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S.A.No.1215 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2026

CORAM:

THE HON'BLE MR. JUSTICE V.LAKSHMINARAYANAN

S.A.No.1215 of 2006
and CMP.No.20457 of 2025

1. Tmt.Azeema Sultana (died)
2. Khaleel Ahmed Khan
3. Zubair Ahmed Khan
4. Thirumathi Naseema Sultana

...Appellant

**[1st appellant died, appellants 2 to 4 are recorded
as LR's of the deceased 1st appellant vide order of this
Court dated 19.06.2019 made in SA.No.1215 of 2006]**

VS.

1. Yunus Alikhan alias Afzal Jan (died)
2. Amanullah Khan alias Ayub Jan (died)
3. Mohammed Alikhan @ Aslam Jan (died)
4. Humaira Begum (died)
5. Rizwan
6. Ayesha Fathima
7. Mariam Bee
8. Meher Sultana
9. Asif Alikhan
10. Safia
11. Asraf Alikhan
12. Khulsum Begam
13. Iqbal Ajamed Khan
14. Zahir Ahmed Kahan
15. Sultan Ahmed Khan
16. Dilawar Ahmed Khan
17. Noor Tabasum Banu



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...Respondents

[R4 to R6 brought on record as LR's of the deceased 2nd respondent vide order of this Court dated 27.04.2012 made in MP.No.1 to 5/2009]

[R7 to R11 brought on record as LR's of the deceased 3rd respondent vide order of this Court dated 27.04.2012 made in MP.No.1 to 5 of 2009]

[R12 to R17 brought on record as LR's of the deceased 1st respondent vide order of this Court in MP.No.1 of 2012]

[R4 & R12 died, R13 to R17, 5 and 6 are recorded as LR's of the deceased R4 & R12 vide order of this Court dated 20.08.2019 made in SA.No.1215 of 2016]

Prayer: Second Appeal filed under Section 100 CPC to set aside the judgment and decree dated 22.07.2003 made in AS.No.254 of 2001 on the file of the Fast Track III Court, Chennai/Additional District cum Sessions Court, Chennai confirming the judgment and decree made in OS.No.13497 of 1996 on the file of the First Assistant City Civil Judge, Chennai dated 31.03.1999.

For Appellant

: Mr.C.D.Trivedi

For Respondents

for RR1 to 4, 7 & 12

: Died – steps taken

R17

: No Appearance

RR5, 6, 8 to 11 & 13 to 16

: Ms.Mubeena Almas

for Mr.Mohammed Gouse Mohideen



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JUDGMENT

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The defendants are the appellants. The plaintiffs and their legal heirs are the respondents.

2. For the sake of convenience, the parties shall be referred to as per their ranking in the plaint.

3. The plaintiffs, three in number, presented O.S.13497 of 1996 on the file of the City Civil Court at Madras for recovery of money.

4. The gist of the plaint is as follows:

i) The plaintiffs are the brothers of one, Kathar Navas Khan. Kathar Navas Khan passed away on 03.05.1996. The said Kathar Navas Khan died as a bachelor. Hence, as per the Shariat, the plaintiffs being the blood brothers of Kathar Navas Khan, they succeeded to the estate.

ii) They pleaded that one Bazulullah Khan @ Akthar Jan, the husband of the first defendant and father of the defendants 2 to 4, had approached one Asif Ali Khan, son of Mohammed Ali Khan and borrowed a sum of Rs.2,00,000/- under a promissory note. The



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promissory note was executed on 08.09.1993. On 09.09.1993, the said Bazulullah Khan deposited the title deeds of his property situated at 56, Ellis Road, Mount Road, Chennai -2 and 38, Pachayappa Chetty Street, Chennai 2, as security for this loan. The plaintiffs added that the loan had been taken for the marriage of the fourth defendant and for meeting, the expenses of a case, that was pending at Villupuram.

iii) They further pleaded that the creditor, Asif Ali Khan, assigned the loan in favour of the brother of the plaintiffs, Kathar Navas Khan, by way of a deed of assignment dated 15.08.1995. Since the defendants had succeeded to the estate of the debtor Bazulullah Khan, the plaintiffs pleaded that they are answerable for the debts. Consequently, they issued a notice on 09.08.1996, calling upon the defendants to make good the pronote. The defendants issued a reply in common on 28.08.1996 denying their liability. Hence, the suit.

