Court and the suit promissory note was referred to an expert. However, I find that the expert has expressed inability to render any opinion, stating that *'the specimen finger print submitted is print out of the identification sheets of the SRO, Ayothiappattinam,*



since the available portions does not cover more portion. Hence all the original documents received and returned'.

11. Taking note of the interim opinion of the expert, the I.A. filed by the respondent/defendant was closed. Nothing prevented the appellant/plaintiff to have pursued the application or atleast make a fresh application, stating that the original request was for not only comparison of signature, but also left thumb impression and atleast the comparison of left thumb impression could have been undertaken. The plaintiff has not done so, especially when the burden is upon the plaintiff to first discharge the onus that the promissory note was duly executed by the defendant/borrower and thereafter, establish passing of consideration. If only, the appellant established due execution, he would be entitled to a presumption under Section 118 of the Negotiable Instruments Act, 1881, that the negotiable instruments was for consideration. In the present case, I am afraid the appellant has not been able to establish the very basic requirement of due execution of the promissory note in the first place. As rightly contended by Mr.Jagadeesan, learned counsel for the respondent, the Scribe being the son-in-law of the plaintiff and the witness being the own brother of the plaintiff are certainly interested witnesses and their testimonies cannot be given much credence. Even though, it is contended by Ms.Gopika Nambiar, learned counsel for the appellant that the witness to the promissory



note is also a defendant's relative, when he happens to be own brother of the plaintiff, the Court would normally not give any weightage to his evidence who is very closely related to the plaintiff.

12. No doubt, the Trial Court has committed an error in comparing the suit promissory note (disputed signature) with the admitted signature in the promissory note and the vakalat, written statement and deposition of D.W.1. Such a comparison is certainly not permissible and has been repeatedly frowned upon by this Court. After the dispute has arisen and the matter is before the Court, there is every likelihood, the defendant can sign differently and therefore, it would not be safe or even proper for the Court to compare signatures of the defendant in the pleadings, vakalat or deposition with the disputed promissory note. However, at the same time, I have also find that the Court has also compared the signature of the defendant (disputed signature) with the admitted signature of the defendant in Ex.B1, partition deed and has rendered a finding that the signature in the promissory note is not similar to the admitted signature of the defendant. In fact, in order to ascertain the findings of the Trial Court independently, I have also gone through the disputed signature in Ex.A1, promissory note and the signature of the defendant in Ex.B1, registered partition deed. The promissory note is said to have been executed on 15.06.2015 and the partition deed is dated 21.08.2017 and the documents are certainly,



contemporaneous in nature. The admitted signatures in the partition deed are entirely different from the disputed signature in the promissory note. Therefore, I do not find any infirmity in the findings ultimately arrived at by the Trial Court that the plaintiff has not been able to establish due execution of the promissory note.

13. Though a further request is made by Ms.Gopika Nambiar, learned counsel for the appellant, to either remit the matter to the Trial Court for enabling the plaintiff to obtain a fresh report from the handwriting and finger print expert or in the alternative, appoint an Advocate Commissioner, pending this appeal to undertake such exercise, I am unable to accede to the said request for the learned counsel for the appellant. The appeal arises under a Civil Suit where rights of the parties have been adjudicated after elaborate trial. The burden of proof was certainly on the plaintiff to establish that the promissory note was executed by the defendant, especially when execution itself has been denied by the plaintiff. It was only the defendant who took out an Application in I.A.No.1 of 2019, for comparing his signature and thumb impression with the disputed signature and thumb impression in Ex.A1, promissory note. However, the expert was not able to give his opinion, citing some technical reasons. Atleast at that juncture, the plaintiff should have persuaded the Trial Court to get a report with regard to the thumb impression. That has also not been done.



No separate application was taken out by the plaintiff as well. Even in the appeal, no such attempt was made by the plaintiff, even though it would have been belated. However, the fact remains that as on date, the plaintiff has not attempted to even discharge the burden of proof regarding due execution of the promissory note, excepting for examination of P.W.2, whose evidence has already been held to be of no credibility.

14. Further, I find from the judgment of the Trial Court that the plaintiff has also filed the suit without even issuing a pre-suit notice or making a demand, especially when the suit is based on, on a demand promissory note. Therefore, in my considered opinion, unless there has been a demand made by the plaintiff and thereafter, there has been refusal to accede to such demand, then alone, the plaintiff would even get a cause of action to file the suit in the first place.

15. Coming to the decisions that have been relied on by the learned counsel on either side, the Calcutta High Court in *Jashodha Chowdhury's* case, (referred herein supra) held that the science of examination of thumb impression had reached its finality and is a perfect science and it would be safe to bring in an expert to compare the thumb impression. The Hon'ble Division Bench of the Delhi High Court, in *Dinesh Kumar Gurjar's* case (referred herein supra), also,



already with a case where thumb impressions were compared by the expert and found to be matching, the Hon'ble Division Bench found the report to be extremely detailed and comprehensive and held that the Court can safely rely on the said report. The Hon'ble Supreme Court in *Lachhmi Narain Singh's* case, (referred herein supra) held that the key characteristics of thumb impression is that every person has unique thumb impression and forgery of thumb impression is nearly impossible. However, in view of the discussion made herein above, I do not see any of these decisions would be of avail to support the case of the appellant. There is admittedly not even a request by the appellant for comparing the thumb impression of the defendant by an expert. In such view of the matter, though there is no quarrel with regard to the settled legal proposition that thumb impressions cannot be forged, I do not see how the ratio laid down in any of these cases can be applied to the facts of the present case.

16. In *Murari Lal's* case (referred herein supra), the Hon'ble Supreme Court held that even in the absence of an expert opinion, the Court has got power to compare writings itself and decide the matter. Similarly, in *Ajit Savant Majagvai's* case, (referred herein supra), the Hon'ble Supreme Court held that the Court has power to compare the disputed signature with the admitted signature and in fact, the Hon'ble Supreme Court compared the signature and



found no dissimilarity. Therefore, even applying the ratio laid down in these two decisions, the Trial Court cannot be said to have fell in error in comparing the signature in the promissory note in Ex.B1, Partition Deed, though comparison with the other documents was certainly not proper. Additionally, as already discussed, I have also personally compared the signatures in disputed promissory note and registered partition deed which contained the admitted signature of the defendant and there is absolutely no similarity for arriving at a conclusion that the disputed signature in the promissory note is that of the defendant.

17. For all the above reasons, I do not find any illegality or perversity in the findings of the Trial Court dismissing the suit. Accordingly, the First is **dismissed with costs.**

13.03.2026

Neutral Citation Case: Yes
Speaking order
Index: Yes
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To

1. The II Additional District Judge, Salem.
2. The Section Officer,
V.R. Section, High Court of Madras.



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P.B.BALAJI.J.

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Pre-delivery judgment made in
A.S. No.65 of 2024

13.03.2026