IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.02.2026

Pronounced on: 30.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

S.A.No.1064 of 2015
and
M.P. No.1 of 2015

1. M.Manoharan
2. M.Rajalakshmi
3. S.Nikab Chand Badevada … Appellants

vs

D.Nirmala .... Respondent

Prayer: Second Appeal filed under Section 100 CPC, 1908 to set aside the judgment and decree dated 27.08.2014 made in AS No.2 of 2013 on the file of the I Additional District and Sessions Judge, Vellore reversing the judgment and decree dated 16.11.2010 made in O.S.No.445 of 2005 on the file of the Sub Court. Vellore.

For Appellant : Mr.N. Krishnakumar
for M/s.Sarvabhauman Associates

For Respondents : Mr.T.Dhanyakumar

JUDGMENT

This Second Appeal has been preferred as against the decree and judgment passed by the learned District Munsif, Madurantakkam in O.S.No.98 of 2010 dated 29.07.2013.

2. The appellant herein is the defendant in the main suit and the respondent herein being plaintiff the filed suit for recovery of money based on the pronotes and mortgage and the trial Court dismissed the suit. Aggrieved by the said decree and judgment the respondent/plaintiff has preferred appeal before the first appellate court and the first appellate Court set aside the decree and judgment passed by the trial Court. Aggrieved by the same the defendants has preferred this second appeal.

3. **The brief averment of the plaint are as follow:**

On 06.09.1999 the defendants 1 and 2 borrowed a sum of Rs.75,000/- from the plaintiff and executed a promissory note dated 06.19.1999 promising to pay the said amount on demand with interest at the rate of 24% per annum. On the same day soon after the execution of the said promissory note the defendants 1 and 3 deposited the title deed with an intent to create equitable mortgage of the due payment of the amount due under the promissory note and for future advances and mortgaging the property set out in the B schedule. The defendants 1 and 2 executed a list dated 06.09.1999 depositing the title deed in respect of A schedule property. On the strength of the deposit of title deeds the defendants 1 and 2 borrowed a sum of Rs.75 lakhs on 04.10.1999, Rs.75,000/- on 10.12.1999 and Rs.70000/- on 20.12.1999 and executed three promissory notes dated 04.10.1999, 10.12.1999 and 20.12.1999 for the above said amounts and they agreed to pay a sum of Rs.24%interest per annum. Thereafter the defendants failed to repay the amount inspite of repeated demands by the plaintiff , therefore the plaintiff issued a notice dated 27.04.2001 and the first defendants refused to receive the notice but the second defendant sent reply dated 05.10.2022 with false averments. Therefore the plaintiff has filed the suit based on mortgage for a sum of Rs.578400/-

4. **The brief averments of the written statement filed by the first defendant are follows:**

The suit is not maintainable either in law or facts and the averments made in the plaint are denied as false. The defendants 1 and 2 never borrowed money from the plaintiff and the defendants had never seen the plaintiff and the defendants have not executed any promissory note in favour of the plaintiff, the alleged deposit of title deeds by the defendants is false. The defendants deny the execution of list dated 06.09.1999, there is no mortgage by the deposit of title deeds by the defendants in favour of the plaintiff as alleged in the plaint. The plaintiff has suppressed the true facts and filed the suit taking advantage of the blank promissory notes in which the defendants have signed and handed over to the husband of the plaintiff namely R.Dhandapani whom the defendants 1 and 2 had money dealings. The husband of the plaintiff is one of the partner of Victory Finance Chit Company at Beri Subramani Swami Kovil Street, Vellore . The said company carried on suspense chits.

4.1 .The defendants 1 and 2 had chit transactions with the said company and deposited the title deeds of the properties dated 20.03.1989 as security for the chit transactions. The defendants 1 and 2 subscribed a chit for a sum of Rs. 5,00,000/- commenced on 11.10.1998 with the said company comprising of 25 monthly installments of Rs.5000/-each. When the defendants decided to auction the chit the husband of the plaintiff advised him to get loan from his finance company.