5. Summons were served on the defendants. The defendants entered appearance through a counsel and filed a common written statement.



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6. The defendants admitted to the relationship disclosed in the plaint between the plaintiffs and the deceased Kathar Navas Khan. The defendants denied that the Bazulullah Khan had executed a pronote on 08.09.1993 and also denied the alleged mortgage created on 09.09.1993.

7. The defendants pleaded that the date on the pronote had been altered. Hence, the suit is liable to be rejected since it is a material alteration. It is further pleaded that there was no notice of assignment of debt by the Creditor in favour of Kathar Navas Khan. Therefore, the assignment is bad. They referred to a partition suit pending in C.S.No.614 of 1996 and urged that, as the plaintiffs are claiming share in the suit property, they are not entitled to enforce the mortgage. On these pleadings, the defendants sought to get the suit dismissed.

8. The learned Trial Judge framed the following issues for consideration:

“ 1. வாதி தாவா தொகையை பெற உரிமையுண்டா?

2. என்ன பரிகாரம்?”



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9. On the side of the plaintiffs, 3 witnesses were examined and Exs.A1 to A9 were marked. On the side of the defendants, one Kathif Ahamed was examined as DW1 and Exs.B1 to B9 were marked.

10. On a consideration of the evidence let in by the parties, especially Ex.A1-promissory note, the learned Trial Judge concluded that the plaintiffs are entitled to succeed. Consequently, he decreed the suit as prayed for with costs.

11. Aggrieved by the same, the defendants preferred a regular appeal to the file of the learned Principal Judge, City Civil Court at Madras. This appeal was received as AS.No.254 of 2001. The appeal was bound over to the file of the III Additional City Civil Judge at Chennai. The learned judge heard the appeal. He confirmed the findings of the Lower Court and dismissed the appeal. Aggrieved by the same, the present second appeal.

12. This appeal was admitted on 11.01.2017, on the following substantial questions of law:-

“1) Whether the defendants, who are the heirs of Bazullah Khan alias Akhtar Khan, are personally liable for the money



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borrowed by Bazullah Khan alias Akhtar Khan and whether the courts below are legally right in granting personal decree against the legal heirs of the borrower?

2) Whether the courts below right in making the defendants personally liable in respect of a debt incurred by Mr.Bazullah Khan alias Akhtar Khan?

3) Whether the courts below are right in decreeing the suit of the plaintiffs without the production Succession Certificate as per of Section 214 of the Indian Succession Act?

4)When there is no assignment of Ex.A-1 under the Assignment deed Ex.A-4, whether the courts below right in granting a decree in favour of the plaintiffs?

5) Whether the courts below erred in not giving a finding as to the validity and due consideration for the assignment under Ex. A-4 when the same was denied and disputed by defendants?”

13. I heard Mr.C.D.Trivedi, for the appellants and Ms.Mubeena Almas, for the respondents 5, 6, 8 to 11 & 13 to 16.



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14. Mr.C.D.Trivedi, expanding on the questions of law urged that, as the document under Ex.A1 is tampered, it amounts to “material alteration”. He further urged that Ex.A2 deed, under which the documents of the two properties had been handed over as security, is an unstamped document, it ought not to have been relied upon by the Courts below. He states that when Ex.A2, the letter showing the properties being offered as security is invalid, the document assigning the mortgage in favour of the plaintiffs predecessor can also not be relied upon. He urges that in any event, the Courts below erred in holding that the defendants are personally liable for the debt incurred by Bazulullah Khan, as the plaintiffs had not proved that Bazulullah Khan had left behind properties, to which they had succeeded. Finally, he appeals to Section 214 of the Indian Succession Act and pleads that as no succession certificate had been produced by the plaintiffs, they are not entitled to succeed.

15. Rejecting these arguments, Ms.Mubeena Almas, pleads that as per the Islamic Law, the plaintiffs, being the blood brothers of the deceased Kathar Navas Khan, are entitled to present the suit for recovery of the money. As they are the legal representatives, they represent the estate of Kathar Navas Khan, which is entitled to recover the amounts



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due. Referring to Ex.A1, she rejects the plea of material alteration, since the pronote remains unaltered. Insofar as the mortgage is concerned, she states that the suit has been presented on the basis of the original cause of action, namely, the pronote executed on 08.09.1993 as well as the deposit of title deeds dated 09.09.1993 and the present suit is not a suit to enforce the mortgage. Hence, that plea too is untenable. She urges the appeal being a concurrent finding of fact, this appeal does not deserve any consideration.

16. In response, Mr.C.D.Trivedi, pleads that the loan, being for a marriage of the fourth defendant, and not being a commercial transaction, grant of interest at the rate of 12% is excessive. Ms.Mubeena Almas, rejects this plea stating that the Courts below have only applied the agreed rate of interest and it is not excessive or usurious. Hence, the same need not be interfered with by this Court.

17. I have carefully considered both sides, I have gone through the records. I have applied my mind to the questions of law framed by this Court on 11.01.2017.



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WEB COPY 18. I will take up the plea on mortgage urged by Mr.C.D.Trivedi

first. A perusal of Ex.A2 shows that the plea taken by the learned counsel is right. Under the Ex.A2 document dated 09.09.1993, Bazulullah Khan @ Akthar Jan, is said to have deposited the title deeds of the aforesaid property, as security for the amounts, that he had received on various occasions. The document is unstamped one. Under Section 35 of the Indian Stamp Act, no document, which requires stamping but has not been stamped or has been under valued, can be received in evidence for any purpose.

19. There is an exception to the said section. Going through the document, it is clear that no objection had been raised by the defendants calling upon the Court not to receive the document. In case, an unstamped document is received in evidence, marked through a party, then Section 36 of the Stamp Act comes into operation. In terms of Section 36, if an instrument has been admitted in evidence, the receipt of the document cannot be questioned, at any stage of the same suit or proceedings, on the ground that the instrument has not been duly stamped. The only exception to this bar is Section 61 of the Stamp Act.



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As we are not concerned with the Revenue Authorities here, the issue of going into the same does not arise.

20. I should point out that Section 36, apart from Section 61, does not brook of any exception. Once the Court whether erroneously or correctly has admitted a document, so far as the parties are concerned, the issue cannot be raised once the document is admitted. This bar applies to the Trial Court or the First Appellate Court or the Second Appellate Court. This position of law has been settled by the Supreme Court in *Javer Chand and others vs. Pukhraj Surana* AIR 1961 SC 1655.

21. Turning to the next point that has been urged by Mr.C.D.Trivedi, namely, that no notice of assignment had been given by the original creditor, Asif Ali Khan to Bazulullah Khan, I have to state that this is a rather unique plea. There is no law which calls upon the creditor to inform the debtor about the assignment in favour of the third party. A promissory note is a negotiable instrument. It is only an “*actionable claim*”, falling under Section 130 of the Transfer of Property Act, 1882. An assignment requires to be intimated to the debtor, by a notice, under Section 131 of that Act. Neither Section 47 nor Section 48 of the Negotiable Instruments Act, 1881, calls upon the holder of a



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promissory note to give notice. As per Section 78 of the Negotiable Instruments Act, the debtor makes payment to the holder of a promissory note. Unless and until, the defendants are able to show that there is a positive law entitling them to notice and that positive law has been breached, this argument too would have to be rejected, as a plea in futility.

22. With respect to the plea that the plaintiffs have not shown that Bazulullah Khan had left behind properties for the defendants to succeed, this argument too deserves rejection for two reasons. The first reason being that, whether Bazulullah Khan left behind properties or not, would not be in the know of things to a third party. Even if I were to assume that is the situation, going through the written statement in paragraph 8, makes it clear that Bazulullah Khan had died and parties had been litigating over the properties left behind by him. If there were no properties, the question of filing a suit for partition arraying the defendants as parties in CS.No.614 of 1996, would not have arisen at all. A partition suit cannot be filed for a non existent property. The averments in paragraph 8 indicates that, on the death of Bazulullah Khan, he had left behind properties and the defendants had succeeded to the estate.



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23. Apart from that, a perusal of Ex.A2, indicates that Bazulullah Khan had handed over the title deeds of his property to Asif Ali Khan, the original creditor. The properties are situated at 56, Ellis Road, Anna Salai, Madras 2, and 38, Pachaiyappa Chetty Street, Madras 2. This shows that Bazulullah Khan was not a penniless gentleman but possessed at least two immovable properties within the City of Chennai. Hence, I am constrained to reject the argument of Mr.C.D.Trivedi that the plaintiffs have not proved that the deceased Bazulullah Khan did not leave behind any property.