4.2. Accordingly the defendants borrowed money from the husband of the plaintiff to the tune of Rs.1,35,000/- signed and handed over the blank promissory notes. While so after payment of chit amount upto 17 installment there was a problem in the finance company of the husband of the plaintiff and other partners of the said finance.. The said finance incured huge loss to the tune of Rs.1,25,00,000/-. The defendants totally paid Rs.3,40,000/- towards chits installment and when he insisted to return the 3.4 lakhs chit amount after deducting the loan amount of Rs.1,35,000/- which was borrowed by the defendants from the husband of the plaintiff he promised to return back the blank promissory note and the title deed given to him, but he has not returned the documents. The defendants 1 and 2 have replied for the notice issued by the plaintiff, therefore the suit promissory notes were not executed by the defendants in favour of the plaintiff and no amount was borrowed from the plaintiff and in the meantime they sold the property to the third defendant . The defendants are not liable to pay any money to the plaintiff. The alleged mortgage by deposit of title deeds as alleged in the plaint are false and the plaintiff is not entitled any relief, therefore the suit is liable to be dismissed.

5. Based on the above said pleading and after hearing both sides, the trial Court framed the following issues:

a) Whether all the four promissory notes are true and genuine?

b) Whether promissory note came into existence as pleaded in para 5 of the written statement?

c) Whether the plaintiff is entitled decree as prayed for in the plaint ?

d) To what relief the plaintiff is entitled to?

Additional Issue

a) Whether the third defendant is a bonafide purchaser for value without notice of the debt.

6. Before the trial court on the side of the plaintiff P.W.1 to P.W.3 were examined and Exhibits A1 to A19 were marked. On the side of the defendants D.W.1 to D.W.3 were examined and no documents were marked.

7. After evaluating the oral and documentary evidence adduced on both sides the trial Court dismissed the suit . Aggrieved by the said decree and judgment the plaintiff has preferred appeal is AS No.2 of 2013 on the I Additional District and Sessions Judge, Vellore, on various grounds.

8. The first appellate Court has framed the following points for determination

> Whether the judgment and decree passed in O.S.No.445 of 2003 on the file of the learned Sub Court Vellore is sustainable or not?

9. The appellate Court reversed the judgment of the trial Court and decreed the suit by allowing the appeal. Aggrieved by the same the defendants have filed the present second appeal.

10. At the time of admitting the second appeal this Court formulated the following substantial questions of law.

1) Whether the first appellate court was right in holding that the suit is not barred by limitation ?

2) Whether the first appellate Court was right in holding that the admission of the signature found in the promissory note would tantamount to execution of the document itself?

3) Whether the first appellate court was right in shifting the burden upon the defendant to disprove the loan transaction when the execution of the document itself not fully proved ?

11. Heard both sides and perused the materials available on record.

12. For the sake of convenience and brevity, the parties in this appeal hereinafter will be referred to as per their status/ ranking in the trial court.

13. The learned counsel appearing for the appellant would submit that the appellants are the defendants . The respondent /plaintiff filed the suit for recovery of money based on the mortgage and promissory notes alleging that there was mortgage by deposit of title deeds. Infact the defendants 1 and 2 had money dealings with the husband of the plaintiff

and also they had chit transactions with one Victory Finance BK chits where the husband of the plaintiff namely Dhandapani is one of the partners. When the defendants 1 and 2 had approached the husband of the plaintiff for auction in the chit amount, he advised to borrow loan from him, instead of bidding the chit, at that time also they entrusted the sale deed dated 20.03.1982 as security for the chit amount.. Accordingly they also borrowed a sum of Rs.1,35,000/- from his finance company and signed and handed over the blank signed promissory notes to the husband of the plaintiff. At the time of 17th installment of the chit subscriptions there was a problem in the finance company and the finance incurred huge loss to the tune of Rs.1,25,00,000/-. Immediately the defendants contacted the husband of the plaintiff and insisted him to return the amount totally paid Rs.3,40,000/- which was subscribed for 17 months after deducting the loan amount of Rs.1,35,000/- which was borrowed by the defendants from the husband of the plaintiff and also demanded to return back the blank promissory notes and the title deed given to him. The husband of the plaintiff promised to return back the blank promissory notes and thereafter suit has been filed by wife of the said Dhandapani as plaintiff, therefore the defendants have not borrowed any money from the plaintiff as alleged in the plaint and they have not deposited the title deeds for the purpose of borrowing loans as alleged in the pliant.