24. Insofar as the plea under Section 214 of the Indian Succession Act is concerned, I made a search in vain in the written statement, nowhere has Mr.C.D.Trivedi's client taken this plea before the Trial Court. Code of Civil Procedure is code of fairness. It is not open to a party to take the other by surprise. A pure question of law can certainly be urged at the time of final disposal. Whether the legal heirs of the deceased creditor requires the succession certificate or not, in my considered view, would not fall under that category. When there is no plea in the Trial Court, to raise this issue for the first time in an appeal is not acceptable to me. The purpose of pleadings is to put the adversary on



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notice. It is not a cinematic trial to take the opponent by surprise. If this plea had been taken at the time of the original statement, the plaintiffs would have perhaps, obtained a certificate. In any event, Section 214 of the Indian Succession Act does not bar the filing of a suit. Hence, that point too stands rejected.

25. I am convinced going through the documentary and oral documents that Bazulullah Khan had borrowed money from Asif Ali Khan, as is clear from Ex.A1 and Asif Ali Khan had executed an assignment of the said document in favour of the Kathar Navas Khan under Ex.A4. Kathar Navas Khan having passed away on 03.05.1996, leaving behind the plaintiffs as his legal heirs, they are entitled to present the suit to enforce the pronote. I reiterate that the suit is not one on mortgage, but a suit for recovery of money on the basis of Ex.A1.

26. The questions of law are answered as follows:

Q(1): Whether the defendants, who are the heirs of Bazullah Khan alias Akhtar Khan, are personally liable for the money borrowed by Bazullah Khan alias Akhtar Khan and whether the courts below are legally right in granting personal decree against the legal heirs of the borrower?



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Q(2): Whether the courts below right in making the defendants personally liable in respect of a debt incurred by Mr.Bazullah Khan alias Akhtar Khan?

As the written statement of the defendants itself discloses that Bazulullah Khan had left behind properties and from Ex.A2, it is clear that Bazulullah Khan was possessed of at least two immovable properties in the City of Chennai, questions of law 1 and 2 are answered against the appellants/defendants and in favour of the plaintiffs.

Q(3): Whether the courts below are right in decreeing the suit of the plaintiffs without the production Succession Certificate as per of Section 214 of the Indian Succession Act?

As this plea has never been taken before the Trial Court, being a mixed question of in fact, it cannot be raised for the first time in a Second Appeal. Hence, this question of law too is rejected.



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Q(4): When there is no assignment of Ex.A-1 under the Assignment deed Ex.A-4, whether the courts below right in granting a decree in favour of the plaintiffs?

Q(5): Whether the courts below erred in not giving a finding as to the validity and due consideration for the assignment under Ex. A-4 when the same was denied and disputed by defendants?

The evidence points out that the original creditor Asif Ali Khan had executed Ex.A4 in favour of Kathar Navas Khan. When the documentary evidence is available before the Court, evidencing the assignment, it is not open to the defendants to urge these questions of law. Hence, the questions of law 4 and 5 are also answered against the defendants.

27. Insofar as the plea on interest is concerned, a perusal of Ex.A1 shows that late Bazulullah Khan had taken money for the marriage of the fourth defendant/his daughter, Naseema Sultana. Being a personal debt, granting a decree for 12% interest, as if it is a commercial transaction, in my view is not correct. Hence, that portion of the decree alone is modified. Accordingly, the plaintiffs are entitled to the relief sought for, and the suit shall stand decreed as prayed for, with the modification that



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the defendants shall be liable to pay interest at the rate of 6% per annum from the date of decree till the date of repayment.

28. Apart from the modification on interest, I find no merits in the second appeal. With the modification on that portion alone, the second appeal is partly allowed. The plaintiffs shall be entitled to costs throughout. Consequently, connected miscellaneous petition is closed.

12.02.2026

pvs
Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order

To

1. Fast Track III Court, Chennai/
Additional District cum Sessions Court, Chennai
2. I Assistant City Civil Judge, Chennai
3. The Section Officer,
V.R.Section, High Court, Madras



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V.LAKSHMINARAYANAN, J.

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