13.1. Before the trial Court on the side of the plaintiff P.W.1 to P.W.3 were examined and Exhibits A1 to A19 were marked. On the side of the defendants D.W.1 to D.W.3 were examined and no documents were marked. Based on the evidences adduced by both sides the trial Court dismissed the suit by holding that evidence of the Plaintiff is not in consonance with the plaint pleadings and the plaintiff has not lent money to the defendants, thereby dismissed the suit. However first appellate court reversed the judgment of the trial court by erroneously holding that the defendants 1 and 2 have executed the mortgage by deposit of title deeds thereby they are liable to pay the suit amount. The first appellate failed to consider that there was a money transaction between the plaintiff's husband and the defendants and no any transaction between the plaintiffs and the defendants. The first appellate court failed to consider that the plaintiff has not discharged the initial burden to prove the execution of promissory not as well as passing of consideration. The first appellate court failed to consider the evidence in a proper perspective . The first appellate Court failed to consider that the dates of pronotes mentioned as various dates but whereas all the pronotes were executed with the same pen, therefore the plaintiff failed to prove the case. However the first appellate Court erroneously decreed the suit and further the suit is based on promissory notes and the plaintiffs failed to prove the alleged deposit of title deeds and thereby the suit is barred by limitation. Mere admission of the signature found in the promissory note would not tantamount to execution of document itself and the first appellate court wrongly placed the burden upon the defendants to disprove the loan transaction when the execution of document is not fully proved. Therefore the judgment of the first appellate court is liable to be set aside by allowing this appeal.

14. The learned counsel appearing for the respondent would submit that the defendants 1and 2 borrowed Rs.75,0000/- on 06.09.1999 and also on the same day they deposited the title deeds and created an equitable mortgage and also they executed promissory notes agreed to repay with 24% interest per annum and again they borrowed money on various dates

in total they received a sum of Rs.2,95,000/- by executing promissory notes and the total amount due on the date of filing of suit would come to Rs.5,78,400/- . The defendants failed to repay the said amount and thereby the plaintiff caused notice and the said notice was not immediately replied. Notice was issued on 27.04.2001 but the reply was issued by the first defendant on 05.10.2002 with false averments and inorder to prove the case of the plaintiff he was examined as P.W.1 and also examined the husband of the plaintiff as P.W.2 and P.W.3 is the attesting witness in the promissory notes and there by the plaintiff has clearly established the case through sufficient evidence . The defendants also admitted the execution of promissory note and according to the defendants they executed the promissory note for the loan borrowed from the husband of the defendant and there was a chit transactions and chit money was not paid to him and thereby they have adjusted the money and the husband of the plaintiff has to pay the money. At the time of borrowing money they executed blank promissory notes and also handed over the original deeds to the husband of the plaintiff but the above said contentions have not been proved by the defendants through proper evidence. However the trial Court without considering the evidence adduced by the plaintiff erroneously dismissed the suit. However the first appellate court after taking into consideration the evidence in a proper perspective correctly decreed the suit and thereby there is no infirmity in the decree and judgment passed by first appellate Court and there are no substantial questions of law involved in this case and thereby the second appeal is liable to be dismissed.

15. Heard both sides and perused the materials available on record.

16. In this case the plaintiff field suit for the relief of recovery of money based on promissory note and the mortgage by deposit of title deeds. The defendants denied the transactions between the plaintiff and the defendants. According to the defendants they had dealing with the husband of the plaintiff and they handed over the unfilled signed blank promissory notes to the husband of the plaintiff and also they had chit transactions with one Victory Finance chit company where they deposited the title deed as security for the chit amount. Without paying the chit amount the husband of the defendant insisted the defendant to borrow

money at that time the husband of the defendant insisted to execute blank promissory notes and the same were utilized by the plaintiff. Since the defendants denied the execution of promissory notes in the favour of the plaintiff, the plaintiff has to prove that the defendants have executed the suit promissory notes in her favour and also deposited the title deeds. In order to prove the same the plaintiff was examined as P.W.1 and her husband was examined as PW.2 and P.W.3 is the attesting witness . PW.1 in her evidence has stated that husband of the plaintiff namely Dhandapani lent money of the plaintiff to the defendants 1 and 2 for a sum of Rs.75000- and also they executed promissory note dated 06.09.1999. She only paid the money to her husband and her husband in turn paid money to the defendants and thereafter they executed promissory notes to her husband and also they created mortgage for the 'B'schedule property and again she lent money to the defendants through her husband through Ex.A.4 to A6 for a sum of Rs.75,000/- dated 04.10.1999, Rs75.000/-dated 10.12.1999 and Rs.70,000/- dated 20.12.1999.

17. Per contra the present suit was filed by the plaintiff alleging that she only paid money to the defendants 1 and 2 and they executed promissory notes in her favour. Further the Ex.A.1 is said to be the mortgage deed but according to the evidence of PW.1, the husband of the plaintiff had obtained the above said documents , therefore the defence of the defendants that they had dealings with the husband of the plaintiff and they handed over the blank promissory notes is probabilized. The defendants also examined D.W.1 to D.W.3 and they categorically deposed by supporting their defence.

18. It is an admitted fact that the husband of the plaintiff is a partner of victory finance. The attesting witness of pronotes was examined as P.W.3 and she deposed that she did not see the payment of money based on the promissory notes and she did not see the signature signed by the second defendant. P.W.2 who is husband of the plaintiff also in his evidence stated that at the time of execution of promissory notes his wife was not present and it is habit of obtaining title deeds at the time of lending money. At the time of execution of Ex.A1 to A4 he did not see the defendants 1 and 2 and he did not know who wrote the

mortgage deed and thereby he did not know about the execution of Ex.A 1, A4 to A6, and Ex.A.2. P.W.1 also in her evidence stated that the husband of the plaintiff along with one Loganathan conducted chit company and there were nine partners in the chit company. On that chit company of Victory finance her husband obtained the original document and she was not in a position to identify the defendants 1 and 2 and also she stated that she does not know whether Ex.A2 was obtained at the time of execution of Ex.A.1 and she does not know where her husband obtained Ex.A1/promissory note and her husband did not state to her that the defendants 1 and 2 have mortgaged their property and obtained loan and therefore the evidence of PW.1 is highly doubtful as to whether the promissory notes and Ex.A2 were executed as alleged in the plaint and the plaintiff failed to prove the execution of suit promissory notes and Ex.A.2.

19. In this context the trial Court elaborately discussed about the evidence on both sides and came to conclusion that the plaintiff failed to prove her case.

20. As far as third defendant is concerned he purchased the property and once the plaintiff failed to prove the execution of mortgage deed no question of bonafide purchase would arise. However the firt appellate Court in the judgment discussed that P.W.1 had deposed regarding grant of loan by the defendants and execution of pronotes and deposit of title deeds. P.W.2 has clearly stated about the loan being advanced to defendants 1 and 2. PW.3 is the attesting witness of the four pronotes has evidenced to the passing of consideration to the defendants 1 and 2 and the defendants also admitted the issue of notice to issued by the plaintiff and issued reply belatedly on 05.10.2002 and thereby the plaintiff has proved the case, but the defendants failed to prove their contention that they had chit transaction with the victory finance and also they borrowed money from the husband of the plaintiff to the tune of Rs.1,35,000/- and the chit amount of Rs.348400/- was paid and for that purpose they executed blank promissory notes and handed over title deeds of the property, thereby based on the above evidence came to conclusion that the plaintiff proved the case. The first appellate Court failed to consider that the defendants denied the execution of promissory notes in favour of the plaintiff and according to them they executed

blank promissory notes in favour of the husband of the plaintiffs. The evidence of PW.1 shows that she has not lent money to the defendants directly and through her husband she lent money, but the evidence of P.W.1 is not in consonance with the pleadings and the evidence of the plaintiff is not supporting the pleadings of the plaintiff and without pleadings the evidence cannot be taken into account and there must be proper pleadings and the pleadings have to supported by the evidence.

21. In this case as per the pleadings, the plaintiffs had lent money to the defendants 1 and 2 and they executed the promissory notes and Ex.A2/mortgage deed, whereas the plaintiffs side evidence shows that the husband of the plaintiff lent money to the plaintiff and the defendants had executed deeds and promissory notes in favour of the husband of the plaintiff and the husband of the plaintiffs did not state about the execution of Ex.A2 but Ex.A2 reveals the name of the plaintiff, therefore the plaintiff failed to prove her case. Per contra the defendants probabilized their defence. Though the appellate court relied on some judgments on the aspect of unregistered mortgage deeds, the plaintiff failed to prove the execution of A2 deed itself thereby question of

registration would not arise. First the execution of document has to be proved and then only the registration would arises. Therefore the findings of 1st appellate court that the plaintiff proved her case and the defendants failed to prove their case is erroneous, thereby the judgment and decree passed by the first appellate Court are liable to be set aside.

22. As far the substantial question of law (No.1) Whether the first appellate court was right in holding that the suit is not barred by limitation? is concerned the plaintiff filed the suit for recovery of money as against the defendants 1 and 2 based on the mortgage and the defendants denied the execution of promissory notes in favour of the plaintiff. According to the defendants they had dealing with the husband of the plaintiff. The suit is based on the promissory notes as well as the mortgage deed. The execution of promissory notes as well as mortgage deeds are all have not been proved. There is no issues framed by the Courts below in respect of limitation. Since the execution of promissory notes itself have not proved by the plaintiff and the plaintiff also failed to prove the Ex.A.2 in accordance with law. Based on the promissory notes

for the year 1999, the suit is filed in the year 2003 i.e., after the lapse of three years and thereby the suit is barred by limitation. Though the specific issues has not been framed by the court below both the parties are aware about the date of promissory notes and the defendants also denied the execution of promissory notes as well as the mortgage deed and thereby even without framing specific issues for limitation the court can dismissed the suit as barred by limitation when there is evidence for limitation. Thus the substantial question of law is answered.

23. As far as substantial question of law (No.2)Whether the first appellate Court was right in holding that the admission of the signature found in the promissory note would tantamount to execution of the document itself? is concerned the defendants admitted the execution of blank promissory notes in favour of the husband of the plaintiff and the plaintiff also admitted that she had not obtained the promissory notes from the defendants for the loan advanced by her. Therefore admission of signature found in the promissory notes which were handed over to the husband of the defendants would not tantamount to admission of execution of document in favour of the plaintiff, therefore the first

appellate Court was not right in holding that the admission of the signature found in the promissory note would tantamount to admission of execution of document. Thus the substantial question of law is answered.

24. As far as substantial question of law(No.3) Whether the first appellate court was right in shifting the burden upon the defendant to disprove the loan transaction when the execution of the document itself not fully proved ? is concerned this Court in the previous point already decided that suit is filed based on the promissory notes and mortgage deed and the promissory notes were executed in the year 1999, but suit was filed in the year 2003. According to the plaintiff the defendants also executed mortgage deed but however the plaintiff failed to prove the execution of mortgage deed as well as promissory notes and already this court holds that the defendants probabilized their defence and the evidences of plaintiffs itself shows that the promissory notes/Ex.4 to A6 and Ex.A2 were not executed in favour of the plaintiff. While so shifting the burden upon the defendants to disprove the loan transactions when the execution of documents is not fully proved by the appellate Court was not right in shifting the burden on the defendants to disprove the loan

transactions. Thus the substantial question of law is answered.

25.In view of the above discussions and answers to the substantial questions of law this second appeal is to be allowed. The judgment and decree passed by the first appellate court is liable to be set aside and the judgment and decree passed by the trial Court is to be restored.

26. In the result, this second appeal stands allowed and the judgment and decree passed by the I Additional District and Sessions Judge, Vellore in AS No.2 of 2013 dated 27.08.2014 are set aside and the decree and judgment passed by the trial Court in in O.S.No.445 of 2005 dated 16.11.2010 on the file of the Sub Court, Vellore is restored. No costs. Consequently connected miscellaneous petition stands closed.

30**.03.2026**

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mjs

To

1. The I Additional District and Sessions Judge, Vellore

2. The Sub Court. Vellore

3. The Section Officer, VR Section, High Court, Madras.

P.DHANABAL, J.

MJS

S.A.No.1064 of 2015
and C.M.P. No.499 of 2026

30.03.2026